Lucio Obakerbau v. Nat'l Weather Serv., 14 ROP 132 (2007)

LUCIO OBAKERBAU,
Appellant,

v.

NATIONAL WEATHER SERVICE,
Appellee.

CIVIL APPEAL NO. 06-027
Civil Action No. 05-244

Supreme Court, Appellate Division
Republic of Palau

Argued: June 29, 2007
Decided: July 6, 2007

Counsel for Appellant: Kevin N. Kirk

Counsel for Appellee: Christopher L. Hale and Erin Johnson

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LOURDES F. MATERNE, Associate Judge, presiding.

SALII, Justice:

The sole issue raised in this appeal is whether the trial court's misquotation of the governing statute constitutes reversible error. Both parties agree that the trial court erred, but the National Weather Service argues that Obakerbau failed to preserve the issue at trial and/or that the error was harmless.

BACKGROUND

Appellant Lucio Obakerbau was terminated from his employment with the National Weather Service for violations of the Public Service System Rules and Regulations. Obakerbau contested his termination and a grievance panel (the "Panel") was convened to determine whether the action by ⊥133 management was defensible or capable of being justified under 33 PNC § 426(a). On August 23, 2005, a majority of the three-person Panel found that Obakerbau had engaged in discourteous treatment of other employees and had been dishonest. The majority concluded that his termination was therefore justified. Obakerbau "appealed" the Panel's decision[1] to the Trial Division of the Supreme Court pursuant to 33 PNC § 426(b)(1). In addition

[1]The document filed on October 17, 2005, is entitled "Notice of Appeal." Although accepted by the Trial

to arguing that the Panel's decision was not supported by the manifest weight of the evidence and was contrary to law, Obakerbau sought relief in the Trial Division "[u]pon any other grounds that may be apparent on records." *Obakerbau v. Nat'l Weather Serv.*, Civ. Action No. 05-244. The trial court conducted a *de novo* review of the facts before concluding that the employer's reasons for Obakerbau's termination were substantiated and that the proper procedures had been followed. Judgment was entered in favor of the National Weather Service and against Obakerbau on June 30, 2006. This appeal was timely filed on August 29, 2006.

ANALYSIS

If an employee chooses to contest his dismissal through an action in the courts, the scope of review is as follows:

> If the court finds that the reasons for the action are not substantiated in any material respect, or that the procedures required by law or regulation were not followed, the court shall order that the employee be reinstated in his position, without loss of pay and benefits. If the court finds that the reasons are substantiated or only partially substantiated, and that the proper procedures were followed, the court shall sustain the action of the management official, provided that the court may modify the action of the management official if it finds the circumstances of the case so require, and may thereupon order such disposition of the case as it may deem just and proper.

33 PNC § 426(b)(2). When quoting the governing statute in its Decision and Order, the trial court failed to include the underlined language. Its decision does not address whether modification would be appropriate in this case. Rather, the trial court simply sustained the employer's action after concluding that the reasons for the action were substantiated and no procedural errors ⊥134 occurred.

In its response brief, the National Weather Service argues that Obakerbau has waived any right he may have had to a modification of the adverse employment action because he never requested such relief from the trial court. The record in this matter is particularly unhelpful in determining what was argued before the Trial Division. After considering the entire record (consisting mainly of Obakerbau's notice of appeal, the grievance panel's decisions, and the trial court's order), the Court is unable to conclude that Obakerbau sought anything other than reinstatement to his former position, that the parties or the trial court ever discussed an alternative claim for modification, or that Obakerbau ever proposed a modification for the Court to consider.

Apparently recognizing that the record does not show that Obakerbau requested

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Division, the filing is procedurally defective. Pursuant to 33 PNC § 426(b)(1), an employee has the right to "bring an action for reinstatement and loss of pay in the Trial Division of the Supreme Court within 60 calendar days after written notice of the decision of the grievance panel in the government's favor." The authorized action is not an appeal of the grievance panel's decision: it is an independent action for reinstatement that should have been initiated by a complaint, not a notice of appeal.

modification below, Obakerbau argues that the trial court was nevertheless required to consider all potential remedies when entering judgment, even those not specifically requested by the parties, pursuant to Rule of Civil Procedure 54(c). Appellant reads too much into Rule 54(c), which states in relevant part, ". . . every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings." This rule is taken verbatim from the United States Federal Rules of Civil Procedure (the "Federal Rules"). The rule was initially intended to eliminate the common law practice of rigid adherence to the claims and remedies set forth in the complaint and to merge the procedures applicable to the once-separate arenas of law and equity. *See* Federal Rule 54(c), 1937 Advisory Committee Note; 10 Charles Alan Wright, *et al.*, *Federal Practice and Procedure* § 2662 (3rd ed. 1998). The fact that a particular claim for relief does not have to be demanded in the complaint does not, however, mean that plaintiff would be entitled to such relief if it were never requested at any point in the proceeding. Such a reading would jeopardize defendant's due process rights and place the court in the uncomfortable position of trying to guess what relief plaintiff would accept.

> [A]lthough Rule 54(c) itself does not place any restrictions on the type of relief that may be awarded in a nondefault case, stating only that it must be relief "to which the party in whose favor it is rendered is entitled," this does not mean that there actually are no limitations. The relief must be based on what is alleged in the pleadings and justified by plaintiff's proof, which the opposing party has had an opportunity to challenge. In addition, relief that the parties do not desire should not be forced on them. "Unless all parties in interest are in court and have voluntarily litigated some issue not within the pleadings, the court can consider only the issues made by the pleadings, and the judgment may not extend beyond such issues nor beyond the scope of the relief demanded . . . . The foregoing rules are all fundamental and ⊥135 state nothing more than the essentials of due process and of fair play. They assure to every person his day in court before judgment is pronounced against him."

Id. (quoting *Sylvan Beach v. Koch*, 140 F.2d 852, 861-62 (8th Cir. 1944)). Contrary to Obakerbau's argument, a litigant who never requests a particular form of relief, either in his pleadings or at trial, is generally not entitled to such relief and Rule 54(c) does not save him from the waiver.

The Appellate Division has generally been able to resolve preservation issues by relying on the admissions of a party or by reviewing the record *de novo*. *See Rechucher v. Lomisang*, 13 ROP 143, 148 (2006). In this case, however, the record is so sparse that it is impossible to determine with any certainty whether Obakerbau requested modification at the trial level.

It is appellant's burden to demonstrate, based on the record on appeal, that an error occurred in the trial court. *See State v. Nobles*, 515 S.E.2d 885, 892 (N.C. 1999); *Pompa v. State*, 787 S.W.2d 585, 587 (Tex. App. 1990). "Where an appellant has failed to provide an adequate record for review, the decision of the lower court will be affirmed, as the duty to provide an adequate record rests on the appellant." 5 Am. Jur. 2d *Appellate Review* § 617 (1995). Having

failed to present any record citation indicating that Obakerbau requested modification from the trial court, Obakerbau is bound by the deficiencies in the record. Because a party will not be permitted to assign error to the trial court's failure to consider a claim that was not raised below (*see, e.g., Nakamura v. Sablan*, 12 ROP 81, 82 (2005)), the trial court's decision will not be disturbed on appeal.

CONCLUSION

For all of the foregoing reasons, the trial court's decision is affirmed. There is no indication in the record that Obakerbau requested that the trial court exercise its authority under 33 PNC § 426(b)(2) to modify the employer's action. The trial court's apparent failure to consider whether a modification was appropriate is, therefore, harmless and does not give rise to an appealable issue.