

DOROTHY B. TERRE, COMPLAINANT, VS. ATTY. JORDAN TERRE, RESPONDENT.

A.C. No. 2349. July 03, 1992

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PER CURIAM:

In a sworn complaint filed with this Court on 24 December 1981, complainant Dorothy B. Terre charged respondent Jordan Terre, a member of the Philippine Bar with "grossly immoral conduct," consisting of contracting a second marriage and living with another woman other than complainant, while his prior marriage with complainant remained subsisting.

The Court resolved to require respondent to answer the complaint.[1] Respondent successfully evaded five (5) attempts to serve a copy of the Court's Resolution and of the complaint by moving from one place to another, such that he could not be found nor reached in his alleged place of employment or residence.[2] On 24 April 1985, that is after three (3) years and a half, with still no answer from the respondent, the Court noted respondent's success in evading service of the complaint and the Court's Resolution and thereupon resolved to "suspend respondent Atty. Jordan Terre from the practice of law until after he appears and/or files his answer to the complaint against him" in the instant case.[3]

On 28 September 1985, respondent finally filed an Answer with a Motion to Set Aside and/or Lift Suspension Order. In his Answer, Atty. Terre averred that he had contracted marriage with complainant Dorothy Terre on 14 June 1977 upon her representation that she was single; that he subsequently learned that Dorothy was married to a certain Merlito A. Bercenilla sometime in 1968; that when he confronted Dorothy about her prior marriage, Dorothy drove him out of their conjugal residence; that Dorothy had mockingly told him of her private meetings with Merlito A. Bercenilla and that the child she was then carrying (i.e., Jason Terre) was the son of Bercenilla; that believing in good faith that his marriage to complainant was null and void ab initio, he contracted marriage with Helina Malicdem at Dasol, Pangasinan.[4]

In her Reply, complainant Dorothy denied that Jason Terre was the child of Merlito A. Bercenilla and insisted that Jason was the child of respondent Jordan Terre, as evidenced by Jason's Birth Certificate and physical resemblance to respondent. Dorothy further explained that while she had given birth to Jason Terre at the PAFGH registered as a dependent of Merlito Bercenilla, she had done so out of extreme necessity and to avoid risk of death or injury to the fetus which happened to be in a difficult breech position. According to Dorothy, she had then already been abandoned by respondent Jordan Terre, leaving her penniless and without means to pay for the medical and hospital bills arising by reason of her pregnancy.

The Court denied respondent's Motion to Set Aside or Lift the Suspension Order and instead referred, by a Resolution dated 6 January 1986, the complaint to the Office of the Solicitor General for investigation, report and recommendation.[5]

Then Solicitor Pio C. Guerrero was appointed investigator by the Office of the Solicitor General. He set the case for hearing on 7 July 1986 with notice to both parties. On 7 July 1986, complainant Dorothy appeared and

presented her evidence ex parte, since respondent did not so appear.[6] The Investigating Solicitor scheduled and held another hearing on 19 August 1986, where he put clarificatory questions to the complainant; respondent once again did not appear despite notice to do so. Complainant finally offered her evidence and rested her case. The Solicitor set still another hearing for 2 October 1986, notifying respondent to present his evidence with a warning that should he fail once more to appear, the case would be deemed submitted for resolution. Respondent did not appear on 2 October 1986. The Investigating Solicitor accordingly considered respondent to have waived his right to present evidence and declared the case submitted for resolution. The parties were given time to submit their respective memoranda. Complainant Dorothy did so on 8 December 1986. Respondent Terre did not file his memorandum.

