EMILIA MARIÑAS, COMPLAINANT, VS. TERENCIO G. FLORENDO, SHERIFF V, REGIONAL TRIAL COURT (RTC), BRANCH 21, VIGAN CITY, ILOCOS SUR, RESPONDENT.

A.M. No. P-07-2304. February 12, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

In a Complaint-Affidavit[1] dated March 7, 2006, Emilia Mariñas charged Terencio G. Florendo, Sheriff V, Regional Trial Court (RTC), Branch 21, Vigan City, Ilocos Sur, with neglect of duty relative to the implementation of the writ of execution issued by the RTC, Branch 21, Vigan City, in Civil Case No. 5238-V entitled Emilia Mariñas v. Cesar Zaplan.

Complainant alleged that the decision in Civil Case No. 5238-V was promulgated on November 18, 2002 and the same became final and executory for failure of defendant therein to file his appeal. Thus, on May 19, 2003, the RTC issued a writ of execution and respondent sheriff was assigned to implement the same. Respondent assured complainant that the writ would be implemented and demanded from her seven thousand pesos (P7,000.00) for sheriff's expenses which she readily gave to the respondent. Complainant repeatedly followed-up the execution of the writ of execution. However, respondent failed to implement the writ for about three (3) years at the time of the filing of her complaint. Hence, complainant was constrained to file this complaint for neglect of duty against respondent.

In his 1[st] Indorsement dated September 20, 2005, Court Administrator Jose P. Perez referred the matter to Executive Judge Alipio V. Flores of the RTC of Vigan City, Ilocos Sur for appropriate action.[2]

In a Letter[3] dated October 25, 2005, Judge Flores reported that complainant failed to appear for a confrontation with respondent despite several invitations. On December 16, 2005, complainant executed an affidavit explaining that her failure to appear before Judge Flores was due to the fact that she was never informed nor notified of the same.[4]

In his comment, respondent denied having solicited, much less, received P7,000.00 from complainant. He, however, admitted that he received P1,000.00 from complainant, but only because complainant herself offered the said amount as, "pandagdag gastos man lang . . kasi nakakahiya na!" Respondent claims that he asked the assistance of Sheriff Fernando Austria of the RTC, Lingayen in conducting surveillance on Cesar Zaplan's (defendant in Civil Case No. 5238-V) residence for two (2) days but the latter found nothing to report. On November 27, 2003, Clerk of Court and Ex-Officio Sheriff Alex R. Raqueno of the RTC, Vigan, officially endorsed the subject writ of execution for further proceedings to his counterpart, Clerk of Court Alicia Favia of the RTC, Dagupan City, Pangasinan. According to respondent he transmitted, via postal money order, the P1,000.00 given to him by complainant to the Office of the Clerk of Court, Dagupan City, for sheriff's operational expenses. In fine, respondent contended that the referral of the said writ transferred the task of enforcing the same to the RTC, Dagupan City.

Respondent belied complainant's allegation that the latter made numerous follow-ups between 2004 and 2005. According to him, aside from the complainant's visit in January 2004, when he informed the latter that he had not received any feedback from the RTC, Dagupan City, complainant visited his office only twice. Respondent also disclosed that on October 4, 2005, the parties were summoned for a conference with Executive Judge Alipio V. Flores, but the complainant did not show up for the scheduled dialogue.

Finally, respondent claimed that the search for the vehicle of the defendant in the case proved futile and budgetary constraints prevented a longer stay in Dagupan City.

In its Memorandum Report[5] dated February 14, 2007, the Office of the Court Administrator made the following evaluation:

> EVALUATION: Respondent was negligent in the performance of his duty as sheriff.
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> A review of the records of this case reveals that the Writ of Execution was issued on May 19, 2003 and has not yet been implemented up to this day, more than three (3) years after the date of issuance. It is the duty of the sheriff to enforce the writ of execution without delay once it is given to him unless restrained. Section 14 of Rule 39 of the Rules of Court provides the manner by which the execution is to be implemented as follows:
> Sec. 14. Return of writ of execution. The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty days (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

Pursuant to the rule, respondent sheriff should report to the court within thirty (30) days from receipt of the writ of execution dated May 19, 2003, the reasons why the judgment obligation has not been satisfied. Moreover, he should submit reports every thirty (30) days thereafter until such time that the judgment obligation has been fully satisfied. It does not appear that respondent rendered these reports. Instead, respondent sought to avoid administrative liability by commissioning the services of Sheriff Viñez A. Hortaleza, RTC, Dagupan City, to conduct surveillance on the judgment defendant's assets. Respondent sheriff cannot rely solely on the surveillance he requested to be conducted by Sheriff Hortaleza as respondent is tasked to personally implement the writ. It is almost trite to say that execution is the fruit and end of the suit and is the life of law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Evidently, respondent was not only remiss in his implementation of the writ, but likewise derelict in his submission of the returns thereon.

Likewise, respondent grievously failed to comply with the requirements of Section 10, Rule 141 of the Rules of Court, as follows:

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> With regard to sheriff's expenses in executing writ issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation with the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned

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with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

Despite the plain meaning of the above-quoted procedure, respondent failed to comply therewith. His act of receiving an amount for expenses to be incurred in the implementation of the writ of execution, without him having made an estimate thereof and securing prior approval of the court issuing the writ is clearly proscribed by the rule. Whether the amount was just given to respondent is beside the point, his mere acceptance of the amount without the prior approval of the court and without him issuing a receipt thereof is clearly a misconduct in office [Danao vs. Franco, Jr., 440 Phil. 181, 185-186 (2002); Commendador vs. Canabe, 438 Phil. 99, 107 (2002)].

