

**EUSEBIO OSORIO, COMPLAINANT, VS. JUDGE AGUSTIN S. DIZON AND
BRANCH CLERK OF COURT ATTY. REZA M. CASILA-DERAYUNAN,
REGIONAL TRIAL COURT (BRANCH 80), QUEZON CITY,
RESPONDENTS.**

A.M. No. RTJ-04-1838. March 18, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In an affidavit-complaint dated August 11, 2003, Eusebio Osorio charges presiding Judge Agustin S. Dizon and Branch Clerk of Court Atty. Reza M. Casila-Derayunan of the Regional Trial Court, Branch 80, Quezon City, for grave misconduct and oppression.

The antecedent facts are as follows:

Complainant Osorio is one of the plaintiffs in Civil Case No. Q-95-24507 of the Regional Trial Court, Branch 80, Quezon City. On July 22, 2002, the trial court rendered its decision against plaintiffs-spouses Danilo and Rosita Amor and Spouses Eusebio and Gloria Osorio.[1] Atty. Florentino L. Quendangan, filed a notice of appeal, to wit:

COMES NOW, plaintiff by the undersigned attorney, and hereby file a notice of appeal from the judgment of this Honorable Court dated July 22, 2002 in the above-entitled case, a copy of which was received by the undersigned on August 23, 2002 and appeals the same to the Court of Appeals.

Pulilan, Bulacan for Quezon City.

August 26, 2002.[2]

Judge Dizon, on September 25, 2002, gave due course to the appeal and ordered the transmittal of the entire records to the Court of Appeals for further proceedings.[3] However, the records were not forwarded to the appellate court.

On May 23, 2003, complainant's co-plaintiff, Danilo Amor, filed with the trial court an Urgent Motion to Discharge Counsel and to Withdraw Notice of Appeal, alleging that plaintiff Rosita Amor had passed away and none of the heirs including himself are no longer interested to pursue the case to file notice of appeal; that the other plaintiffs, namely: Eutiquio Valdez and Shirley Valdez are likewise not interested in pursuing an appeal; that they did not authorize Atty. Quendangan to file a notice of appeal.[4] Judge Dizon granted the motion in an Order dated June 4, 2003.[5]

Subsequently, or on June 16, 2003, Amor filed a Motion for Withdrawal of the urgent motion to discharge counsel and withdraw notice of appeal he had filed earlier. Defendant Narciso Badua and his counsel, Atty. Ricardo C. Pilares, Jr. were required by respondent to comment on the said motion to which they filed an opposition. Then, Judge Dizon issued an Order dated July 16, 2003, as follows:

There being an opposition to plaintiff's Danilo Amor's withdrawal of motion interposed by defendants

spouses Narciso and Linda Badua and considering that there are evidentiary matters involved herein which requires a hearing, the Court has deemed it proper to set for hearing the incident in question on August 28, 2003 at 8:30 a.m. Meanwhile, the Order dated June 4, 2003 granting the Urgent Motion to Discharge Counsel and to Withdraw Notice of Appeal is hereby set aside until further orders from the Court.[6]

Defendants spouses Badua filed a Manifestation[7] that they were no longer interested in the resolution of the pending incident, i.e., whether or not several plaintiffs are withdrawing their appeal, and prayed that the entire records be forwarded to the Court of Appeals which was granted by Judge Dizon in an Order dated November 11, 2003.[8] Accordingly, the entire records of Civil Case No. Q-95-24507 were transmitted to the Court of Appeals on November 13, 2003 per Manifestation filed by Branch Clerk of Court, Atty. Casila-Derayunan.[9]

In his complaint, Osorio alleges, as follows: Eleven months had passed without the records of Civil Case No. 95-24507 being sent to the appellate court, a violation of the Rules requiring transmittal of records within the period of thirty days from the time the appeal was given due course. The delay was a means to enable defendant Narciso Badua to lure his co-plaintiff Amor in filing a motion to discharge counsel and withdraw appeal which Judge Dizon granted without giving him (Osorio) and their lawyer the chance to comment thereon. Judge Dizon should not have acted on the motion since the thirty-day period had already lapsed. The granting of the motion caused him injustice since his interest in the case was different from that of Amor's. When he went to see Amor, the latter promised to withdraw the motion which he did by filing a motion for withdrawal of the earlier motion. However, Judge Dizon, showing his bias in favor of defendants Badua, set the motion for hearing, thus giving the latter the opportunity to react accordingly.

