

Rosita L. DAVID
vs.
Lourdes P. Camacho

Civil Action No. 85-9010
District Court NMI
Appellate Division

Decided June 13, 1986

1. Appeal and Error - Standard of Review - Agency Findings

Appellate Court will affirm administrative agency findings if there is relevant evidence such that a reasonable mind might accept as adequate to support a conclusion.

2. Labor - Wage Claims

Where live-in maid, who was paid \$150 per month, carried feed for customers of her employer's store, and there was substantial evidence that she did so on a voluntary basis, she was not entitled to compensation for these services.

3. Federal Law - Fair Labor Standards Act

Federal overtime wage provision applies in the Commonwealth. 29 U.S.C. §207.

4. Federal Law - Fair Labor Standards Act

Live-in maids are exempt from the maximum hours provision of federal wage law. 29 U.S.C. §207.

5. Appellate Procedure - Attorney Fees & Costs

An appeal is frivolous when the arguments are entirely without merit and when the result is obvious. Dist.Cour. R.App.Pro. 18.

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS
APPELLATE DIVISION

FILED
Clerk
District Court

JUN 13 1986

For The Northern Mariana Islands
By _____
(Deputy Clerk)

ROSITA L. DAVID,)
)
Plaintiff-Appellant,)
)
vs.)
)
LOURDES P. CAMACHO,)
)
Defendant-Appellee.)

DCA NO. 85-9010

OPINION

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BEFORE: Judges LAURETA, DUENAS and REAL*, District Judges
LAURETA, District Judge:

Rosita L. David (David), appellant, filed a complaint
with the Labor Department against her former employer, Lourdes P.
Camacho (Camacho), appellee, claiming she had been terminated
without cause and that she had not been paid for her services.
The Labor Department ruled in favor of Camacho and on appeal the

*Honorable Manuel L. Real, Chief Judge, United States District
Court, Central District of California, sitting by designation.

1 Commonwealth Trial Court affirmed. In this appeal, David raises
2 three issues:

3 (1) whether the evidence showed that she was
4 required to work in Camacho's store and is
5 therefore entitled to compensation for those
6 services;

7 (2) whether she is entitled to unpaid wages
8 for the time she spent in Camacho's mother-in-
9 -law's house;

10 (3) whether Title 29 U.S.C. §207 (the
11 maximum hours provision of the Fair Labor
12 Standards Act of 1938) applies in the Common-
13 wealth.

14 For the following reasons we affirm the decision of the Common-
15 wealth Trial Court.

16 Camacho and David entered into an employment contract
17 on March 25, 1983, by which David was to serve as a live-in-maid
18 for Camacho for a period of one year at a rate of \$150.00 per
19 month. The contract states that the employee "shall perform at
20 the Employer's discretion those duties customarily perform [sic]
21 in the assigned job classification in the Commonwealth."

22 In March, 1983, David arrived in Saipan and began
23 working as Camacho's maid and living in a room at Camacho's
24 house. In June, 1983, Camacho moved into another house bringing
25 David with her. This house was attached to a garage from which
26 the Camachos operated a feed business. One of David's duties as
a maid was to answer the front door of the house. The callers
were both social and business callers. When responding to a
business caller, David was instructed to communicate the order to
Camacho. On occasion, David assisted customers in carrying feed

1 from Camacho's store to the customer's car. In July, 1983, David
2 began sleeping in Camacho's mother-in-law's house approximately
3 150 feet from Camacho's house. She retained the option to sleep
4 in Camacho's house.

5 [1] 1 C.M.C. §9112(2)(E) provides that agency findings
6 should be upheld where a reviewing court determines there is
7 substantial evidence to support them. Therefore, this Court will
8 affirm the findings from below if there is "relevant evidence
9 such that a reasonable mind might accept as adequate to support a
10 conclusion." 2 Fed.Proc. L.Ed. §2.233.

