ELENA ZARATE-BUSTAMANTE AND LEONORA SAVET CATABIAN,COMPLAINANTS, VS. ATTY. FLORENTINO G. LIBATIQUE, RESPONDENT.

A.C. No. 4990. September 26, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a complaint for disbarment filed by Elena Zarate-Bustamante and Leonora Savet-Catabian against Atty. Florentino G. Libatique, received by the Office of the Bar Confidant on December 14, 1998. Complainants allege that respondent, as their counsel, neglected to inform them of the status of a case for partition they had earlier filed, which resulted to the loss of their share in the property subject of partition.

The antecedent facts are as follows:

Elena Zarate-Bustamante, Felicitas Zarate-Savet, and Florencio Zarate were children of Casimiro and Trinidad Zarate.[1] The spouses Zarate owned a parcel of land in Bauang, La Union, with an area exceeding 3,000 square meters.[2] Casimiro donated the land to Florencio in 1944.[3]

In 1974, with respondent as counsel, Bustamante and Savet filed an action seeking partition of the land before Branch 4 of the then Court of First Instance of Bauang, La Union, docketed as Civil Case No. 155-BG. Defendant therein was Florencio Zarate. On October 2, 1975 the CFI ordered the parties to voluntarily partition the property, inasmuch as all three siblings have a right to the land.

Zarate appealed from the decision of the CFI. In a decision promulgated on January 29, 1982, the Court of Appeals reversed the order of the CFI and dismissed the complaint, after it found that the property in question was donated to Zarate by his father in 1944 and that, since then, he had been in actual, adverse possession of the property for almost 30 years when the complaint for partition was filed in 1974. Thus, he had acquired title to the property by prescription.

In 1998, Bustamante secured a copy of the CFI order of partition and inquired from respondent if it could still be enforced. She was also able to secure a copy of an extrajudicial partition of the property made by the heirs of Zarate, who died in 1993, and asked respondent his opinion about such partition.

Respondent replied that the CFI order of partition could still be enforced, and that the extrajudicial partition made by the heirs of Zarate was null and void, being contrary to the CFI order. Respondent agreed to file a new case to enforce the order, for an acceptance fee of P10,000.00 and appearance fee of P500.00.[4] Complainants paid the acceptance fee on September 30, 1998.[5] On the same day, respondent, as counsel for Bustamante and Savet's daughter Leonora Savet-Catabian, filed a new case for recovery of ownership, partition, and declaration of nullity of extrajudicial partition.[6]

However, the case was dismissed upon motion of the heirs of Zarate, who cited the 1982 ruling of the CA upholding Zarate's ownership of the property, which had become final and executory.[7]

Complainants claimed to have been unaware of the appeal made by Zarate to the CA, and confronted respondent about the matter. However, respondent allegedly claimed ignorance of such appeal.[8]

Hence, this complaint, in which complainants aver that they lost their share in a property worth millions of pesos due to the gross negligence and irresponsible conduct of respondent. Complainants argue that respondent could not have been unaware of the appeal made by Zarate, since a check of court records allegedly made by them revealed that respondent was duly served court processes in connection with the appeal.

In his Comment, respondent admits that he was counsel for the plaintiffs in the action for partition filed before the CFI of Bauang, La Union. He also admits that he agreed to handle a new case, this time for recovery of ownership and declaration of nullity of an extrajudicial partition, for complainants. Respondent stated that in agreeing to accept the new case, he only relied on the order of the CFI dated October 2, 1975, which he believed could still be enforced. He also believed that the extrajudicial partition made by Zarate's heirs was null and void, owing to the CFI's order of partition.

Respondent likewise admits having received P10,000.00 from complainants as acceptance fee.[9] However, he claims to have "no recollection" as to the status of the case filed before the CFI, "as it has been a long time ago and I have no more record of the case on file in my office."[10]

We referred the matter to the IBP for investigation, report, and recommendation on June 23, 1999. We received the IBP's report on October 16, 2000.

