

NICETAS TANIEZA-CALAYOAN, COMPLAINANT, VS. ELMER JERRY C. CALAYOAN, PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 2, BANGUED, ABRA, RESPONDENT.*A.M. No. P-14-3253. August 19, 2015*

Ponente: CARPIO, J.

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Before the Court is an administrative complaint for Disgraceful and Immoral Conduct filed by Nicetas Tanieza-Calayoan (Nicetas) against her husband, Elmer Jerry C. Calayoan (Elmer Jerry), a Process Server of Branch 2, Regional Trial Court (RTC), Bangued, Abra.

The Antecedent Facts

Nicetas and Elmer Jerry were married on 18 March 1993 and they subsequently had two children, Michael Jessie T. Calayoan (Michael Jessie) and Jenny Ann T. Calayoan (Jenny Ann). In a sworn Letter-Complaint dated 15 August 2005,[1] Nicetas alleged that Elmer Jerry abandoned her and their children since 18 May 2005 and that he was having an illicit affair with Rina Balboa (Rina). Nicetas further alleged that on 5 August 2005, she and her daughter Jenny Ann saw Elmer Jerry and Rina in Angono, Rizal, where the latter admitted to Nicetas that she was then three months pregnant.[2]

In his Comment dated 18 January 2006,[3] Elmer Jerry denied that he had any illicit relations with Rina and maintained that Rina was simply a neighbor. Elmer Jerry insisted that the complaint filed by Nicetas was merely a result of her jealousy and suspicion. He further denied the allegation that he was seen with Rina in Angono, Rizal on 5 August 2005 because on this date, a Friday, he was on duty at Branch 2, RTC, Bangued, Abra. To support his claim, Elmer Jerry submitted a certified photocopy of his Daily Time Record (DTR).[4] Elmer Jerry also denied the allegation that he has abandoned his wife and children. On the contrary, Elmer Jerry claimed that he was still living in their family home in Barangay Deet, Tayum, while his wife and children left him to live in Bangued.[5]

On 10 October 2005, a criminal complaint for Concubinage[6] was filed against Elmer Jerry and Rina in the Municipal Trial Court of Tayum-Peñarrubia, Abra. This, however, was subsequently dismissed on a technicality as the criminal complaint was improperly filed.[7] No other criminal complaint for Concubinage was filed against Elmer Jerry and Rina.[8]

In a letter dated 7 February 2006,[9] Nicetas wrote to the Office of the Court Administrator (OCA), reiterating her allegation that (1) she and her daughter saw Elmer Jerry and Rina in Angono, Rizal on 5 August 2005; (2) when Elmer Jerry and Rina found out that Nicetas had filed an administrative complaint, they transferred to live in the family home of Rina's mother in Bagalay, Tayum, Abra; (3) when Elmer Jerry and Rina became aware of the criminal complaint for Concubinage that was filed against them, they moved back to the house of Rina in Turod, Tayum, Abra, where it was of common knowledge that they were cohabiting as husband and wife; (4) Rina gave

birth to a baby girl on 21 January 2006; and (5) Elmer Jerry had had several other illicit relations, one of which was with Rosemarie Jacquias (Rosemarie), a nursing student of Abra Valley Colleges. In support of the allegation that Elmer Jerry had illicit relations with Rosemarie, Nicetas attached the Minutes of Meeting dated 15 June 2000 between the school officials of Abra Valley Colleges, and Rosemarie and her parents.[10] Nicetas also attached Rosemarie's promissory note wherein she promised to stop her "illicit relationship with Jerry Calayoan." [11]

In his Comment dated 11 September 2006,[12] Elmer Jerry again insisted that his alleged illicit relationships with other women, including that with Rosemarie, were all imaginary and merely the suspicions of his wife Nicetas. As to the picture of Elmer Jerry and Rina, which Nicetas attached to her letter to the OCA, Elmer Jerry explained that it was a simple group picture taken when he was attending a wedding during which Rina was also present as a godmother for a baptism. Finally, as to the daughter of Rina, Elmer Jerry alleged that he had "no knowledge sufficient to form a belief about this fact" and that Nicetas was merely speculating that he sired the child.

On 17 July 2006, in accordance with the recommendation of the OCA dated 22 May 2006,[13] the Court referred the instant administrative matter to the Executive Judge of the RTC at Bucay, Abra for investigation, report and recommendation.[14]

Then Acting Presiding Judge Charito B. Gonzales (Judge Gonzales) initially presided over the investigation of this matter. Thereafter, upon appointment of Judge Elpidio C. Cablayan (Judge Cablayan) to Branch 58, RTC, Bucay, Judge Gonzales turned over this administrative matter to Judge Cablayan. Judge Cablayan, however, retired from the service without completing the investigation. Thus, in a Resolution dated 20 August 2008, the Court referred this case to Acting Presiding Judge Gabino B. Balbin, Jr. (Judge Balbin) for investigation, report and recommendation within sixty (60) days from notice thereof. This period lapsed without any report from Judge Balbin. In an Order dated 27 August 2010, Judge Balbin "relieved himself of any responsibility in trying and deciding" the case as Judge Jaime L. Dojillo, Jr. (Judge Dojillo) was appointed as the new presiding judge of Branch 58, RTC, Bucay. Judge Dojillo immediately set the case for presentation of evidence. Thereafter, Judge Dojillo began to hear the testimonies of the parties.

