

TERESITA B. TABILIRAN, COMPLAINANT, VS. ATTY. JOSE C. TABILIRAN, JR., RESPONDENT.

A.C. No. 906. July 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In her verified complaint dated December 8, 1969, Teresita B. Tabiliran alleged that her husband, Atty. Jose C. Tabiliran, "abandoned the family home, and went with another woman by whom he have (sic) been living and whom a child was born." Required to answer, the respondent said that it was complainant who abandoned the family home without justifiable reasons and that he did not live with another woman nor had a child with her.

We referred the matter to the Solicitor General for investigation, report and recommendation. The report and recommendation of the Solicitor General was set for hearing on November 25, 1976, but on that date there was no appearance for both the complainant and the respondent although the Solicitor General sent an Assistant Solicitor General. It was then resolved to consider the case submitted for decision.

The report of the Solicitor General contains the following findings:

"Complainant, on the basis of her evidence, has failed to substantiate her charge that her husband, the herein respondent, has abandoned the family home and lived with another woman by whom he allegedly begot a child. Complainant's own evidence Exhibit "H" belies her charge that respondent abandoned the family home, for in paragraph No. 1 of said Exhibit "H" she claims that she has left the conjugal home against the will and without the consent of her husband.

As to the charge that respondent lived with another woman by whom he allegedly begot a child, no competent evidence was adduced to support said charge. While the following complainant's exhibits:

Exhibit "B" - Letter dated July 15, 1970 carrying the signature 'Leonora Pillarion' addressed to the Chairman, Police Commission, Quezon City, informing the latter that she begot a child as a result of her alleged illicit relations with Atty. Jose Tabiliran, Jr. and requesting the latter's dismissal from his position as Chief of Police of Titay, Zamboanga del Sur;

Exhibit "C" - Certificate of Baptism issued by the Parish Priest, Parish of San Jose, Ipil, Zamboanga del Sur, on August 18, 1969 certifying that a child named Dennis Tabiliran supposedly the child of Jose Tabiliran, Jr. and 'Leonora Hilarion', and born in Titay, Zamboanga del Sur on June 17, 1968 was baptized on May 25, 1969; and

Exhibit "G" - Affidavit dated June 4, 1970 of 'Leonora Pilarion', executed at Calamba, Misamis Occidental stating that she is the mother of Dennis Tabiliran born on June 16, 1968 at Titay, Zamboanga del Sur and the father is Jose Tabiliran.

tend to establish that respondent is the father of one Dennis Tabiliran, the child named therein, nevertheless, said exhibits cannot validly constitute competent evidence against respondent on the ground that they were never properly identified as nobody ever testified thereon. Neither complainant nor the persons whose signatures appear

therein and who are supposed to have executed the same were never presented for confrontation by respondent. Said exhibits, therefore, are hearsay and inadmissible as evidence against respondent. In this connection, the Provincial Fiscal of Misamis Occidental who investigated this case correctly denied, upon seasonable objection on the part of respondent, admission of said complainant's exhibits.

At any rate, even if it be assumed, of course, *arguendo*, that said exhibits are admissible in evidence, the charge which they tend to prove was vehemently denied by respondent who claims that he has not lived with any other woman; that he does not know Leonora Pilarion, much less her alleged child supposedly named 'Dennis Tabiliran'; and that he has only two children, namely: Reynald Antonio Tabiliran and Jose III Tabiliran referred to in Exhibits "E" and "F", respectively, begotten with his wife (complainant herein). Furthermore, there are marked discrepancies in complainant's Exhibits "B", "C" and "G" insofar as the alleged 'another woman' is concerned. While in Exhibit "B" that supposed 'another woman' is surnamed 'Pilarion', however, in Exhibits "C" and "G", her surnames are 'Hilarion' and 'Pilarion', respectively.

It is thus plain that complainant had failed to substantiate her complaint against her husband (respondent herein), and to establish the basis for his disbarment or suspension. The rule is well settled that in disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary power, the case against the respondent must be 'established by convincing proof' (*Go vs. Candoy*, Adm. Case No. 736, Oct. 23, 1967; *Magno vs. Gallada*, 42 SCRA 549; *Arboleda vs. Gatchalian*, 58 SCRA 64). Thus, as held by this Honorable Court in another case, the power to disbar attorneys must always be exercised with great caution and should follow only when there is a clear preponderance of evidence against the respondent. For the presumption is, an attorney is innocent of the charges preferred against him until the contrary is proved and as an officer of the court that he has performed his duty in accordance with his oath (*In re: De Guzman*, 55 SCRA 139)."

The Solicitor General recommends "the exoneration of respondent from the charges of having abandoned his family home and lived with another woman with whom he allegedly begot a child, as reflected in his wife's letter-complaint (Exh. "A")." The recommendation is well-taken; accordingly, the respondent is hereby exonerated of the charges of abandonment of family and of immorality.

In the course of the investigation conducted, it turned out that the complainant and the respondent executed a "Deed of Settlement of Spouses To Live Separately From Bed" which contains, among others, the following stipulation:

"A. To live separately from each other in home and in bed allowing each of the other spouse to live with another man or woman as the case may be without the objection and intervention of the other."

It is obvious that except for the first part, the stipulation is contrary to law, morals and public policy and the respondent who is a lawyer should have perceived the contrariety. There are, however, extenuating circumstances according to the Solicitor General and they are:

"Considering, however, that it was the late lawyer Jesus Sarmiento who prepared Exhibit "H" at the instance of complainant, and considering further that on February 18, 1969 when said Exhibit "H" containing the aforementioned stipulation was entered into by and between complainant and respondent, the latter was then, for almost three years, an abandoned and disappointed husband, and impulsive at that due to his youthful years (only about 29 years old then); x x x."

In view of the foregoing, the Solicitor General recommends that the respondent be reprimanded only which we hereby do.

SO ORDERED.

Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

Barredo, (Chairman), concurs in the conclusion that complainant's charge has not been proven. He reserves his vote as to whether or not a lawyer who enters into a contract contrary to law, morals and public policy should only be censured.

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