Supreme Court E-Library

and the subsequent move to reconsider denied on September 24, 1997. These resolutions have become final and executory on November 6, 1997 and Entry of Judgment was made on December 16, 1997. Thus, filing a special civil action for *certiorari* under Rule 65 of the Rules of Court cannot be used as a substitute for the lost remedy of appeal, the exception of which is not applicable in this particular case.[14]

Given the circumstances in this case, and considering precedents as well as prevailing rules, we find petitioner's claim that respondent appellate court gravely abused its discretion in issuing the assailed resolutions, could not prosper. The resultant dismissal of his appeal is well justified.

WHEREFORE, the petition is hereby *DISMISSED*.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug, and *Panganiban, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-96-1363. October 12, 1998]

TOMAS CABULISAN, *complainant, vs.* **JUDGE ADRIAN N. PAGALILAUAN,** *respondent.*

SYNOPSIS

Respondent was charged by Tomas Cabulisan with grave misconduct, having a mistress and allowing local practitioners to write his decisions. In her sworn statement, Marilyn declared that in two occasions she saw respondent's face over the divider

[14] *Peo. vs. Court of Appeals*, 199 SCRA 539, 547; *Sy vs. Romero*, 247 SCRA 187, 193.

Supreme Court E-Library

(about 2-1/2 meters in height which did not go all the way to the ceiling) looking at her naked body while she was taking a bath. Respondent, for his defense, denied all the charges. He denied peeping over the divider and explained that Marilyn probably misappreciated the incidents. He claimed that his boarding house had a toilet adjacent to a bathroom and that while he was inside the toilet and was about to squat thereon his hand, holding the divider, slipped and almost dislodged her clothes draped on the divider. He also denied having a mistress and that it was the widow of Judge Calaycay seeking help in obtaining death benefits of her husband, who used to visit him. He also denied the allegation that he allowed local practitioners to write decisions for him claiming the same to be baseless and fabricated. When the case was first investigated, the investigating Justice recommended the dismissal of the complaint as the identity of the complainant could be verified. When the case was referred back to the investigating Justice for a more thorough investigation, Marilyn appeared. She declared that she did not see exactly respondent looking at her, and that she cannot recall if the peeping incident happened twice.

The Supreme Court ruled that the statements of Marilyn contained a detailed account of the two peeping incidents which is so persuasive as to convince the Court that it actually transpired. Thus, respondent's defense of denial cannot prevail over the latter's positive assertion that respondent committed the acts complained of.

Respondent's act of peeping at the married daughter of his landlord while she was taking a bath reflect his obvious ungratefulness and moral depravity. By committing said acts, respondent violated the trust reposed in him and utterly failed to live up to the noble ideals and rigid standards of morality required in the judicial profession. Thus, for his disgraceful acts of voyeurism, respondent is fined ₱10,000.00 with warning that a repetition of the same or similar acts will be dealt with more severely.

SYLLABUS

1. JUDICIAL ETHICS; JUSTICES AND JUDGES; MUST POSSESS HIGHEST DEGREE OF INTEGRITY AND

Supreme Court E-Library

PROBITY.— People who run the judiciary, particularly justices and judges, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest degree of integrity and probity and an unquestionable moral uprightness both in their public and private lives.

2. **ID.; ID.; VOYEURISM CONSTITUTES FAILURE TO LIVE UP WITH RIGID STANDARDS OF MORALITY.**— His act of peeping at the married daughter of his landlord while she was taking a bath reflects respondent's obvious ungratefulness and moral depravity. Moreover, he callously abused the confidence of his landlord who had welcomed him into his home. In this administrative case, we are principally concerned with the moral fiber of respondent. By committing the prurient acts in question, respondent violated the trust reposed in him and utterly failed to live up to the noble ideals and rigid standards of morality required in the judicial profession. For his disgraceful acts of voyeurism committed against Marilyn C. Dumayas, respondent Judge Adrian N. Pagalilauan, RTC-Br. 12, Sanchez Mira, Cagayan, is fined ₱10,000.00 with warning that a repetition of the same or similar acts will be dealt with more severely.

VITUG, *J.*, *dissenting opinion*:

REMEDIAL LAW; EVIDENCE; WEIGHT AND CREDIBILITY; TESTIMONY IN COURT GIVEN MORE WEIGHT THAN SELF-SERVING AFFIDAVIT; CASE AT BAR.— In her testimony before the Investigating Justice, the complainant, Marilyn Dumayas, said that she saw the forehead of respondent and "suspected" that he had peeped at her. Marilyn's statement was, of course, a far cry from the affidavit she had previously executed where she there claimed to have seen respondent staring at her naked body. This affidavit, should not be given greater weight than that of her formal testimony. In the first place, the affidavit was not made part of the testimony either by reiteration or incorporation; neither had she been cross-examined thereon. The basic philosophy behind the requirement of due process, should not be held irrelevant to an administrative proceeding of this kind where at stake is one's moral integrity. Secondly, it would seem improbable for the complainant to have merely "forgotten" what she once narrated; the matter was not a minor

Supreme Court E-Library

detail but, in fact, the very focus of her case against respondent. Accordingly, I vote for the dismissal of the administrative case filed against respondent Judge as so recommended by the Investigating Justice.

APPEARANCES OF COUNSEL

Jezarene C. Aquino for respondent.