On 26 February 1990, the Office of the Solicitor General submitted its "Report and Recommendation" to this Court. The Report summarized the testimony of the complainant in the following manner:

"Complainant Dorothy Terre took the witness stand and testified substantially as follows: she and respondent met for the first time in 1979 as fourth year high school classmates in Cadiz City High School (tsn, July 7, 1986, p. 9); she was then married to Merlito Berceñilla, while respondent was single (id.); respondent was aware of her marital status (ibid, p. 14); it was then that respondent started courting her but nothing happened of the courtship (ibid, p. 10); they [complainant and respondent] moved to Manila where they respectively pursued their education, respondent as a law student at the Lyceum University (tsn, July 7, 1986, p. 12, 15-16); respondent continued courting her, this time with more persistence (ibid, p. 11); she decided nothing would come of it since she was married but he [respondent] explained to her that their marriage was void ab initio since she and her first husband were first cousins (ibid, p. 12); convinced by his explanation and having secured favorable advice from her mother and ex-in-laws, she agreed to marry him [respondent] (ibid, 12-13, 16); in their marriage license, despite her [complainant's] objection, he [respondent] wrote 'single' as her status explaining that since her marriage was void ab initio, there was no need to go to court to declare it as such (ibid, 14-15); they were married before Judge Priscilla Mijares of the City Court of Manila on June 14, 1977 (Exhibit A; tsn, July 7, 1986, pp. 16-17); Jason Terre was born of their union on June 25, 1981 (Exhibit B, tsn, July 7, 1986, p. 18); all through their married state up to the time he [respondent] disappeared in 1981, complainant supported respondent, in addition to the allowance the latter was getting from his parents (ibid, pp. 19-20); she was unaware of the reason for his disappearance until she found out later that respondent married a certain Vilma [sic] Malicdem (Exhibit C, tsn, July 7, 1986, pp. 21-22); she then filed a case for abandonment of minor with the City Fiscal of Pasay City (ibid, p. 23) which was subsequently filed before Branch II of the City Court of Pasay City as Criminal Case No. 816159 (Exhibit D; tsn, July 7, 1986, p. 24); she likewise filed a case for bigamy against respondent and Helina Malicdem with the office of the Provincial Fiscal of Pangasinan, where a prima facie case was found to exist (Exhibit E; tsn, July 7, pp. 25-26); additionally, complainant filed an administrative case against respondent with the Commission on Audit where he was employed, which case however was considered closed for being moot and academic when respondent was considered automatically separated from the service for having gone on absence without official leave (Exhibit F; tsn, July 7, 1986, pp. 28-29)."[7]

There is no dispute over the fact that complainant Dorothy Terre and respondent Jordan Terre contracted marriage on 14 July 1977 before Judge Priscilla Mijares. There is further no dispute over the fact that on 3 May 1981, respondent Jordan Terre married Helina Malicdem in Dasol, Pangasinan. When the second marriage was entered into, respondent's prior marriage with complainant was subsisting, no judicial action having been initiated or any judicial declaration obtained as to the nullity of such prior marriage of respondent with complainant.

Respondent Jordan Terre sought to defend himself by claiming that he had believed in good faith that his prior marriage with complainant Dorothy Terre was null and void ab initio and that no action for a judicial declaration of nullity was necessary.

The Court considers this claim on the part of respondent Jordan Terre as a spurious defense. In the first place, respondent has not rebutted complainant's evidence as to the basic facts which underscores the bad faith of respondent Terre. In the second place, that pretended defense is the same argument by which he had inveigled complainant into believing that her prior marriage to Merlito A. Bercenilla being incestuous and void ab initio (Dorothy and Merlito being allegedly first cousins to each other), she was free to contract a second marriage with the respondent. Respondent Jordan Terre, being a lawyer, knew or should have known that such an argument ran counter to the prevailing case law of this Court which holds that for purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void ab initio is essential.[8] Even if we were to assume, arguendo merely, that Jordan Terre held that mistaken belief in good faith, the same result will follow. For if we are to hold Jordan Terre to his own argument, his first marriage to complainant Dorothy Terre must be deemed valid, with the result that his second marriage to Helina Malicdem must be regarded as bigamous and criminal in character.

That the moral character of respondent Jordan Terre was deeply flawed is shown by other circumstances. As noted, he convinced the complainant that her prior marriage to Bercenilla was null and void ab initio, that she was still legally single and free to marry him. When complainant and respondent had contracted their marriage, respondent went through law school while being supported by complainant, with some assistance from respondent's parents. After respondent had finished his law course and gotten complainant pregnant, respondent abandoned the complainant without support and without the wherewithal for delivering his own child safely in a hospital.