11 [2] David argues that she should be paid as a store clerk
12 for answering the door for customers and for carrying feed to
13 their cars. David was required to answer the door as part of her
14 services as a live-in-maid. Naturally, she could not know a
15 caller's purpose until she answered the door and inquired into
16 the nature of the visit. Appellant's argument, that upon
17 learning that a caller's purpose was to purchase feed she should
18 have closed the door in the person's face is unreasonable. So
19 too is her argument that Camacho should have hired a second
20 person to answer the door for store customers since this duty was
21 not within the ambit of her job as a maid.

22 There was substantial evidence which indicated that
23 David only rarely carried feed for customers and that she did so
24 on a purely voluntary basis. She is not entitled to compensation
25 for these voluntary services.

26 David also contends that she should be compensated for

1 the time she spent in the mother-in-law's house. David slept in
2 a storage area in Camacho's house but she had her own room at the
3 mother-in-law's house. She retained the option to stay in
4 Camacho's house though she chose not to exercise that option.
5 Though David alleged she performed numerous duties for the
6 mother-in-law including cooking and cleaning the evidence
7 indicated that this was not the case and she is not entitled to
8 additional compensation for these alleged services.

9 [3.4] David's final contention is that she should receive
10 overtime wages pursuant to Title 29 U.S.C. §207 because she
11 regularly worked more than forty hours per week. Title 29 U.S.C.
12 §207 states that:

13 Except as otherwise provided in this
14 section, no employer shall employ any of his
15 employees who in any workweek is engaged in
16 commerce or in the production of goods for
17 commerce for a workweek longer than forty
18 hours, unless such employee receives compen-
19 sation for his employment in excess of the
20 hours above specified at a rate not less than
21 one and one-half times the regular rate at
22 which he is employed.

23 . . .

24 David argued unsuccessfully before the Labor Department
25 that §207 applies in the Commonwealth. On appeal the Common-
26 wealth Trial Court correctly concluded that §207 does apply in
the Commonwealth. See 29 U.S.C. §203(c) ("State" means "any
State of the United States or the District of Columbia or any
territory or possession of the United States"; in accord, Daves
v. Hawaiian Dredging Co., 114 F.Supp. 643, 647 (D.Haw. 1953)

1 (Title 29 applies to Guam, Johnston Islands and American Samoa
2 and thus applies to the Northern Mariana Islands as well. See
3 Covenant, Sec. 502(a)(2)). But, as the trial court pointed out
4 live-in-maids are specifically exempted from the maximum hour
5 provision of §207 by §213(b) so David must fail here also. (Sec.
6 213(b): "The provisions of Section 7 [29 U.S.C. §207] shall not
7 apply with respect to.. [21] any employee who is employed in
8 domestic service in a household and who resides in such house-
9 hold.")

10 David's appeal is predicated primarily on a disagree-
11 ment with the factual findings of the Labor Department and the
12 trial court. As appellant knows, such findings will not be
13 disturbed by an appellate court if the record below reveals
14 evidence to support such findings. We find no reason in this
15 case to disturb those findings.

16 Appellant's reading and interpretation as to the
17 applicability of Title 29 U.S.C. to the Northern Mariana Islands
18 is clearly erroneous.

19 [5] Camacho's attorney has requested that this Court award
20 double costs including attorney's fees to compensate his client
21 for the costs of defending what he deems a frivolous appeal.
22 Rule 18 of the appellate rules of this Court provides that:

23 If the District Court shall determine
24 that an appeal is frivolous, it may award
25 just damages and single or double costs to
the appellee.

26 "An appeal is frivolous when the arguments are entirely without

1 merit and when the result is obvious." Unt v. Aerospace Corp.,
2 765 F.2d 1440 (9th Cir. 1985)(citing NLRB v. Catalina Yachts, 679
3 F.2d 180 (9th Cir. 1982). We find both to be true here and we
4 award appellee double costs to be borne jointly and severally by
5 appellant and her counsel. Appellee shall submit a bill of
6 costs.

7 The decision of the Commonwealth Trial Court is
8 affirmed.

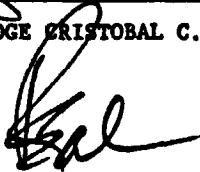
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JUDGE ALFRED LAURETA



JUDGE CRISTOBAL C. DUENAS



JUDGE MANUEL L. REAL