Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CLODUALDA D. DAACO,
Petitioner,

- *versus* -

VALERIANA ROSALDO YU,
Respondent.

G.R. No. 183398

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

June 22, 2015

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D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Section 2(c), Rule 41, in relation to Rule 45 of the Rules of Court, seeking to reverse and set aside the Order[1] dated October 4, 2007 of the Regional Trial Court (*RTC*), Branch 6, of Tacloban City in Civil Case No. 2006-12-16 dismissing the case for annulment of title, recovery of property under Transfer Certificate (*TCT*) No. T-28120 and damages due to the absence or failure of petitioner to appear at the pre-trial conference.

The antecedent facts are as follows:

The instant petition stems from a complaint filed by petitioner Clodualda D. Daaco against respondent Valeriana Rosaldo Yu, Faustina Daaco, and the Register of Deeds of Tacloban City docketed before the

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[1] Penned by Judge Santos T. Gil; *rollo*, p. 14.

RTC, Branch 6, Tacloban City as Civil Case No. 2006-02-16 for Annulment of Title, Recovery of Property under TCT No. T-28120 and Damages.

After the answer had been filed and preliminary matters disposed of, the RTC, on September 5, 2007, set the pre-trial conference on October 4, 2007. However, upon motion, the trial court dismissed the case as against respondent Yu in its assailed Order for petitioner's failure to appear thereat.

Subsequently, petitioner filed a Motion for Reconsideration alleging the following grounds: (1) that she was not properly notified of the pre-trial conference scheduled at 8:30 a.m. on October 4, 2007 as she received notice thereof only at 5:30 p.m. of October 3, 2007, or merely 15 hours before the scheduled conference, and thus, the order of dismissal was invalid; and (2) that there is still an unresolved Motion to Consider the Answer of Respondent as Not Filed, which she had previously filed on October 4, 2006.

On December 27, 2007, the RTC issued an Order[2] denying the Motion for Reconsideration in the following wise:

> **It is not disputed, in fact admitted, that plaintiff herself and his non-licensed lawyer son, received the notice of pre-trial on October 3, 2007. Their failure, therefore, to appear in the pre-trial conference set on October 4, 2007 at 8:30A.M. is good reason for defendant Valeria Rosaldo Yu to move and to pray the court for dismissal of the complaint.**
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> It is no good reason to excuse the absence of plaintiff in the pre-trial conference on October 4, 2007 simply because plaintiff and her counsel received the notice of pre-trial short of twenty-four (24) hours before the pre-trial conference was conducted. **Vital, plaintiff and her counsel have had notice of the pre-trial conference that if prudence, diligence and respect for the court had been observed there was sufficient time still for both to come to court on October 4, 2007 at 8:30 A.M.** That they didn't appear despite notice, righty, upon motion by defendant, the court has to order the dismissal of the complaint.
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> **San. Jose District, Tacloban City where plaintiff and her counsel resides is just fifteen (15) to twenty (20) minutes ride to the court thru public utility vehicle. Veritably, under the circumstance, plaintiff's not going to court to appear in the pre-trial conference despite notice showed nothing more but abandonment of their cause not to mention their deliberate defiance to the notice of the court for them to appear in the scheduled pre-trial conference**. Under Rule 17 of the Rules of Court, failure to comply the order of the court is a ground to dismiss plaintiff's complaint.
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> **It is not correct to claim that there is still a pending motion filed by plaintiff which this court failed to resolve**. **The motion to consider the answer to the complaint of defendant Valeria Ronaldo**

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2 *Id*. at 17-19.

> **Yu as not filed was filed by plaintiff on October 4, 2006. Yet, as early as of May 26, 2006, and after Valeria Ronaldo Yu had filed her Answer to the complaint, plaintiff had filed a motion for judgment on the pleadings. This motion for judgment on the pleadings was denied by the court in the order issued on June 9, 2006.** On June 19, 2006, plaintiff filed a motion for reconsideration to the order denying the motion for judgment on the pleadings. On July 18, 2006, the motion for reconsideration to the order of the court, dated June 9, 2006 was denied. With the facts obtaining, obviously, the motion filed by plaintiff on October 4, 2006 is a motion which this court must not take cognizance of. **When a party to a case files a motion for judgment on the pleadings, by it, necessarily he admits the propriety of the answer to the complaint as filed. Hence, after admitting the propriety of the pleadings which in this case, is the answer to the complaint, obedience to ethical precepts requires abstention from further wasting unnecessarily the time of the court by filing another motion of similar import.** The motion filed on October 4, 2006 in effect a second motion for reconsideration to the order issued on June 9, 2006.

On February 1, 2008, petitioner sought recourse from the Court by filing the instant petition essentially invoking the following question of law:

> I.
> WHETHER OR NOT THE REGIONAL TRIAL COURT'S DISMISSAL OF THE CASE FOR PETITIONER'S FAILURE TO APPEAR IN THE PRE-TRIAL CONFERENCE IS CONTRARY TO LAW, RULES, AND EXISTING JURISPRUDENCE.