However, in a Resolution dated 28 February 2011, the Court directed Judge Balbin to continue with the investigation of the case and to decide the same with dispatch. On 23 March 2011, Judge Balbin filed a Motion to be Relieved as Investigating Judge. Pending resolution of this motion, Judge Balbin heard the testimonies of the parties, continuing from where Judge Dojillo left off. Judge Balbin was able to conclude the investigation and thereafter, he submitted his Findings and Recommendation to the Court. His Motion to be Relieved as Investigating Judge, which had become moot and academic, was subsequently denied.

Report of Investigating Judge

Judge Balbin submitted his Findings and Recommendation dated 10 November 2011,[15] recommending that Elmer Jerry be suspended for one (1) year without pay. While Judge Balbin found the DTR of Elmer Jerry a reasonable defense against the alleged sighting of Elmer Jerry and Rina in Angono, Rizal on 5 August 2005, he gave much credence to the testimony of Michael Jessie in finding that Elmer Jerry and Rina were indeed maintaining an illicit relationship, and thus guilty of disgraceful and immoral conduct:

However, the testimony of Michael Jessie Calayoan, the son of the complainant and the respondent, is too revealing to be ignored. He testified that on several occasions, his father, Jerry Calayoan, brought him and his sibling, Jenny Ann, to a house in Bagalay, Tayum, Abra where they ate lunch with Rina Balboa. Jerry Calayoan, Rina Balboa and their daughter, Elagerryn, are the occupants of the bungalow. Jerry Calayoan told them that Rina Balboa is his wife and that, Elagerryn, is their daughter. All of these gave him the impression that they are living together as a family.[16] (Emphasis and underscoring supplied)

Judge Balbin also took note of the name of the daughter of Rina, Elagerryn, which seemed to be derived from the names of Elmer Jerry and Rina:

Further, the birth certificate of Rina Balboa's child shows that the father's name was recorded as "unknown". There is no need to register name [sic] of the biological father. His name and Rina Balboa's name are all over the child's first name, which is a common practice among Filipino couples. The child's first name is "ELAGERRY". "ELAGERRY" was coined from the respondent's first name "ELMER JERRY", while "xxxRYN" was added thereto after "RINA", Rina Balboa's first name. That the respondent and Rina Balboa flaunted their illicit relationship by naming their child after them, even after a criminal complaint was filed against them, is the height of insensitivity, for which reason the maximum penalty for the offense should be imposed.[17]

The Recommendation of the OCA

The OCA considered the findings of the Investigating Judge well-taken. In a Memorandum dated 3 March 2014, the OCA also relied heavily on the testimony of Michael Jessie in finding truth in Elmer Jerry and Rina's illicit relationship:

xxx Indeed the testimony of Michael Jessie is compelling enough to hold respondent administratively liable for the offense charged. Michael Jessie personally witnessed respondent and Rina living together as husband and wife when respondent himself brought Michael Jessie on several occasions to the house where he and Rina were cohabiting, along with their child. Michael Jessie may have harbored a grudge towards respondent, but the same may be considered justified. As correctly pointed out by Judge Balbin, such feeling of resentment is a common expression of children like Michael Jessie who have been abandoned by their father to live with another woman. Besides, there is no showing that Michael Jessie was unduly pressured by complainant or anyone to testify against respondent. Hence, his testimony is entitled to full faith and credence.[18]

The OCA also took note of Elmer Jerry's alleged past relationship with Rosemarie, which he never denied:

It bears stressing that this is not the first time that respondent has had an illicit relationship. On cross-examination, complainant testified that before Rina, respondent had an extra-marital relationship with Rosemarie, a nursing student, which respondent never denied. Pieces of evidence were presented during the investigation in support of this allegation like the "Minutes of Meeting at the Abra Valley College on June 15, 2000" and "Promissory Note of Rosemarie," which were marked as Exhibits "H" and "I" for complainant. Both exhibits show that Rosemarie expressly admitted that she had an illicit relationship with respondent. Judge Balbin, however, declared that the promissory note was not admitted in evidence because it was not identified by its author or anybody who has personal knowledge of its execution. Nonetheless, respondent's failure to deny his alleged immoral dalliance with Rosemarie is a tacit admission that such relationship existed and renders inconsequential the exclusion of the promissory note as evidence.[19]

The OCA also agreed with the finding of Judge Balbin that the name of Rina's daughter, Elagerryn, reflected the illicit relationship between Elmer Jerry and Rina:

As correctly pointed out by Judge Balbin, respondent and Rina have flaunted their illicit relationship by naming their child after them by combining the first and last syllables of their respective first names even after a criminal complaint for concubinage was filed against them by complainant. Although the case was dismissed due to a technicality, there is enough reason to warrant respondent's suspension from the service for one (1) year.[20]

Based on the foregoing, the OCA recommended that: (a) the matter be re-docketed as a regular administrative matter; and (b) Elmer Jerry be adjudged guilty of disgraceful and immoral conduct and be suspended from the service without pay and other benefits for one (1) year.