The IBP found that, indeed, respondent was remiss in fulfilling his duty to his clients. He forgot about the case filed before the CFI, and thus, failed to consider its implication on the new case that he filed in 1998. The IBP recommended that respondent be admonished for filing a new case "when the outcome would have been dependent on an existing appealed case."[11] The IBP also recommended that respondent return the P10,000.00 he received from complainants as acceptance fee, with legal interest.

We agree with the findings and the recommendation of the IBP.

Respondent claims to have been rattled and shocked[12] upon learning, after he filed the new case in 1998, that the CA reversed in 1982 the order of the CFI directing partition of the property, implying that he was unaware of the appeal made by Zarate. He admits that when he filed the new case, he "had no recollection" regarding the status of the case before the CFI. The latest development he was aware of concerned the CFI order issued in 1975.

However, respondent also admits having filed an appellees' brief when the CFI's order of partition was appealed to the CA. Yet, he claims to have lost track of the case owing to numerous other commitments requiring his attention.[13] He faults complainants for failing to inquire from him about the status of the case, despite having had the opportunity to do so when they went home to Bauang on several occasions. He blames them for not taking further steps to enforce the CFI order and protect their right to the property. Respondent also argues that complainants should have known of the appeal, since he certainly did not personally cause the printing of the appellees' brief and provide the money to pursue the appeal in Manila. Only the complainants could have done so. Respondent avers that, like him, complainants might have forgotten all about the case.[14]

Respondent has expressed willingness to reimburse the P10,000.00 he received from complainants as acceptance fee.[15] He denied complainants' allegations that he was only interested in money, since, according to him, he could have charged much more than P10,000.00 if indeed the property in question was worth millions as claimed by complainants.[16]

We are not entirely persuaded by respondent's attempt to shift the blame to his clients regarding their case on

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appeal.

Canon 18 of the Code of Professional Responsibility provides that a lawyer shall serve his client with competence and diligence. More specifically, Rule 18.03 and Rule 18.04 provide:

> Rule 18.03.--A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
>
> Rule 18.04.--A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Clearly, respondent breached his duty to his client when he conveniently forgot about the appeal filed by Zarate. His negligence shows a glaring lack of the competence and diligence required of every lawyer, and his admission of negligence[17] does not mitigate his liability. He cannot now shift the blame to complainants for failing to inquire about the status of the case, since, as stated above, it was his duty as lawyer to inform his clients of the status of cases entrusted to him. His failure to do so is an infraction that this Court will not countenance.

Respondent cannot simply say that he lost track of the first partition case because he had numerous other commitments to attend to. Like all professionals, he is expected to devise ways to follow the course of his cases and to keep his files updated. None of these would have happened had respondent been more mindful of his responsibilities as an attorney.

Neither is the passage of time an excuse. It is a fundamental rule of ethics that "an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion."[18] It is respondent's bounden duty to see his cases through until properly completed and not abandon or neglect them in midstream.

WHEREFORE, Atty. Florentino G. Libatique is declared GUILTY of negligence in the performance of his duties to his clients, and ADMONISHED to henceforth adhere faithfully to the canons set forth in the Code of Professional Responsibility. He is ORDERED to return to complainants Elena Zarate-Bustamante and Leonora Savet-Catabian the amount of P10,000.00 he received from them as attorney's fee, with legal interest until fully returned.

Let a copy of this decision be spread in his file at the Office of the Bar Confidant and of the Integrated Bar of the Philippines.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, p. 56.

[2] Id. at 56-57.

[3] Id. at 57.

[4] Id. at 47.

[5] Id. at 67.

[6] Id. at 62.

[7] Id. at 19.

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[8] Id. at 3-4.

[9] Id. at 48.

[10] Id. at 47.

[11] IBP Report and Recommendation, p. 9.

[12] Rollo, p. 47.

[13] Id. at 54.

[14] Id. at 49.

[15] Records, p. 61.

[16] Rollo, p. 53.

[17] Records, p. 50.

[18] Orcino v. Gaspar, 279 SCRA 379, 384 (1997).

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