

SECOND DIVISION

[A.M. No. MTJ-02-1441, July 31, 2002]

**SPOUSES TERRY AND MERLYN GERKEN, COMPLAINANTS, VS.
JUDGE ANTONIO C. QUINTOS, ACTING PRESIDING JUDGE OF
THE FOURTH MUNICIPAL CIRCUIT TRIAL COURT OF BAGAC-
MORONG, BATAAN, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a complaint filed against Judge Antonio C. Quintos, Acting Presiding Judge of the Fourth Municipal Circuit Trial Court of Bagac-Morong, Bataan, for gross ignorance of the law, grave misconduct, and abuse of authority. Complainants were accused of kidnapping in Criminal Case No. 2857, entitled "People of the Philippines v. Terry Gerken, Merlyn Gerken, Walter Cutrer, and John Doe," of the Fourth Municipal Circuit Trial Court of Bagac-Morong, Bataan.

It appears that on August 23, 2000, complainants were arrested on the strength of a warrant issued by respondent Judge Antonio C. Quintos. Yolanda Cutrer and her son Mark Kevin Albina had implicated complainants, together with Yolanda's husband Walter Cutrer, and an unidentified person in the kidnapping of Yolanda's daughter Jed. No bail was recommended for the provisional liberty of the accused.

On August 25, 2000, complainants' counsel, Atty. Norberto de la Cruz, filed on their behalf an Urgent Omnibus Motion to Quash Complaint and Warrant of Arrest and to Annul the Result of the Preliminary Investigation. However, the motion was not acted upon by respondent judge.

On September 4, 2000, respondent judge reiterated his finding of probable cause against the accused and forwarded the records of the case to the Office of the Provincial Prosecutor for the filing of the case in court. Concurring in respondent's finding, the provincial prosecutor filed the corresponding information with the Regional Trial Court, Branch 3, Balanga, Bataan. Complainants then filed a Motion for Reinvestigation dated September 18, 2000. The motion initially was denied, but, on motion of complainants, the court reconsidered its order and directed the provincial prosecutor to conduct a reinvestigation. This was done, but the provincial prosecutor's office found no ground to reconsider its prior findings and accordingly recommended on November 20, 2000 that the information filed in court be maintained.

In his comment, respondent judge recounted that on August 18, 2000, the kidnapping case, entitled "People of the Philippines v. Terry Gerken, et al.," was filed before the Fourth Municipal Circuit Trial Court, Bagac-Morong, Bataan. Complainants filed a motion for preliminary investigation, in which they alleged that two of the accused were American citizens who were leaving the country within two weeks. Accordingly, on August 21, 2000, he conducted a preliminary investigation. After

examination in writing and under oath of Yolanda Cutrer, the complainant in the criminal case, and her son, Mark Kevin Albina, he found probable cause against the accused and issued a warrant of arrest against them because it was necessary to do so in order not to frustrate the ends of justice. Respondent judge says that the Office of the Provincial Prosecutor of Bataan in fact agreed with his findings.

As regards the Urgent Motion to Quash Complaint and Warrant of Arrest and to Annul the Result of the Preliminary Investigation, dated August 24, 2000, which complainants' counsel requested to be heard on August 28, 2000, respondent judge claims that it is possible that the same was not brought to his attention and that he cannot remember whether the motion was calendared on the said date, which explains why no action was taken thereon.

Respondent judge denies the accusation of complainants that he is related to the private prosecutor, Atty. Benjamin Escolango, in the kidnapping case filed against them, nor to any of the parties in that case.

Complainants filed a reply wherein they alleged that they were denied due process of law. According to them, there was no valid reason for issuing the warrant of arrest against them in great haste considering that they were permanent residents of Olongapo City. They contend that respondent judge should have issued a subpoena requiring them to submit their counter-affidavits within 10 days from receipt thereof, as required by Rule 112, §3(b) of the Revised Rules of Criminal Procedure.^[1]

As regards the failure of respondent judge to act on their Urgent Motion to Quash Complaint and Warrant of Arrest and to Annul the Result of the Preliminary Investigation, complainants aver that respondent judge knew all along that their motion was calendared on August 28, 2000, considering that respondent judge himself called their counsel's attention to the fact that an opposition to their motion had been filed by Atty. Escolango. As a consequence of respondent judge's refusal to act on their motion, complainants claim, they languished in jail for several months with their infant son.

On December 18, 2000, the criminal case was provisionally dismissed at the instance of the public prosecutor subject to the condition that complainants would provide Yolanda Cutrer with the address and telephone number of Walter Cutrer, which condition had already been complied with.

The Office of the Court Administrator (OCA) found respondent judge guilty of violating the right of complainants, as the accused in Criminal Case No. 2857, to a preliminary investigation. It found that no searching questions were asked by respondent judge when he examined Yolanda Cutrer and her witness to determine whether there was sufficient ground to engender a well-founded belief that a crime had been committed and that complainants were probably guilty thereof and should be held for trial as required by Rule 112, §3, in relation to §6, of the Revised Rules of Criminal Procedure. Respondent judge likewise did not observe the requirements of Rule 112, §3(b) that the respondents in a preliminary investigation should be given 10 days within which to submit their counter-affidavits. The OCA found the reason given by respondent judge for his failure to act upon the Urgent Motion to Quash Complaint and Warrant of Arrest and to Annul the Result of the Preliminary Investigation to be flimsy, considering that respondent judge's attention was called by complainants' counsel regarding the pendency of the motion.