Petitioner assails the RTC's October 4, 2007 Order dismissing her case on the ground of an alleged irregularity in the notice of pre-trial conference, which she received only at 5:30 p.m. of October 3, 2007, or merely 15 hours before the conference scheduled at 8:30 a.m. on October 4, 2007. She maintains that since she was belatedly notified of the pre-trial conference, she was unable to appear thereat for she had yet to secure counsel to represent her as well as prepare the necessary documents therefor. Considering the sheer impossibility for her to prepare for the scheduled conference, the 15-hour notice is deemed as if no notice was given at all, and hence, the impropriety of the trial court's dismissal. In support of this, she invokes our ruling in *Leobrera v. Court of Appeals*,[3] which provides that "observance of notice requirement is a mandatory requirement which cannot be dispensed with as this is the minimum requirement of procedural due process."[4]

Petitioner further faults the RTC for repeatedly stating that petitioner "and her counsel" failed to appear during the pre-trail conference when it is clear from the records of the case that she is not represented by any counsel. Because of this, she claims that the lower court's order dismissing her case has no legal basis and is, therefore, patently void.

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3 252 Phil. 737, 743 (1989).
4 *Rollo*, p. 7.

The petition is devoid of merit.

At the outset, it must be noted that petitioner's reliance on our ruling in *Leobrera v. Court of Appeals* is misplaced. In said case, the issue was the propriety of an order of the trial court granting a Motion to File Supplemental Complaint, when notice thereof was received by the other party only a day *after* the issuance of the said order, when it was already too late to contest the same. In addition, it was also observed that the notice did not even indicate the time and place of the scheduled hearing. As such, the order of the trial court granting the admission of the supplemental complaint was nullified for non-compliance with Sections 4,[5] 5,[6] and 6[7] of Rule 15 of the Rules of Court. Here, it is undisputed that notice of the pre-trial conference was received by petitioner a day *before* the same. Said notice sufficiently indicated the time and place of the scheduled pre-trial. Thus, petitioner cannot invoke our ruling in the aforementioned case in view of the dissimilar factual circumstances herein.

To repeat, the issue in this case is the propriety of the trial court's order dismissing the case for petitioner's failure to appear at the pre-trial conference. In relation to this, Sections 4 and 5 of Rule 18 of the Rules of Court provides:

> Section 4. *Appearance of parties.* — **It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor** or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. (n)
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> Section 5. *Effect of failure to appear.* — **The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless other-wise ordered by the court.** A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof. (2a, R20)

Thus, the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then he may be declared

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[5] Section 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)

[6] Section 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

[7] Section 6. *Proof of service necessary.* — No written motion set for hearing shall be acted upon by the court without proof of service thereof. (6a)

non-suited and his case dismissed. If it is the defendant who fails to appear, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof.[8]

In certain instances, however, the non-appearance of a party may be excused if a valid cause is shown. What constitutes a valid ground to excuse litigants and their counsels at the pre-trial is subject to the sound discretion of a judge.[9] Unless and until a clear and manifest abuse of discretion is committed by the judge, his appreciation of a party's reasons for his non-appearance will not be disturbed.

In this case, petitioner harps on the fact that the notice of pre-trial was sent to her 15 hours before the scheduled conference. She maintained that said amount of time rendered it impossible for her to appear thereat since she had yet to secure counsel to represent her as well as prepare documents necessary for the case. Thus, the 15-hour notice is deemed no notice at all, resulting in the invalidity of the trial court's dismissal of the case.

Petitioner's argument is untenable. *Firs*t, this Court finds petitioner's reasoning that she had yet to secure the services of a counsel rather specious. Had this been the case, she should already be represented by one at this stage in the proceedings. Yet, as the records bear, petitioner comes to this Court by herself, via Petition for *Certiorari*, unrepresented by any counsel. In fact, in her petition, she even faults the trial court for repeatedly referring to her counsel when it is clear that no such counsel exists. Thus, contrary to her allegation, this Court is under the impression that petitioner never really intended on securing the services of counsel.

Second, while it cannot be denied that every party to a case must be given the chance to come to court prepared, they must do so within the parameters set by the rules. In this case, it must be noted that petitioner had more than a year from the filing of respondent's Answer before the month of May 2006 to prepare for the pre-trial conference scheduled by the trial court in October 2007. Note that during said period when she was supposedly preparing for the conference, petitioner was able to file 3 motions in a span of 6 months.[10] First, she filed a Motion for Judgment on the Pleadings on May 26, 2006, after respondent had filed her Answer to the Complaint. Second, was a Motion to Declare Defendant in Default for Failure to File Pre-Trial Brief filed on September 6, 2006, which was denied by the trial court for being premature. Third, she filed a Motion to Consider the Answer

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8 *Philippine National Bank v. Spouses Perez*, 667 Phil. 450, 469 (2011).