It is clear that under the rule, the sheriff has to estimate the expenses to be incurred and upon the court's approval of the estimated expenses the interested party has to deposit the amount with the Clerk of Court. These expenses shall then be disbursed to the executing sheriff subject to his liquidation. Any unspent amount shall be refunded to the party who made the deposit.

Clearly, in the implementation of a writ of execution, sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interest of the service because even assuming arguendo such payments are indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments are made for less than noble purposes. In short, sheriffs cannot, as in this case, receive gratuities or voluntary payments from parties they are ordered to assist.

Indeed the assailed conduct of respondent sheriff cannot be countenanced. He has admitted having received the amount of One Thousand Pesos (P1,000.00) from complainant. The fact that this money was allegedly used for the implementation of the writ is of no moment. Respondent Sheriff ignored the procedures set forth in the Rules of Court. The money was not deposited with the Clerk of Court and there was no showing that this amount was subjected to court's prior approval. He should have waited for the money to be officially disbursed by him if indeed due or required for expenses. He should not accept money from a party, much less ask for it. The respondent's failure to faithfully comply with the provisions of Rule 141 of the Rules of Court constitutes dereliction of duty and negligence, which warrants the imposition of disciplinary measures (Andal vs. Tonga, A.M. No. P-02-1581, 28 October 2003, 414 SCRA 524, citing Tiongco vs. Molina, 416 Phil. 676).

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RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are our recommendations that:

- The instant administrative complaint be RE-DOCKETED as a regular administrative matter; and

- That respondent sheriff be SUSPENDED for one (1) month and one (1) day without pay with a warning that the commission of a similar act in the future will be dealt with more severely.

As recommended, this complaint was re-docketed as a regular administrative matter pursuant to the Resolution dated March 7, 2007. We shall now resolve this administrative matter on the basis of the pleadings already filed by the parties.

A review of the record at hand shows that respondent did not comply with the mandate of Section 14, Rule 39 of the Rules of Court. Under the said rule, a sheriff is mandated to execute and make a return on the writ of execution within the period provided by the Rules. In addition, he must make periodic reports on partially satisfied or unsatisfied writs in accordance with the above-cited rule, in order that the court as well as the litigants may be apprised of the proceedings undertaken in connection therewith. The periodic reporting on the status of the writs must be done by the sheriff every 30 days regularly and consistently until they are returned fully satisfied.[6] Here, no evidence was presented to prove that respondent complied with the requirements mandated

by the rule. Respondent cannot evade liability by claiming that the duty of enforcing the subject writ was already transferred to the RTC, Dagupan City when the said writ was officially endorsed by the RTC, Vigan City Branch Clerk of Court Raqueno to Clerk of Court Favia of the RTC, Dagupan City. As the sheriff assigned to the case, he should implement the writ personally. Even if the subject writ is to be executed outside his territorial jurisdiction, respondent can seek the assistance of the sheriff of the place where the writ of execution shall take place[7] but the responsibility for its implementation still remains with respondent.

Respondent disregarded Section 10, Rule 141 of the Rules of Court. Under the said rule, the sheriff and other persons serving processes are authorized to collect certain amounts from parties while in the performance of their functions. However, the Rules also require the Sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount to the Clerk of Court who will disburse the amount to the Sheriff, subject to liquidation. Any unspent amount will have to be returned to the prevailing party. Thus, any amount received by the Sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty.[8]

In this case, the fact that the P1,000.00 was offered to him by complainant to defray expenses of execution is of no moment. It makes no difference if the money, in whole or in part, had indeed been spent in the implementation of the writ. The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes.

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs of execution.[9]

It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom.[10]

Respondent departed from the directive of the court by failing to make periodic reports on the implementation of the writ and to fully implement the said writ. He failed to observe the degree of dedication to the duties and responsibilities required of him as a sheriff. He breached his sworn duty to uphold the majesty of the law and the integrity of the justice system. The Court cannot countenance such dereliction of duty, as it erodes the faith and trust of the citizenry in the judiciary. Thus, following the prevailing jurisprudence for dereliction of duty, a one-month suspension must be imposed on respondent.[11]

While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Furthermore, he may use his suspension as another excuse to justify his inaction and inefficiency in other matters pending before his office. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writs and perform the other duties of his office.[12]

WHEREFORE, respondent is found guilty of neglect of duty, and a FINE equivalent to his one-month salary is hereby imposed upon him. Likewise, upon receipt of this Decision, respondent sheriff is hereby DIRECTED to immediately implement the subject writ. He is warned that the commission of the same offense or a similar act in the future will be dealt with more severely.

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SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Azcuna, JJ., concur.

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[1] Rollo, pp. 1-3.

[2] Id. at 7.

[3] Id. at 8.

[4] Id. at 11.

[5] Id. at 55-58.

[6] Garcia v. Yared, A.M. No. P-01-1492, March 20, 2003, 399 SCRA 331, 338.

[7] Administrative Circular No. 12 dated October 1, 1985 on the Guidelines and Procedure in the Service and Execution of Court Writs and Processes in the Reorganized Courts.

> - No sheriff or Deputy Sheriff shall execute a court writ outside his territorial jurisdiction without first notifying in writing, and seeking the assistance of the Sheriff of the place where the writ of execution shall take place;

[8] Villarico v. Javier, A.M. No. P-04-1828, February 14, 2005, 451 SCRA 218, 223-224; Tan v. Dela Cruz, A.M. No. P-04-1892, September 30, 2004, 439 SCRA 555, 562.

[9] Lopez v. Ramos, A.M. No. P-05-2017, June 29, 2005,462 SCRA 26, 34.

[10] Pesongco v. Estoya, A.M. No. P-06-2131, March 10, 2006, 484 SCRA 239, 254.

[11] Ibid.

[12] Aquino v. Lavadia, A.M. No. P-01-1483, September 20, 2001, 365 SCRA 441, 447.

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