

THIRD DIVISION

[A.M. No. P-10-2791 (formerly A.M. No. 10-3-91-RTC), April 06, 2011]

JUDGE RENATO A. FUENTES, REGIONAL TRIAL COURT, BRANCH 17, DAVAO CITY, COMPLAINANT, VS. ATTY. ROGELIO F. FABRO, BRANCH CLERK OF COURT, SAME COURT, RESPONDENT.

DECISION

BRION, J.:

For the Court's resolution is the letter-complaint^[1] dated July 17, 2009 of Judge Renato A. Fuentes (*Judge Fuentes*), Regional Trial Court, 11th Judicial Region, Branch 17, Davao City, addressed to the Office of the Court Administrator (OCA). Judge Fuentes charged Branch Clerk of Court Atty. Rogelio F. Fabro (*Atty. Fabro*) and Civil Records In-Charge Ofelia Salazar (*Salazar*) with gross negligence of duty. This was the second letter of Judge Fuentes to the OCA on Atty. Fabro and Salazar.

Background Facts

On May 19, 2009, Judge Fuentes wrote the OCA to report the negligence committed by Atty. Fabro and Salazar in not elevating to the Court of Appeals, Cagayan de Oro City (CA) for more than six (6) years the records of Civil Case No. 29,537-2003, entitled *Teodoro Polinar, et al. v. Hon. Antonio D. Laolao*.

In his second letter to the OCA, Judge Fuentes again reported the negligence of Atty. Fabro and Salazar for failing to elevate to the CA the records of Civil Case No. 29,019-2002, entitled *Medardo E. Escarda v. Celso E. Escarda and the Register of Deeds of Davao City*. Judge Fuentes claimed that he approved Medardo Escarda's Notice of Appeal in his April 10, 2007 Order and directed the Branch Clerk of Court to elevate the entire records to the CA. Apparently, the records were not elevated because Medardo Escarda's counsel, Atty. Santos E. Torreña, Jr., wrote Judge Fuentes on July 14, 2009^[2] to inquire if their appeal and records have been forwarded to the CA. Atty. Torreña enclosed a CA letter^[3] stating that "[t]here is no showing that the case was elevated on appeal to this Court as per verification from the records and list of cases from 2007 until the present time."

In his second letter to the OCA, Judge Fuentes related that:

What is alarming in this second discovery, however, is the record consisting of the Notice of Appeal and the Order, elevating the case to the Honorable Court of Appeals, along with the other documents, such as Decision of the Court, Motion for Reconsideration and Order of denial, were not attached in the main record, consisting of pleadings and transcript of stenographic notes but after exerting pressure on the Civil

Records In-Charge, to look for the remaining portion of the records, she turned-over the remaining records, after one week, but was observed by the undersigned, purposely separated, so that the compliance of the Order to elevate the entire records to the Appellate Court, can be justified by her and the Branch Clerk of Court.

The OCA required Atty. Fabro to comment on Judge Fuentes' letter. Atty. Fabro filed his comment on August 8, 2009^[4]. He averred that the records of Civil Case No. 29,537-2003 have been elevated to the CA and that Salazar admitted that it was her own fault and that she found that the record, "already bounded for transmittal to the Court of Appeals, was indeed mixed up with the files of old cases transferred to the other store room" at a time when the staff of the RTC Branch 17 was decongesting the office store room to give way to newly filed cases. He also mentioned that his office was a very busy one, that he had his own duties, and that he could not "at all times" spend his time supervising subordinate employees to ensure their performance of their normal duties without prejudice to his own duties and responsibilities.

On March 2, 2010, the OCA submitted a report and recommendation^[5] that: (1) the case be re-docketed as a regular administrative matter; and (2) Atty. Fabro be fined P5,000.00 for the delay in transmitting the records of two cases to the CA, with a warning that a repetition of the same or similar act in the future shall be dealt with more severely.

The OCA Report stated that although the records of the cases have already been transmitted to the CA, the OCA cannot tolerate the long delay in transmission nor give credence to Atty. Fabro's reasons for the delay. The OCA stressed that the administrative functions of the Branch Clerk of Court are vital to the prompt and proper administration of justice and that the timely transmittal to the appellate court of the records of appealed cases ensures the speedy disposition of cases; any delay in the transmission of the case records would hamper the proper administration of justice. The OCA added that it has been held that the failure of the clerk of court to transmit the records of the case constitutes negligence and warrants disciplinary action.

The Court's Ruling

We agree with the OCA finding that Atty. Fabro was guilty of gross negligence of duty for being remiss in his duty to transmit to the CA the records of Civil Case Nos. 29,537-2003 and 29,019-2002 within the required period. The Rules of Court in Section 10 of Rule 41^[6] provides that within thirty (30) days after the perfection of appeal, the clerk of court of the lower court has the duty to transmit the records to the appellate court. Judge Fuentes gave due course to the appeals but the records were not transmitted to the CA within the 30-day period provided in the Rules.

The records of Civil Case No. 29,019-2002 (*Medardo E. Escarda v. Celso E. Escarda*) were mailed on August 15, 2009^[7] or **two (2) years after** the issuance of the Order directing their transmittal to the CA (April 10, 2007). The records of Civil Case No. 29,537-2003 (*Teodoro Polinar, et al. vs. Hon. Antonio D. Laolao*) were