

BENITA A. AGBAYANI, COMPLAINANT, VS. ATTY. JAIME V. AGTANG, RESPONDENT.*A.C. No. 1445. October 05, 1976*

Ponente: ANTONIO, J.

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The complaint for disbarment against respondent is predicated on the alleged falsehood made by the respondent in the petition for adoption filed by Geronimo Reyes,[1] wherein it was alleged that the adopter, Geronimo Reyes, has no child, when in truth and in fact he knew that the adopter has a child named Balbina Reyes. It was further claimed that the Court was misled into believing that the adopter has no child, hence, it rendered a decision granting the adoption. After the respondent submitted his comment on May 26, 1975, the case was referred, on June 4, 1976, to the Office of the Solicitor General for investigation, report and recommendation.

In the Office of the Solicitor General, the investigation was first set for hearing on November 27, 1975, but had to be reset to November 28, 1975. On this latter date, the investigation could not proceed because the complainant requested for postponement of the investigation. The case was reset to December 19, 1975, but on said date the hearing did not again proceed because of the joint motion of the parties for postponement. The case was further reset to July 26, 1976, on which date, only the respondent appeared, while the complainant and her lawyer did not appear. To enable the complainant to appear, the hearing was again reset to August 16, 1976. On the afore-mentioned date, the complainant and the respondent appeared. The complainant, however, instead of presenting evidence, submitted an affidavit of desistance (Exhibit "1"), to the effect that in truth and in fact she was misled in filing the case and "in fairness to the respondent, I have lost interest in the same and it is my desire to withdraw my complaint." Notwithstanding the affidavit of desistance, the Solicitor assigned to the case proceeded with the investigation. On the basis of this investigation, on September 8, 1976, the Acting Solicitor General submitted his report, recommending the dismissal of the charges. The afore-mentioned recommendation is predicated upon the following findings:

"The respondent first presented the complainant. The testimony of the complainant was brief. All that she stated is that she was the complainant and that she affirms the truth of her affidavit of desistance, Exhibit 1.

"The next witness presented by the respondent was the respondent himself, Atty. Jaime V. Agtang who testified substantially as follows:

"He is the respondent in this case.

"He knows the complainant Benita Agbayani.

"He knows a person by the name of Geronimo Reyes because the latter was his client in a petition for adoption which he filed before the Court of First Instance of Ilocos Norte.

"He stated that sometime in August 1973, a certain Martin Agbayani, father of minor Joey Agbayani sought his assistance regarding the desire of Geronimo Reyes to adopt his minor son Joey Agbayani. Because Geronimo

Reyes was not present, he told Martin Agbayani to bring Geronimo Reyes with him so that he could be interviewed.

"Sometime in the middle of August 1973, Martin Agbayani, his son Joey Agbayani and Geronimo Reyes returned to respondent Agtang's house where he holds office. When the three came, there were two other persons present namely Honorio Tunac and Jose Castillo. The respondent interviewed the proposed adopter Geronimo Reyes and inquired about his personal circumstances, and among others, if he had any child and if he was married. Geronimo Reyes answered that he has no child and that he is a widower.

"A few days later or August 20 to be exact, respondent Agtang went to the residence of Geronimo Reyes to sign a verification of the petition for adoption. Agtang also let Agbayani and his wife sign the affidavit of consent for the adoption of their son.

"The respondent further testified that he first saw the house of Geronimo Reyes on August 20, 1973 and that the first time he met Geronimo Reyes was about a week before.

"Testifying on the proceedings of the adoption case, the respondent stated that the Clerk of Court was appointed as commissioner to hear the case and the Clerk of Court, as commissioner asked several questions among which are the status of the petitioner Geronimo Reyes, his financial capacity and also as to whether he had any child or children, natural or legitimate.

"To rebut the allegations in the instant complaint, the respondent alleged that it is not true that he had known the adopter Geronimo Reyes even before the filing of the special proceeding with the Court of First Instance of Ilocos Norte. The respondent also denied that he has been frequenting Bo. Salsalamagui, Vintar, Ilocos Norte, the barrio where Geronimo Reyes lives.

"Finally, the respondent claims that the charges in the complaint of Benita Agbayani are not true; and that the reason why she filed the complaint against him was that the complainant might have been misled or misguided into filing the same, because the respondent happened to be the counsel of certain persons in cases wherein the husband of Benita Agbayani is the adverse party.

"The next witness presented by the respondent was Honorio Tunac, an Elementary School Head Teacher and con-currently Asst. Principal of Barangay High School, Vintar, Ilocos Norte. Honorio Tunac substantially testified as follows:

"He knows the complainant, Benita Agbayani, the respondent Atty. Jaime V. Agtang and a person by the name of Geronimo Reyes.

"He knows one Joey Agbayani, son of Martin Agbayani. Sometime in the middle of August 1973, he recalls that he was at the house of respondent Atty. Jaime V. Agtang at Vintar, Ilocos Norte. While in the house of Jaime Agtang, he recalls that he saw Geronimo Reyes, Martin Agbayani and Joey Agbayani and learned that these persons went there be-cause they were interviewed by the respondent Atty. Agtang. The subject matter of the interview was the adoption of Joey Agbayani by Geronimo Reyes. He remembers some ques-tions asked by Atty. Agtang such as the personal data of Geronimo Reyes, his occupation, whether he is married or not; and whether he had any children. In answer to these questions, Geronimo Reyes stated that he had no child at all. The witness also stated that he remembers that the three, Geronimo Reyes, Martin Agbayani and Joey agbayani, stayed in the house of Atty. Agtang for around 40 to 50 minutes.

"With the testimony of Honorio Tunac, the respondent rested his case."[2]

As found by the Solicitor General, the respondent had relied in good faith upon the representations made by

Geronimo Reyes that he had no child, contrary to the claim of the complainant. The complainant herself subsequently admitted that she was misled in filing the case, as it is her view that the administrative case against respondent should not have been filed at all. According to the Solicitor General, there is also testimony indicating that the complainant had a personal motive in charging the respondent, as the latter happened to be the counsel of certain persons in cases wherein the husband of the complainant is the adverse party.

The burden in disbarment proceedings rests upon the complainant to establish by convincing proof the alleged misconduct of respondent. In the case at bar, the complainant failed to discharge such burden.

WHEREFORE, in view of the foregoing, the case against respondent is hereby dismissed.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Special Proceedings No. 4943-III, entitled "In the Matter of the Adoption of the Minor Joey Agbayani, Geronimo Reyes, Petitioner".

[2] Report and Recommendation of the Acting Solicitor General, pp. 2 to 5, Rollo, pp. 35 to 38.

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