



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**SPOUSES ED DANTE LATONIO AND  
MARY ANN LATONIO and the minor  
ED CHRISTIAN LATONIO,**  
Petitioners,

**G.R. No. 206184**

**Present:**

CARPIO, *J.*, Chairperson,  
PERALTA,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, JR., *JJ.*

- versus -

**MCGEORGE FOOD INDUSTRIES  
INC., CEBU GOLDEN FOODS  
INDUSTRIES, INC., and TYKE  
PHILIP LOMIBAO,**  
Respondents.

**Promulgated:**

06 DEC 2017

*Associate Justice*

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**DECISION**

**PERALTA, J.:**

Before this Court is a petition for review<sup>1</sup> via Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated September 28, 2012 and Resolution<sup>3</sup> dated January 31, 2013 of the Court of Appeals (CA), Cebu City in CA-G.R. CV No. 03079, which reversed and set aside the Decision<sup>4</sup> of the Regional Trial Court (RTC) Branch 22, Cebu City and denied the motion for reconsideration, respectively.

The facts are as follows:

<sup>1</sup> Rollo, pp. 3-25.  
<sup>2</sup> Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Melchor Q. C. Sadang, concurring; *id.* at 27-40.  
<sup>3</sup> Rollo, pp. 42-43.  
<sup>4</sup> CA rollo, pp. 120-152.

On September 17, 2000, the petitioners, spouses Ed Dante (*Ed*) and Mary Ann Latonio (*Mary Ann*), accompanied their eight-month-old child Ed Christian to a birthday party at the McDonald's Restaurant, Ayala Center, Cebu City.

During the party and as part of the birthday package, McDonald's presented two mascots – “Birdie” and “Grimace” – to entertain and dance for the guests. Respondent Tyke Philip Lomibao (*Lomibao*)<sup>5</sup> was the person inside the “Birdie” mascot suit.

After the mascots danced, guests had their pictures taken with them. Intending to have her child's photo taken with the mascots, Mary Ann placed Ed Christian on a chair in front of the mascot “Birdie.” The mascot positioned itself behind the child and extended its “wings” to give a good pose for the camera.

As photos were about to be taken, Mary Ann released her hold of Ed Christian. Seconds later, the child fell head first from the chair onto the floor.

Several guests attended to Ed Christian. Meanwhile, the employees of respondent McDonald's Cebu Golden Food<sup>6</sup> (*Cebu Golden Food*) assisted petitioners in giving first aid treatment to Ed Christian. Petitioners, nevertheless, remained and continued with the party and left only after the party was over.

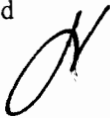
At about 9:30 in the evening of the same day, Mary Ann called up Cebu Golden Food to inform them that their doctor advised them to get an x-ray examination on Ed Christian. Cebu Golden Food then assured her that they were willing to shoulder the expenses for the x-ray examination of Ed Christian. Later, McDonald's reimbursed Mary Ann for the expenses incurred relative to the x-ray examination. It further offered to pay the expenses for the CT scan to be conducted on Ed Christian.

For some time, nothing was heard from petitioners. Nonetheless, a staff of Cebu Golden Food visited the Latonios in their residence to follow up the results of the CT scan test. The staff was met by the brother of Mary Ann, who allegedly repeatedly shouted at them saying that they would file a case against Cebu Golden Food. Thus, Cebu Golden Food reported the incident to their licensor, McGeorge Food Industries, Inc.

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<sup>5</sup> Respondent Tyke Philip Lomibao is an employee of Cebu Golden Food Industries.

<sup>6</sup> Cebu Golden Food Industries, Inc. is the licensee of respondent McGeorge for the operation of a restaurant business developed by the McDonald's Corporation, a foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, U.S.A.



Sometime in October 2000, McGeorge received a Letter from the lawyer of the Latonios regarding the September 17, 2000 incident. In its reply, McGeorge immediately assured the Latonios that the health and safety of all McDonald's customers is its utmost concern and that the best medical and hospital care would be made available to Ed Christian.

McGeorge also sent its Field Service Director, together with its lawyer, to meet with the Latonios and their lawyers to assure them that McDonald's was ready to assist in whatever medical attention would be required of Ed Christian.

During the meeting, McGeorge agreed to contact a neurologist for consultation to ensure Ed Christian's health. McGeorge conferred and consulted with two neurosurgeons at the St. Luke's Medical Center and the Makati Medical Center, who both recommended to first study the x-ray results and CT scan to determine the extent of the injury sustained by the baby.

Thereafter, McGeorge relayed the doctor's requirement to the Latonios who initially agreed to give McGeorge copies of the x-ray and CT scan results. However, the Latonios had a change of heart and informed McGeorge that they had decided against lending them the x-ray and CT scan results and other related medical records.