9 *Spouses Khonghun v. United Coconut Planters Bank*, 529 Phil. 311, 316 (2006), citing *Fountainhead International Philippines, Inc. v. Court of Appeals*, G.R. No. 86505, 11 February 1991, 194 SCRA 12; *Spouses Sy v. Andok's Litson Corporation*, G.R. No. 192108, November 21, 2012, 686 SCRA 188, 194.

10 *Rollo*, p. 18.

to the Complaint as Not Filed on October 4, 2006, which was likewise denied by the trial court for being inconsistent with her first motion.

In addition, petitioner even filed a Petition for *Certiorari* and Mandamus with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction before the Court entitled *Clodualda D. Daacao v. Honorable Judge Santos T. Gil, et al.*, assailing the Orders dated September 18, 2006 and June 4, 2007 of the trial court denying petitioner's Motion to Declare Defendant in Default for Failure to File Pre-Trial Brief. In a Resolution[11] dated September 19, 2007, however, this Court dismissed the said petition for failure to sufficiently show any grave abuse of discretion committed in rendering said Orders, which appear to be in accord with applicable law and jurisprudence. It is clear, therefore, that petitioner's rather active participation in the proceedings during the period leading up to the pre-trial conference contradicts her defense of unpreparedness. Petitioner cannot persistently file multiple motions before the trial court, diligently participating in the hearings thereon, and yet claim to need more time to prepare for the pre-trial conference, the proceeding wherein she may rightly assert the rights for which she had originally filed her complaint.

Furthermore, it bears stressing that the foregoing justifications given by petitioner for failure to appear at the pre-trial conference were never raised before the trial court. A perusal of her Motion for Reconsideration merely alleged the ground that she was improperly notified of the conference for having received the notice thereof 15 hours before the same, therefore nullifying the trial court's dismissal of the case. Her need to secure counsel and prepare documents necessary for the case were only asserted in the instant petition before this Court. It is settled that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage.[12]

Accordingly, the trial court cannot be said to have whimsically or capriciously dismissed the case for it was merely implementing the letter of the law. As the trial court observed, the court was just 20 minutes away from petitioner's residence. Prudence and diligence in complying with the rules and orders of the court would have prompted petitioner to have at least notified the court of her predicament. This way, she could have been appointed with counsel or granted an extension of time to prepare for pre-trial. Unfortunately for petitioner, she not only failed to attend the scheduled conference, she also failed to inform the court the reasons for her absence. Indeed, while a 15-hour notice may be quite impulsive, this fact, standing alone, fails to excuse petitioner's absence. The fact remains that notice was

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11 *Id*. at 4.

12 *Tolentino v. Laurel*, G.R. No. 181368, February 22, 2012, 666 SCRA 561, 572, citing *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001).

received by petitioner before the date of the pre-trial, in compliance with the notice requirement mandated by the Rules.

In *The Philippine American Life & General Insurance Company v. Enario,*[13] it has been held that pre-trial cannot be taken for granted. It is more than a simple marking of evidence. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. Hence, it should not be ignored or neglected, as petitioner had.

As to petitioner's allegation that the RTC's order is patently void because the RTC erroneously included the absence of her counsel despite due notice as reason to dismiss the case when the records reveal that she is not actually represented by any counsel, the same is rather flawed.

Section 3,[14] Rule 18 of the 1997 Rules of Civil Procedure requires that notice of pre-trial conference be served on counsel. The counsel served with notice is charged with the duty of notifying the party he represents. However, when a party has no counsel, as in this case, the notice of pre-trial is required to be served personally on him. In view of the fact that petitioner was, and still is, not represented by counsel, and that as petitioner herself admitted, notice of the pre-trial conference was served on her, the mandate of the law was sufficiently complied with. Thus, the fact that the trial court mistakenly referred to her counsel when no such counsel exists is immaterial. For as long as notice was duly served on petitioner, in accordance with the rules, the trial court's order of dismissal cannot be invalidated due to statements referring to her counsel, for the same have no bearing on the validity of the notice of pre-trial.

In view of the foregoing, this Court does not find that the facts in the case at hand warrant a liberal construction of the rules. Considering that the petitioner failed to offer sufficient justification for her failure to appear at the pre-trial conference, this Court finds no compelling reason to disturb the findings of the trial court. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least promptly explain its failure to comply with the rules.[15] Indeed, technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.[16]

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13 645 Phil. 166, 176-177 (2010).

14 Section 3. *Notice of pre-trial.* — The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him.

15 *Suico Industrial Corp. v. Honorable Lagura-Yap*, G.R. No. 177711, September 5, 2012, 680 SCRA 145, 162, citing *Lapid v. Judge Laurea*, 439 Phil. 887, 896 (2002).

16 *Id*.

WHEREFORE, premises considered, the instant petition is **DENIED.** The Order dated October 4, 2007 of the Regional Trial Court, Branch 6, of Tacloban City in Civil Case No. 2006-12-16 dismissing the case for annulment of title, recovery of property under Transfer Certificate (TCT) No. T-28120 and damages is **AFFIRMED.**

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A . SERENO
Chief Justice