Thus, we agree with the Solicitor General that respondent Jordan Terre, by his actions, "eloquently displayed, not only his unfitness to remain as a member of the Bar, but likewise his inadequacy to uphold the purpose and responsibility of his gender" because marriage is a basic social institution.[9]

In *Pomperada v. Jochico*,[10] the Court, in rejecting a petition to be allowed to take the oath as a member of the Bar and to sign the Roll of Attorneys, said through Mme. Justice Melencio-Herrera:

"It is evident that respondent fails to meet the standard of moral fitness for membership in the legal profession. Whether the marriage was a joke as respondent claims, or a trick played on her as claimed by complainant, it does not speak well of respondent's moral values. Respondent had made a mockery of marriage, a basic social institution which public policy cherishes and protects (Article 216, Civil Code)."[11]

In *Bolivar v. Simbol*,[12] the Court found the respondent there guilty of "grossly immoral conduct" because he made "a dupe of complainant, living on her bounty and allowing her to spend for his schooling and other personal necessities while dangling before her the mirage of a marriage, marrying another girl as soon as he had finished his studies, keeping his marriage a secret while continuing to demand money from complainant x x x." The Court held such acts "indicative of a character not worthy of a member of the Bar." [13]

We believe and so hold that the conduct of respondent Jordan Terre in inveigling complainant Dorothy Terre to contract a second marriage with him; in abandoning complainant Dorothy Terre after she had cared for him and supported him through law school, leaving her without means for the safe delivery of his own child; in contracting a second marriage with Helina Malicdem while his first marriage with complainant Dorothy Terre was subsisting, constituted "grossly immoral conduct" under Section 27 of Rule 138 of the Rules of Court, affording more than sufficient basis for disbarment of respondent Jordan Terre. He was unworthy of admission to the Bar in the first place. The Court will correct this error forthwith.

WHEREFORE, the Court Resolved to DISBAR respondent Jordan Terre and to STRIKE OUT his name from the Roll of Attorneys. A copy of this decision shall be spread on the personal record of respondent Jordan Terre in the

Bar Confidant's Office. A copy of this resolution shall also be furnished to the Integrated Bar of the Philippines and shall be circularized to all the courts of the land.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

[1] Resolution, 16 June 1992. Rollo, p. 6.

[2] Three (3) attempts were made by registered mail: the first two (2), at respondent's address at Abelardo Street, Cadiz City, Negros Occidental, and the third, at respondent's employment address at Commission on Audit, Cadiz City. Another attempt was made at respondent's address at Bliss Project Daga, Cadiz City, through the assistance of the P.C. Command at Bacolod City; and another at Lumbunao Calinog Sugar Mill, Iloilo (Court's Resolution dated 24 April 1985, Rollo, p. 47).

[3] Resolution, 24 April 1985. Rollo, p. 52.

[4] Rollo, p. 53.

[5] Id., p. 70.

[6] In his Answer with Motion to Set Aside and/or Lift Suspension Order, respondent Jordan Terre stated his address as "c/o 4th Floor, PAIC Building, 105 Paseo de Roxas, Makati, Metro Manila." Court papers sent to him at that address were, however, returned unserved with the notation "not known at given address" (Rollo, p. 63). It thus appears that Jordan Terre once more submerged to evade service of legal papers on him.

[7] Rollo, p.73.

[8] Gomez v. Lipana, 33 SCRA 615 (1970); Vda. de Consuegra v. Government Service Insurance System, 37 SCRA 316 (1971); Wiegel v. Hon. Alicia Sempio-Diy, etc, et al, 143 SCRA 499 (1986). This rule has been cast into statutory form by Article 40 of the Family Code (Executive Order No. 209, dated 6 July 1987).

[9] Arroyo v. Court of Appeals, et al., G.R. Nos. 96602 and 96715, 19 November 1991.

[10] 133 SCRA 309 (1984)

[11] 133 SCRA at 316. See also Cordova v. Cordova, 179 SCRA 680 (1989) and Laguitan v. Tinio, 179 SCRA 837 (1989)

[12] 16 SCRA 623 (1966).

[13] 16 SCRA at 630.

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