Instead, the Latonios sent a Letter to McGeorge demanding for compensation in the amount of Fifteen Million Pesos (₱15,000,000.00).

As their demand remained unheeded, the Latonios caused the publication of the accident in the local newspaper, *Sun Star Cebu* on February 8, 2001 with a headline "*Food outlet sued for ₱9 M damages*". Simultaneously, the Latonios also instituted a complaint for damages and attorney's fees against McGeorge.

On March 3, 2009, the RTC, in Civil Case No. CEB-26126, issued a Decision,<sup>7</sup> the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants Tyke Philip Lomibao and Cebu Golden Foods, Inc., finding defendant Tyke Philip Lomibao liable

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<sup>7</sup> CA rollo, pp. 120-152.

for acts of negligence causing the fall of baby Ed Christian Latonio and correspondingly, finding defendant Cebu Golden Foods, Inc. liable solidarily with defendant Tyke Philip Lomibao, pursuant to Article 2180 of the New Civil Code inasmuch as defendant Cebu Golden Foods, Inc. was the employer of defendant Tyke Philip Lomibao.

Accordingly, defendants Tyke Philip Lomibao and Cebu Golden Foods, Incorporated, are hereby ordered to pay to the plaintiffs the following:

1. ₱900,000.00 as Moral Damages;
2. ₱50,000.00 as Exemplary Damages, and
3. ₱300,000.00 as Attorney's fees.

The case against defendant McGeorge Food Industries Inc., is hereby dismissed for lack of evidence.

SO ORDERED.

Aggrieved, Cebu Golden Food and Lomibao filed an appeal before the Court of Appeals-Cebu City.

On September 28, 2012, in its assailed Decision, the Court of Appeals reversed the trial court's decision and said that the trial court overlooked substantial facts and circumstances which, if properly considered, would justify a different conclusion and alter the results of the case. The dispositive portion of the decision reads, thus:

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated 03 March 2009 of the Regional Trial Court, Branch 22, Cebu City is **REVERSED** and **SET ASIDE**. Civil Case No. CEB-26126 is **DISMISSED** for lack of merit. The compulsory counterclaims of defendants-appellants are **DENIED**. No costs.

SO ORDERED.<sup>8</sup>

Thus, the instant petition for review under Rule 45 of the Rules of Court brought before this Court raising the sole issue of: *Whether the Court of Appeals erred in ruling that the proximate cause of Ed Christian's fall was the negligence of petitioner Mary Ann Latonio.*<sup>9</sup>

The trial court held Cebu Golden Food is liable because the proximate cause of Ed Christian's fall is the negligence of their employee, Lomibao. On the other hand, the Court of Appeals reversed the trial court's decision and held that Ed Christian's mother, Mary Ann, is liable because the

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<sup>8</sup> *Id.* at 40. (Emphasis in the original)

<sup>9</sup> *Rollo*, p. 10.

proximate cause of the child's fall was Mary Ann's act of leaving her eight-month-old child, Ed Christian, in the "hands" of Lomibao who was at the time wearing the Birdie mascot costume.

We find no merit on this instant petition.

The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court.<sup>10</sup>

However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court.<sup>11</sup> It is also settled that the appellate courts will not as a general rule disturb the findings of the trial court, which is in a better position to determine the same. The trial court has the distinct advantage of actually hearing the testimony of and observing the deportment of the witnesses. Nevertheless, the rule admits of exceptions such as when its evaluation was reached arbitrarily, or it overlooked or failed to appreciate some facts or circumstances of weight and substance which could affect the result of the case,<sup>12</sup> as what happened in the instant case.

In the instant case, there is no dispute that petitioners suffered damages because of Ed Christian's fall. However, as to the issues on negligence and proximate cause, the Court of Appeals and the trial court gave contradicting findings.

As the action is predicated on negligence, the relevant law is Article 2176 of the Civil Code, which states that —

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there was no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this chapter.

The trial court held that the proximate cause of Ed Christian's fall and the resulting injury was Lomibao's act of holding the baby during the party

<sup>10</sup> *Golden Apple Realty v. Sierra Grande Realty Corp.*, 640 Phil. 62, 70-71 (2010).

<sup>11</sup> *Philippine Rabbit Bus Lines, Inc. v. Intermediate Appellate Court*, 267 Phil. 188, 191 (1990).

<sup>12</sup> *Jarco Marketing Corp. v. Court of Appeals*, 378 Phil. 991, 1008 (1999).

which was purportedly prohibited under the rules and policy of the establishment.

We disagree.