In his Comment, Judge Dizon explains: The non-transmittal of the records of Civil Case No. Q-95-24507 to the Court of Appeals was justified because of the heavy workload due to the fact that his court was constituted into a special drug court and since then he had been saddled with so many drug cases demanding summary and speedy hearing. He had instructed his Branch Clerk of Court to prepare for the transmittal of the records of cases where the decisions rendered were appealed to the Court of Appeals but unfortunately other earlier appealed cases had been given priority than the complainant's civil case. When the records of said case were ready for transmittal, complainant's co-plaintiff Danilo Amor filed on May 23, 2003, an urgent motion to discharge counsel and to withdraw notice of appeal, which must be acted upon. Consequently, the transmittal of the records had to be deferred. As Amor stated that his motion was not a litigated motion, he granted the same in an Order dated June 4, 2003. The discharged lawyer belatedly filed his comment on the urgent motion, thus the same was not considered by his court. The subsequent filing of Amor of the Motion for Withdrawal of his earlier Urgent Motion to Discharge Counsel and Withdraw Notice of Appeal was set for hearing since there was an opposition thereto filed by defendant spouses Badua. He denies the accusation that he had no intention of sending the records to the appellate court because he has yet to determine after due hearing whether or not the other plaintiffs aside from herein complainant Osorio are also appealing the decision.

Respondent further states that in the 31 years of his service in the judiciary, he had never been charged and found guilty of any offense in the discharge of his duties and would like to gracefully retire from the service upon reaching his compulsory retirement in 2008.

In her Comment, Atty. Casila-Derayunan admits her failure to transmit the records within the thirty-day period citing as reasons the heavy burden of work, her administrative and supervisory duties, and the fact that the court had been designated as a special drug court. She avers: Her work record would show that she has consistently gotten a very satisfactory rating for her performance since she was hired in 1997 but due to the volume of work, occasional lapses in administration would naturally set in for which she begs the Court's sympathy and understanding. There was no intention of causing prejudice to anybody. During the interim period that she failed

to transmit the records to the appellate court, the plaintiffs and or their counsel never at any instance prompted her to act accordingly. The transmittal of the records was interrupted by the filing of Amor's Urgent Motion to Discharge Counsel and Withdraw Appeal which was favorably acted upon by Judge Dizon, and later, by Amor's filing of his withdrawal of motion.

Complainant Osorio filed his Reply alleging that the creation of the court to a special drug court was not the cause of the delay in the transmittal of the records since after the filing of Amor's motion on May 23, 2003, Judge Dizon acted with dispatch on every proceedings subsequent thereto. Complainant insists that the motion is a litigated motion since the counsel to be discharged must be given his day in court to explain his side because his fees might be contingent as it is in this case.

In its evaluation, the Court Administrator found that respondent Branch Clerk of Court Atty. Reza Casila-Derayunan was remiss in her duty of transmitting the records of the case to the Court of Appeals; and, that the respondent Judge had jurisdiction to hear plaintiff Amor's Motion for Withdrawal of the motion to discharge counsel and withdraw notice of appeal. The OCA recommended that respondent Clerk of Court Casila-Derayunan be FINED P1,000.00 while respondent Judge Agustin S. Dizon be warned for his inability to exercise close supervision over the personnel of his court and that a commission of similar acts in the future would be dealt with more severely.

We agree with the findings of the OCA and approve its recommendations.

Anent the failure to transmit the records to the Court of Appeals within the period prescribed by law, we find that respondent Casila-Derayunan was remiss in the performance of her duty under Section 10 of Rule 41 of the Rules of Court which provides:

Sec. 10. Duty of clerk of court of the lower court upon perfection of appeal. — Within thirty (30) days after perfection of all the appeals in accordance with the preceding section, it shall be the duty of the clerk of court of the lower court:

x x x

x x x

x x x

(d). To transmit the records to the appellate court.

She ought to know that she is required to transmit the complete records to the appellate court within thirty days after the perfection of the appeal. Based on the records, the appeal was given due course and the records were ordered elevated to the Court of Appeals as early as September 25, 2002 but the same was not transmitted within the 30-day period. Her explanation that she was saddled with heavy work load is not an excuse for her not to perform her duties but serves only to mitigate her liability. The fact that complainant's co-plaintiff Amor filed an urgent motion did not exculpate her from liability because eight months had already lapsed without her transmitting the records to the appellate court when said motion was filed.

