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FIRST DIVISION

[A.M. No. P-2230. April 30, 1980]

ANTONIO BAUTISTA, *complainant, vs.* **PASTOR DE CASTRO, JR., Provincial Sheriff, and ATILANO NANQUIL, Deputy Provincial Sheriff, both of the Province of Zambales,** *respondents.*

SYLLABUS

POLITICAL LAW; CIVIL SERVICE; DERELICTION OF DUTY; WHEN COMMITTED.— The respondent Provincial Sheriff Pastor de Castro, Jr. was remiss in the performance of his duty for having failed to take the necessary steps to perform his duty and to see to it that his subordinate, Deputy Sheriff Atilano Nanquil, discharged his duty in accordance with the rules. The respondent, Deputy Sheriff Atilano Nanquil, failed to take into his custody the personal properties which were attached pursuant to Section 7, Rule 57 of the Revised Rules of Court. The respondents Provincial Sheriff and Deputy Sheriff could have sought assistance from police authorities to enable them to perform their duty if it was true that the defendants Alferos and their lawyers had assumed an aggressive attitude.

D E C I S I O N

FERNANDEZ, *J.*:

In a letter-complaint dated May 11, 1979[1] filed by the law office of Antonio Rodriguez Bautista, Provincial Sheriff Pastor de Castro, Jr. and Deputy Sheriff Atilano Nanquil, both of the Province of Zambales, were charged with dereliction of duty for allegedly having failed to remove the properties levied upon by virtue of a writ of attachment issued in Civil Case No. 121819 of the Court of First Instance of Manila entitled "*Trinidad Estonina vs. Mercedes Alferos, et al.*" from the residence of

[1] *Rollo*. pp. 1-2.

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the defendants Tomas Alferos and Mercedes Alferos and to make a return on their service of the said writ of attachment.

The letter-complaint alleges that Trinidad S. Estonina is the plaintiff in Civil Case No. 121819 of the Court of First Instance of Manila in whose favor a writ of attachment was issued against the properties of the defendants; that on March 6, 1979, the counsel for the plaintiff brought the writ of attachment to the Provincial Sheriff of Zambales at Olongapo City; that on the same date, Deputy Sheriff Atilano G. Nanquil levied on certain properties of the defendant spouses Tomas Alferos and Mercedes Alferos; that up to the date of the letter-complaint, despite repeated demands, Provincial Sheriff de Castro and Deputy Sheriff Nanquil had refused to remove the properties levied upon from the residence of the defendants Alferos and to make a return of their service of said writ; that as a result of such dereliction of duty on the part of the respondents, an *alias* writ of attachment could not be applied for, and the attached properties continued to remain in the premises of the defendants; and that the plaintiff stood to lose the benefit of the writ of attachment issued in her favor.

In their comments both dated June 20, 1979, the respondents denied the allegations of the complainant.

Respondent de Castro alleged that he assigned Deputy Sheriff Nanquil to enforce the writ; that he only assisted in the enforcement of the writ of attachment upon respondent Nanquil's request because of the interference of defendants' counsel; that upon his suggestion, the defendants agreed to file a counterbond to prevent the removal of their personal properties from their residence; that Deputy Sheriff Nanquil had guaranteed the safekeeping of such properties as if they were actually in his possession thereby saving the plaintiff unnecessary expenses for storage and safekeeping; that, moreover, they have no storage space for said properties; that he considered it more discreet to allow the attached properties to remain in the residence of the defendants Alferos subject to the sheriff's periodic inspection, considering that the said defendants are not the only defendants in said case; that, moreover, the defendants Alferos contended

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that they do not owe the plaintiff anything so that their counsel had filed a motion to quash the writ of attachment; that said defendants' residence is worth more than half a million pesos and is enough to guarantee that they would not evade their obligations; that he and Deputy Sheriff Nanquil had been reminding the defendants of their promise to file a counterbond but it always resulted in heated arguments with said defendants; and that he even wrote the defendants who answered that they had not posted a counterbond because of the pendency of their motion to quash.[2]

In his comment, Deputy Provincial Sheriff Atilano Nanquil alleged that he went to the house of the defendants Alferos on March 6, 1979, together with the interested party to enforce the writ of attachment; that the defendant Mercedes Alferos got angry, claiming that she had no knowledge about the case; that the lawyers of said defendants arrived in a belligerent manner so that he had to send for the Provincial Sheriff, Pastor de Castro, Jr.; that when respondent de Castro arrived, they had a conference with the defendants and their lawyers and it was agreed that the attached properties would remain in the hospital of the defendant Mercedes Alferos and he, Nanquil, issued a statement to the effect that said properties were already attached; that he made several attempts to take possession of the attached properties later but to no avail, as a result of which he could only see to it that the properties were in good condition; and that it is not true that he refused to make a return of the writ, the truth being that the complainant is only interested in removing the attached properties although it is better if the defendants would file a counterbond and that it is not true that the defendants are his personal friends.[3]

This administrative matter was referred to Judge Domingo D. Panis of the Court of First Instance of Zambales, Branch III at Olongapo City, for investigation, report and recommendation.[4] Said Judge submitted his report dated November 5, 1979.[5]

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[2] *Rollo*, pp. 6-9.