Indeed, the testimony of Mary Ann herself on cross-examination is telling. Thus:

x x x x

Q. And when you said that you informed the mascot, what exact words did you use?

A. **I tap (sic) him on his side** and then I called him that I am going to have the taking of pictures with my baby.

x x x x

Q. Now did you wait for the mascots to make a reply?

A. He was looking at me and he look (sic) at my face.

Q. **Did he make a reply?**

A. **No, Ma'am.**

Q. **Did you see his eyes looking at you?**

A. **No, Ma'am.**

x x x.<sup>13</sup>

ATTY. ABELLA

x x x x

Q. And at the time you already observed that **the person was wearing a thick leather suit?**

A. **Yes.**

Q. Did you actually see the body of the person who lift (sic) your baby then?

A. **No.**

Q. Did you see the hands inside the costume?

A. Of course, **I cannot see the hands.**

Q. Did you see the arms of the person inside the mascot?

A. **I cannot because he is (sic) wearing a costume.**<sup>14</sup>

<sup>13</sup> TSN, December 8, 2003, pp. 7-8. (Emphasis ours)

<sup>14</sup> TSN, October 23, 2007, p. 21. (Emphasis ours)

## COURT

Q. You were not sure that when you handed the baby it was firmly held by the mascot?

A. **I placed the baby in front of the mascot.**

Q. You were not aware about the hands when you turned over the baby because it was a mascot?

A. I was sure because I can feel the hands and my baby was standing in front of him; and he is doing like this (witness demonstrating).<sup>15</sup>

## ATTY. ABELLA

Q. Did you see the eyes of the person inside the mascot costume?

A. **No.**

Q. Were you aware if there were openings for the eyes of the person inside the mascot?

A. Yes, I was aware.

Q. **The eyes in this mascot costume actually had no opening?**

A. **Yes, no opening.**<sup>16</sup>

## COURT

Q. You entrusted the baby even if there was no opening of the eyes?

A. There was an opening of the costume near the mouth. If the mascot cannot see, then how can he play with the kids?

Q. You said that you told the mascot that you were leaving the baby to him?

A. **I pat (sic) him.**

Q. Did you see the ears of the person inside the mascot?

A. **No.**

Q. Did you even know if there was an opening for the ears at the person wearing the mascot costume?

A. **No**, but I was nearer the mascot.

x x x.<sup>17</sup>

We agree with the appellate court that despite Mary Ann's insistence that she made sure that her baby was safe and secured before she released her grasp on Ed Christian, her own testimony revealed that she had, in fact, acted negligently and carelessly, to wit:

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<sup>15</sup> *Id.* at 21-22.

<sup>16</sup> *Id.* at 22.

<sup>17</sup> *Id.*

Q. Now when you said that you made sure that the mascot was holding your baby, what action did you do to insure that?

A. When I saw that the mascot was holding my baby so I make (sic) a motion to my husband for the picture taking so I left beside. I backed off a little bit.

x x x x.

Q. I will not risk my baby if I am not sure that the mascot was not inserting his hands over my baby when I left the scene. The (sic) I am sure that the baby was already safe in the hands of the mascot.

Q. When you say that you make (sic) sure you just relied on your sight?

A. Yes, ma'am.<sup>18</sup>

x x x x

Q: Did you check what part of your child's body was in contact in any part of the mascot's body?

A: Partly it was here on the waist of the child until (sic) the armpit.

Q: Now you said that you move (sic) further to the side from where your baby was standing, is that your testimony?

A: Yes, ma'am.

Q: Can you tell us or can you give us any reason why you move (sic) to the side?

A: Because I motioned my husband already that he would take a picture of the baby and the mascot before I left and I am so sure that the baby is securely (sic) with the mascot holding the baby.<sup>19</sup>

x x x x

***Q. And your child at that time was eight (8) months old?***

***A: Yes, ma'am.***

***Q: He cannot stand on his own?***

***A: He can stand but he has to have support.***

***Q: He cannot walk on his own at that time?***

***A: At that time with support."***

x x x.<sup>20</sup>

More telling is the ratiocination of the Court of Appeals, which we quote with approval:

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<sup>18</sup> TSN, December 8, 2003, p. 11.

<sup>19</sup> *Id.* at 13-14.

<sup>20</sup> *Id.* at 14. (Emphasis ours)



Indeed, *it is irresponsible for a mother to entrust the safety, even momentarily, of her eight-month-old child to a mascot, not to mention a bird mascot in thick leather suit that had no arms to hold the child and whose diminished ability to see, hear, feel, and move freely was readily apparent. Moreover, by merely tapping the mascot and saying "pa-picture ta", Mary Ann Latonio cannot be said to have "told, informed and instructed the mascot that she was letting the mascot hold the baby momentarily."* Releasing her grasp of the baby without waiting for any indication that the mascot heard and understood her is just plain negligence on the part of Mary Ann.