It has been held that the failure of the clerk of court to transmit the records of a case constitutes negligence and warrants disciplinary action.[10] The clerk of court is an essential officer of our judicial system. As an officer of the court, he performs delicate administrative functions vital to the prompt and proper administration of justice. Among the duties of the Branch Clerk of Court is the prompt and orderly transmittal of appealed cases and the records to the appellate court.[11] The Branch Clerk of Court is responsible for seeing to it that the records of

appealed cases are properly sent to the appropriate appellate court without delay.[12] The reason for the rule requiring prompt transmittal of the records of appealed cases to the appellate court is to ensure the speedy disposition of the case. Otherwise, the speedy administration of justice would be hampered.[13]

As far as the respondent Judge is concerned, the Court finds him not liable for the delay in the transmittal of the records. While he has supervision over respondent Casila-Derayunan, he cannot be expected to constantly check on the latter's performance of his duties since Atty. Derayunan is presumed to be a responsible employee.[14]

We find complainant's claim that respondent Judge violated the Rules of Court when he acted on his co-plaintiff Amor's Motion to Discharge Counsel and Withdraw Notice of Appeal after the perfection of appeal, to be untenable. Rule 41, Section 9 of the Rules of Court provides:

Sec. 9. Perfection of appeal; effect thereof. - A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with section 2 of Rule 39, and allow withdrawal of the appeal. (Emphasis supplied).

Clearly, upon the perfection of appeal, the trial court loses jurisdiction over the case, but prior to the transmittal of the records to the appellate court, it can still exercise residual jurisdiction such as allowing the withdrawal of appeal. At the time the Motion to Discharge Counsel and Withdraw Appeal was filed by complainant's co-plaintiff Amor, the records were not yet forwarded to the appellate court. Thus, respondent judge did not exceed the trial court's jurisdiction when he acted on the motion.

However, the fault of the respondent judge lies in the fact that he treated Amor's motion as a non-litigated motion which he granted without any hearing.[15] While the defendants would naturally not oppose such a motion, Amor had other co-plaintiffs, herein complainant Osorio and his wife who could be prejudiced by the withdrawal of their appeal. Thus, the respondent judge should have set the motion for hearing so as to give the other plaintiffs the chance to be heard; or, he should have required complainant and his wife to comment on said motion. As a judge, he should exhibit more than just a cursory acquaintance with the statutes and the procedural laws.[16]

Notwithstanding the act of respondent judge in granting the motion without setting the same for hearing, the Court finds that such action is not tantamount to a grave misconduct. Judges may not be held administratively responsible for every error or mistake in the performance of their duties; otherwise that would make their position unbearable. To merit disciplinary sanction, the error or mistake must be gross or patent, malicious, deliberate, or in bad faith. In the absence of a showing to the contrary, defective or erroneous decision or order is presumed to have been issued in good faith.[17] Thus, respondent Judge should merely be admonished for having failed to exercise due care in the performance of his adjudicatory functions. At any rate, the Order granting the subject Motion to Discharge Counsel and Withdraw Notice of Appeal had been subsequently set aside by the respondent Judge in an Order dated July 16, 2003. As mentioned in the early part of this decision, the records of Civil Case

No. Q-95-24507 had already been transmitted to the Court of Appeals.

Finally, we find no proof to substantiate complainant's allegation of bias against the respondent Judge for setting the hearing of Amor's subsequent Motion for Withdrawal of the motion to discharge counsel and withdraw appeal and the opposition thereto filed by defendants. Considering respondent Judge had earlier granted the withdrawal of Amor's appeal, the subsequent motion to withdraw the same may indeed prejudice the rights of the defendants, which justified the need to set it for hearing and give both parties the chance to ventilate their respective positions. Complainant's mere suspicion of bias without proof cannot be the basis of a disciplinary action.

WHEREFORE, respondent Branch Clerk of Court, Atty. Reza Casila-Derayunan is ordered to pay a fine in the amount of One Thousand Pesos (P1,000.00). Respondent Judge Agustin S. Dizon is ADMONISHED for having failed to exercise that degree of care required of him in the performance of his judicial functions.

SO ORDERED.

Quisumbing, (Acting Chairman), Callejo, Sr., and Tinga, JJ., concur.

Puno, (Chairman), J., on leave.

[1] Rollo, pp. 26-33, Annex "G".

[2] Rollo, at p. 21, Annex "C".

[3] Id., at p. 23, Annex "D".

[4] Id., at pp. 16-19, Annex "A"

[5] Id., at p. 20, Annex "B".

[6] Id., at p. 24, Annex "E".

[7] Id., at p. 68.

[8] Id., at p. 67.

[9] Id., at p. 66.

[10] Ibid.

[11] *Fabiculana Sr. vs. Gadon*, 239 SCRA 542 (1994).

[12] *Tan vs. Coliflores*, 240 SCRA 303 (1995).

[13] *Re: Report on the Judicial Audit conducted in RTC, Branches 29 and 59, Toledo City*, 292 SCRA 8 (1998).

[14] Ibid.

[15] Section 4 of Rule 15, Rules of Court provides:

Sec. 4. Hearing of motion — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to insure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[16] Agpalo, Legal Ethics, p. 454, 1989 edition.

[17] Del Callar vs. Salvador, 268 SCRA 320 (1997).

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