

ALEXANDER VITO, COMPLAINANT, VS. JUDGE TEOFILO BUSLON, JR., RESPONDENT.

A.M. No. RTJ-94-1160. April 10, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is an administrative complaint filed by Alexander Vito against Judge Teofilo Buslon, Jr., Presiding Judge of the Regional Trial Court, Branch 23, Cebu City for ignorance of the law, breach or violation of ethics, and unjustly rendering interlocutory orders.

Complainant was the defendant in Civil Case No. CEB-10222, entitled "Mibelen Singson-Vito, et al. v. Alexander Vito" before the Regional Trial Court, Branch 6, Cebu City for support. Respondent became the acting presiding judge of said court upon the retirement of the then presiding judge, Judge Ramon Am. Torres, in 1992. When respondent took over said court, Civil Case No. CEB-10222 was pending decision with an unresolved motion for reconsideration of the Order dated October 30, 1992. The said order denied the motion to suspend the giving of support pendente lite and the motion to quash the writ of execution of complainant.

On the charge of ignorance of the law, complainant alleged that on June 7, 1993, respondent rendered a decision without resolving the motion for reconsideration of the Order dated October 30, 1992.

The dispositive part of the Decision states:

"WHEREFORE, premises considered this Court renders judgment in favor of plaintiff and against the defendant, ordering defendant:

1. To give support of P10,000.00 per month payable within the first five days of every month to the plaintiff starting from May 1991 deducting therefrom the amount of support pendente lite;
2. To reimburse attorney's fees and litigation expenses in the amount of P10,000.00; and
3. To pay the cost of the suit" (Rollo, p. 2).

A timely appeal was made from said decision.

Plaintiffs filed a motion for execution pending appeal dated July 6, 1993, which was granted by respondent on July 15, 1993.

On July 23, 1993, complainant filed a motion to quash the Order dated July 15, 1993 on the following grounds: 1) that it was issued beyond the jurisdiction of the court for an appeal had already been perfected; and 2) that no notice was sent to him in violation of Section 2, Rule 39 of the Revised Rules of Court. However, the motion to quash was mooted when plaintiffs withdrew their motion for execution pending appeal because they could not afford to pay the premiums for the supersedeas bond.

On August 4, 1993, one month after the perfection of the appeal, the plaintiffs filed a motion to cite complainant

for contempt. The motion alleged that on October 28, 1991, the trial court issued an order granting the application of the plaintiffs for support pendente lite and that inspite of the issuance of a writ of execution to enforce said order the complainant refused to give the support (Rollo, pp. 15-16).

On August 13, 1993, complainant opposed plaintiffs' motion to cite him for contempt on the grounds that said motion was not verified in violation of Section 6, Rule 15 of the Revised Rules of Court and that the trial court had lost its jurisdiction over the case upon the perfection of an appeal.

Complainant claimed that respondent, without any hearing, issued an order on August 24, 1993 finding him guilty of contempt of court and ordered his arrest without bail.

Respondent, in his Comment, contended that the Regional Trial Court had not been deprived of jurisdiction despite the perfection of an appeal because the case was one for support, which is a continuing obligation.

We ruled in *Vasco v. Court of Appeals*, 81 SCRA 762 (1978), that the trial court loses its jurisdiction over cases for support after the perfection of the appeal "except to issue orders for the protection and preservation of the rights of the parties x x x." Respondent's view, that the court never lost jurisdiction over the support case, is correct only with regard to the amount of the maintenance allowance which is essentially provisional (*Canonizado v. Benitez*, 125 SCRA 610 [1984]).

Although a judge may not always be subjected to disciplinary action for an error of judgment, that does not necessarily mean that he should be negligent in performing his adjudicatory prerogatives (*Revita v. Rimando*, 98 SCRA 619 [1980]). We find respondent negligent in this regard.

On the charge of rendering unjust interlocutory orders, complainant alleged that on August 30, 1993 respondent issued a hold order dated August 30, 1993 on the basis of a non-existing motion and a void order for contempt of court. He claimed that the basis of the August 30, 1993 order was a motion for hold order dated August 31, 1993 filed by the plaintiffs on the same day at 3:20 P.M. Moreover, he alleged: (1) that the antedating of the motion to August 30, 1993 was merely to cover-up respondent's lack of jurisdiction after September 3, 1993 as presiding judge of the Regional Trial Court, Branch 6; and (2) that respondent erred when he issued the Order dated August 30, 1993 without complainant's knowledge as the latter was served with the motion only on September 3, 1993. He claimed that he was deprived of his day in court as respondent immediately ruled on the motion before the notice was received by him.

Respondent, on the other hand, averred that the discrepancy on the date was due to a typographical error inadvertently committed by the stenographer who typed the said order. He reasoned out that the typing of the date as August 30, 1993 and not August 31, 1993 was an error committed in good faith.

We find satisfactory the explanation given by Court Stenographer Esperanza A. Bascar in her affidavit dated November 18, 1993 that she was the one who made the mistake in typing the date.

With regard to the issuance of the hold order even before complainant had received his copy of the motion filed by the plaintiffs in the said case, respondent attached a copy of the Order dated December 9, 1993 of Judge De la Victoria who assumed office over the said branch (Annex "P"; Rollo pp. 40-43). In the said Order, Judge De la Victoria ruled that the motion for the issuance of the hold order departure could be done ex-parte as it is of an urgent nature; hence, the issuance of the motion directed to the proper government agencies against the movant did not require any notice at all.

A motion for the issuance of a hold order, like any other motion, cannot be granted without giving the affected party an opportunity to oppose it. Section 24, Rule 15 of the Revised Rules of Court is explicit when it states that

"notice of a motion shall be served by the applicant to all parties concerned, at least three days before hearing thereof x x x." There is no showing of the urgency that may justify the court's acting ex-parte on the motion for issuance of the hold-order.

Furthermore, complainant alleged that during the pendency of the motion for reconsideration of the hold order, respondent wrote a letter to Judge De la Victoria, the presiding judge of Regional Trial Court, Branch 6, which caused the denial of the motion. Respondent denied that he wrote an "influencing letter" to Judge De la Victoria. He claimed that he merely explained to the said judge that the dating of the questioned order as August 30, 1993 was due to clerical error (Annex "O"; Rollo, p. 40). We find adequate and satisfactory respondent's explanation.

On the charge of breach of judicial ethics, complainant alleged that after the issuance of the Order dated August 31, 1993, respondent acted as a sponsor at the wedding of one of the plaintiffs' daughter in the Civil Case No. CEB--10222.

Respondent, for his part, alleged that he stood as one of the sponsors in the said wedding after he had assumed office as acting presiding judge of another branch of the court (Branch 23). He claimed that he had accepted the invitation to act as one of the sponsors because he valued the chance to meet the Vice-Mayor of Cebu City, whose father was his professor in college.

Respondent's act of standing as a sponsor violated Canon 2 of the Code of Judicial Conduct, specifically Rule 2.01 which states that "a judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary" (Alfonso v. Juanson, 228 SCRA 239 [1993]). Furthermore, it has been said that a magistrate of the law must conduct himself in a manner that his acts, whether in the office or in public, can bear the most searching scrutiny of the people that look up to him as the epitome of integrity and justice (Dia-Anonuevo v. Bercacio, 68 SCRA 81 [1975]).

WHEREFORE, respondent is FINED the amount of FIVE THOUSAND PESOS (P5,000.00). He is WARNED that the commission of the same or similar offense in the future will merit a more severe penalty.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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