

SECOND DIVISION

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

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

DECISION

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