In a Resolution dated 13 August 2014, the Court resolved to re-docket the matter as a regular administrative matter against Elmer Jerry.

The Issue

The sole issue in this case is whether Elmer Jerry is guilty of disgraceful and immoral conduct.

The Ruling of the Court

The Court finds the report of the OCA in order.

Every official and employee in the public service is expected to observe a good degree of morality if respect and confidence are to be maintained by the government in the enforcement of the law.[21] Elmer Jerry was expected to adhere to the standard of decency expected of employees in the public service - this is more so because he is an employee of the court. The image of a court of justice is mirrored in the conduct, official or otherwise, of the women and men who work in the judiciary, from the judge to the lowest of its personnel.[22]

Elmer Jerry's act of maintaining an illicit relationship with Rina, and previously with Rosemarie, is hardly the behavior expected of court employees. His actions fall under the definition of disgraceful and immoral conduct, provided in the Revised Rules on the Administrative Offense of Disgraceful and Immoral Conduct, to wit:

Section 1. Definition of Disgraceful and Immoral conduct - Disgraceful and Immoral conduct refers to an act which violates the basic norm of decency, morality and decorum abhorred and condemned by the society. It refers to conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community.[23]

This Court, on several occasions, has held that abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes disgraceful and immoral conduct which should be subject to proper disciplinary action.[24] As established by the evidence on record, Elmer Jerry and Rina were living together as husband and wife, and had a daughter whom they named after themselves. In fact, according to Michael Jessie, Elmer Jerry even introduced Elagerryn and Rina as his daughter and wife, respectively.[25]

Elmer Jerry abandoned his wife Nicetas and their two children when he started to live together with Rina and Elagerryn. Not only this, but it seems that he has also been remiss in his duty to provide financially for his children with Nicetas.[26] Elmer Jerry's illicit relations with Rina and his abandonment of his family are definitely contrary to the acceptable norms of morality, especially since he is expected to maintain a certain degree of decency and morality. His conduct shows moral indifference to the opinion of the good and respectable members of the community. He should be held administratively liable for his disgraceful and immoral conduct.

The Revised Rules on Administrative Cases in the Civil Service,[27] which govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases, provide that disgraceful and immoral conduct is a grave offense for which the penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the first offense and dismissal for the second.[28]

While this may be Elmer Jerry's first offense, his alleged previous relationship with Rosemarie - which seemed to have ceased in accordance with the promissory note issued by the latter, should nonetheless be taken into consideration in imposing the proper penalty. His conduct is serious enough to warrant the maximum penalty for his offense. The recommended penalty of suspension for one (1) year is in order.

WHEREFORE, we find respondent Elmer Jerry C. Calayoan, Process Server, Regional Trial Court, Branch 2, Bangued, Abra, GUILTY of disgraceful and immoral conduct and SUSPEND him for one (1) year from the service without pay and other benefits with a STERN WARNING that a commission of the same or similar

offense shall be dealt with more severely.

SO ORDERED.

Brion, Del Castillo, Mendoza, and Leonen, JJ., concur.

[1] Exhibit "A," rollo, p. 5.

[2] Exhibit "N," id. at 65.

[3] Id. at 47.

[4] Exhibit "E-I," id. at 15.

[5] Id. at 56.

[6] Id. at 18.

[7] Id. at 200.

[8] Id.

[9] Exhibit "G," id. at 20.

[10] Exhibit "H," id. at 21.

[11] Exhibit "I," id. at 22.

[12] Id. at 45-46.

[13] Id. at 33-34.

[14] Id. at 36.

[15] Id. at 276-283.

[16] Id. at 281.

[17] Id. at 282.

[18] Id. at 290.

[19] Id.

[20] Id.

[21] Babante-Capales v. Capales, A.M. No. HOJ-10-03, 15 November 2010, 634 SCRA 498.

[22] Acebido v. Halasan, 662 Phil. 159 (2011).

[23] Civil Service Commission Memorandum Circular No. 15, s. 2010, Amending Certain Provisions of the Rules on the Administrative Offense of Disgraceful and Immoral Conduct. Dated 5 August 2010.

[24] Elape v. Elape, 574 Phil. 550 (2008), citing Sealana-Abbu v. Laurenciana-Hurano, 558 Phil. 24 (2007); Dela Torre-Yadao v. Cabanatan, 498 Phil. 372, 377 (2005), citing Maguad v. De Guzman, 365 Phil. 12, 19 (1999); Lauro v. Lauro, 411 Phil. 12, 17 (2001); Bucatcat v. Bucatcat, 380 Phil. 555, 566-567 (2000).

[25] Rollo, pp. 230-231; TSN, 11 November 2010, p. 6.

[26] *Id.* at 233-235; TSN, 11 November 2010, pp. 9-11.

[27] CSC Resolution No. 1101502 dated 18 November 2011.

[28] Rule 10, Section 46 (B)(5).

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