To Our mind, what is more in accord with human experience and dictates of reason is that a diligent mother would naturally ensure first and foremost the safety of her child before releasing her hold on him. Such is not the case here. Mary Ann Latonio, in placing Ed Christian on a chair and expecting a bird mascot to ensure the child's safety, utterly failed to observe the degree of diligence expected of her as a mother of an eight-month-old baby.<sup>21</sup>

Clearly, based on the foregoing, Mary Ann's negligence was the proximate cause of Ed Christian's fall which caused him injury. Proximate cause is defined as –

that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.<sup>22</sup>

Here, it is beyond dispute that the cause of Ed Christian's fall is traceable to the negligent act of Mary Ann of leaving him in the "hands" of Lomibao who was wearing the Birdie mascot suit. We noted that "hands" and "wings" were used interchangeably during the testimonies of the witnesses, thus, causing confusion. However, it must be stressed that while indeed Lomibao has hands of his own, at the time of the incident he was wearing the Birdie mascot suit. Suffice it to say that the Birdie mascot suit have no hands but instead have wings. Lomibao cannot possibly hold or grasp anything while wearing the thick Birdie mascot suit. In fact, even if he wanted to hold Ed Christian or anything, he could not possibly do so

<sup>21</sup> *Rollo*, pp. 35-36. (Emphasis ours)

<sup>22</sup> *McKee v. Intermediate Appellate Court*, 286 Phil. 649, 677-678 (1992).

because he was wearing the Birdie mascot suit which do not even have hands or fingers to be able to hold or grasp firmly.

Notably, while the CA and the trial court made conflicting rulings on the negligence of Cebu Golden Food and Lomibao, they, however, concur on Mary Ann's own negligence. The trial court's summation of Mary Ann's own negligence is as follows:

X X X X

A review of their testimonies would reveal that although we ascribe negligence of defendant Lomibao we, likewise, unraveled that plaintiff herself was not entirely blameless. *Therefore, plaintiff Mary Ann Latonio was likewise negligent. Why was she negligent can be traced to the fact as established that she left her eight-month-old baby on top of a chair to the temporary custody of a mascot.* Even if the baby was only left for a few seconds or minutes that could already spell a disaster, in fact, it really happened. The baby fell from the chair and went straight into the floor head first. Even if she already informed and told the mascot that she was leaving the baby to his hold she should not have let go of her grip because as a mother she ought to exercise the commensurate prudence and care.

X X X.”<sup>23</sup>

Thus, all the aforementioned circumstances lead us to no other conclusion than that the proximate cause of the injury sustained by Ed Christian was due to Mary Ann's own negligence.

All told, in the absence of negligence on the part of respondents Cebu Golden Foods and Lomibao, as well as their management and staff, they cannot be made liable to pay for the damages prayed for by the petitioners.

To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.<sup>24</sup>

Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favor. In such cases, the consequences must be borne by the injured person

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<sup>23</sup> CA rollo, p. 140. (Emphasis ours)

<sup>24</sup> *Spouses Custodia v. CA*, 323 Phil. 575, 585 (1996).

alone. The law affords no remedy resulting from an act which does not amount to a legal injury or wrong.<sup>25</sup>

**WHEREFORE**, premises considered, the Decision dated September 28, 2012 and Resolution dated January 31, 2013 of the Court of Appeals in CA-G.R. CV No. 03079 are hereby **AFFIRMED**.

**SO ORDERED.**



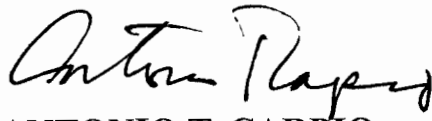
**DIOSDADO M. PERALTA**  
Associate Justice

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<sup>25</sup>

*Id.* at 586.

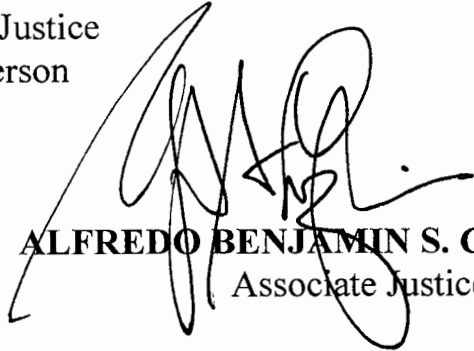
**WE CONCUR:**



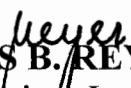
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ANDRES B. REYES, JR.**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second 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