[3] *Rollo*, pp. 11-13.

[4] *Rollo*, p. 35.

[5] *Rollo*, pp. 62-70.

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The rulings of Judge Domingo D. Panis may be summarized as follows:

This case arose out of Civil Case No. 121819 for a sum of money, filed in the Court of First Instance of Manila by complainant on behalf of his client, Trinidad Estonina, against the spouses Mercedes Alferos and "John Doe" Alferos and one Bienvenido Divinagracia, in which an order directing the issuance of a writ of preliminary attachment was issued by Judge Emeterio Cui on February 26, 1979. The corresponding order of attachment was issued by the same court on February 28, 1979 directing the Sheriff of Olongapo City to attach the properties of said defendants. On March 6, 1979, an associate of the complainant, Atty. Oscar Raro, accompanied by Atty. Dorentino Floresta, presented the aforesaid order to respondents' office for enforcement. Respondent de Castro assigned respondent Nanquil to enforce the said writ. When the latter went to the residence of the defendants Alferos with the interested party to enforce the writ, they were met with strong opposition, so that he had to send for respondent de Castro for assistance. Later, it was agreed that the properties already listed by respondent Nanquil would remain with defendants Alferos until March 9, 1979 to give them time to post a counterbond.

The properties so listed by respondent Nanquil remained in the possession of defendants Alferos and were never pulled out even after March 9, 1979, the date agreed upon by the parties. Because of the follow-up by the complainant, the respondent Nanquil went several times to defendants' residence, but each time defendants Alferos would get angry and threaten respondent Nanquil who noted the presence of five men in the Alferos residence.

On March 9, 1979, respondent Nanquil issued a notice of attachment in Civil Case No. 121819 of the Court of First Instance of Manila over a piece of commercial and a residential lot, both located at the East Bajac-Bajac, Olongapo City, and belonging to defendants Alferos. No further action was taken thereon.

The Sheriff's Return of the Order of Attachment was made by respondent Nanquil only on June 15, 1979. The said return

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states that the respondent Nanquil listed the properties attached, issued a receipt stating that they were already attached, and agreed to defendants' filing a counterbond in lieu of the removal of the properties from their residence. The order of attachment was therefore returned "partially satisfied" only after 101 days of the supposed attachment and listing of the properties, after several warnings were made by complainant, and after a complaint was already filed against them.

The findings of the investigating judge are supported by the evidence adduced at the hearing of this administrative matter. It is dear that the respondents are guilty as charged.

The respondent Provincial Sheriff Pastor de Castro, Jr. was remiss in the performance of his duty for having failed to take the necessary steps to perform his duty and to see to it that his subordinate, Deputy Sheriff Atilano Nanquil, discharged his duty in accordance with the rules. The respondent, Deputy Sheriff Atilano Nanquil, failed to take into his custody the personal properties which were attached pursuant to Section 7, Rule 57 of the Revised Rules of Court. The respondents Provincial Sheriff and Deputy Sheriff could have sought assistance from police authorities to enable them to perform their duty if it was true that the defendants Alferos and their lawyers had assumed an aggressive attitude.

It also appears that the respondents failed to make an immediate return of their implementation of the writ of attachment as required by Section 6 of Rule 57 of the Revised Rules of Court. Said respondents only made a return on June 15, 1979 after the instant complaint had already been filed against them in this Court.

The investigating judge recommended leniency for the reason that "both respondents have had long years of unblemished service."

Having been in the service for many years, the respondents ought to know how to perform their duties as Provincial Sheriff and Deputy Sheriff. Under the circumstances, Deputy Sheriff Atilano Nanquil should be suspended for thirty (30) days without

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pay. Respondent Provincial Sheriff Pastor de Castro should be fined in an amount equivalent to fifteen (15) days salary.

WHEREFORE, the respondents Pastor de Castro, Jr. and Atilano Nanquil are both found GUILTY as charged. Respondent Atilano Nanquil is suspended for thirty (30) days without pay effective upon the finality of this decision. This suspension should not be charged against his vacation or sick leave.

Respondent Pastor de Castro, Jr. is fined in an amount equivalent to his salary for fifteen (15) days.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-25788. April 30, 1980]

PACIFICO C. DEL MUNDO, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, ANTONIO, EUGENIA, DELFIN and MARCIANA, all surnamed ALVAREZ, and SIMPLICIO BALCOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE; EXCEPTION THERETO.— While as a rule, the findings of fact of the Court of Appeals are final and conclusive and cannot be reviewed on appeal to this Court, one of the recognized exceptions to said rule is when the conclusion made is manifestly mistaken. We are of the opinion that the ruling of the Court of Appeals is not persuasive, and We are accordingly constrained