D E C I S I O N

BELLOSILLO, *J.*:

A certain Tomas Cabulisan filed an administrative complaint dated 4 April 1995 against respondent Judge Adrian N. Pagalilauan, RTC-Br. 12, Sanchez Mira, Cagayan, for grave misconduct committed as follows: (1) peeping into the bathroom where Marilyn C. Dumayas, a public health nurse of the Sanchez Mira School of Arts and Trade, and daughter of the owner of the house where he was boarding, was then taking a bath; (2) having a mistress in the neighboring town of Pamplona where he would pass the night now and then; and (3) allowing local practitioners to write decisions for him.

In the First Indorsement of then Deputy Court Administrator Juanito A. Bernad, the complaint was referred to the National Bureau of Investigation (NBI) which procured statements from Marilyn C. Dumayas, alleged victim of the peeping incident, and Gemma C. Cabading, Court Interpreter, RTC-Br. 12, Sanchez Mira, Cagayan.

In her sworn statement executed on 1 August 1995 before NBI Agent Norman A. Toloza at the Administration Building of the SMSAT, Barangay Santor, Sanchez Mira, Marilyn C. Dumayas, married to Orlando T. Dumayas a process server in the sala of respondent, narrated that one morning in February 1995 (specific day was not mentioned) while she was taking a bath in the bathroom she noticed someone enter the adjacent comfort room. After she finished and was about to take her towel, she saw the face of respondent Judge Adrian N.

Supreme Court E-Library

Pagalilauan over the concrete dividing wall with his eyes looking at her naked body so she hurriedly wrapped herself with her towel and went out of the bathroom immediately.[1]

One morning a week after, a similar incident happened again. While she was taking a bath in a squatting position in the same bathroom, and sensing that respondent would peep again, she instinctively glanced at the mirror in the bathroom and saw respondent from his chest up staring at her. Again, she immediately wrapped herself up with her robe and screamed as she fled from the bathroom.[2] A few days after the second incident, respondent voluntarily left her place and transferred to a neighbor's house.[3]

Gemma C. Cabading, in her sworn statement dated 11 August 1995, stated that she had no knowledge that respondent was maintaining a *querida*.[4] But she recalled that a certain Divina Calaycay frequented the sala of respondent but explained that Divina was the widow of Judge Infante S. Calaycay, a friend of respondent and his predecessor in office.[5] Cabading denied having any knowledge of practicing lawyers preparing decisions for respondent.[6]

In his undated letter-comment, respondent denied the charges but admitted that while presiding judge of the Regional Trial Court of Sanchez Mira, Cagayan, he boarded in the house of Isabelo P. Castillo, father of Marilyn C. Dumayas and his former sheriff. Respondent explained that since he was not accustomed to sitting on the toilet bowl in the comfort room, he would squat on the bowl with his feet and not his buttocks resting on

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[1] Sworn Statement of Marilyn C. Dumayas dated 1 August 1995, p. 1; *Rollo*, p. 13.

[2] *Id.*, p. 2; *Rollo*, p. 14.

[3] *Ibid.*

[4] Sworn Statement of Gemma C. Cabading dated 11 August 1995, p. 1; *Rollo*, p. 16.

[5] *Id.*, pp. 1 and 2; *id.*, pp. 16 and 17.

[6] *Id.*, p. 2; *id.*, p. 17.

Supreme Court E-Library

it. Respondent claimed that under that circumstance, he had to balance himself by placing one hand on the divider while mounting the bowl and dismounting from it. One morning in February 1995, while using the toilet bowl, he had to hold the top of the divider with his left hand to balance himself. His left hand almost dislodged the clothes of Marilyn which were draped on the divider. He held on to them to prevent them from falling on the floor. He concluded that Marilyn who was at the adjacent bathroom must have interpreted the movement of her hanging clothes as a deliberate and malicious act on his part thus giving rise to her suspicion that he was actually peeping at her.

With regard to the charge that he had a mistress, respondent surmised that the woman alluded to was Divina Calaycay, widow of Infante S. Calaycay, his predecessor in the Regional Trial Court. He insisted that he and Divina Calaycay were merely friends, as he and her late husband were former classmates. There were even instances after the death of Judge Calaycay when she would visit him to ask help in connection with her husband's death benefits from the Employees Compensation Commission considering that he was formerly Executive Labor Arbiter of the National Labor Relations Commission before becoming a judge.

On the accusation that respondent allowed local practitioners to write decisions for him, respondent maintained that it was baseless and merely fabricated.

In the resolution of 2 October 1996 the Court noted the complaint as well as respondent's comment and referred the case to Associate Justice Hilarion L. Aquino of the Court of Appeals for investigation, report and recommendation. Justice Aquino however filed a motion to be relieved as investigator on the ground that respondent was a friend and townmate and in fact consulted him once regarding this case.

On 15 January 1997 the Court granted the motion of Justice Aquino and designated Justice Portia Aliño-Hormachuelos of the Court of Appeals to replace him. In her Report and Recommendation dated 18 March 1997 Justice Aliño-

Supreme Court E-Library

Hormachuelos recommended the dismissal of the complaint on the ground that the identity of the complainant could not be verified. Summons issued to complainant Tomas Cabulisan was returned with the notation "RTS-unknown." According to the Officer's Return of Service, there was no Tomas Cabulisan known to be residing in the address on record. Furthermore, in the report of NBI Agent Norman Taloza it was mentioned that complainant Tomas Cabulisan was a non-existing person.

In the resolution of 17 September 1997 the case was referred back to Justice Portia Aliño-Hormachuelos for a more thorough investigation on the ground that the alleged non-existence of the complainant was insufficient basis for dismissal since witnesses mentioned in the complaint could still be subpoenaed and required to testify. As a result, Marilyn C. Dumayas appeared in the formal investigation. She testified that respondent was a boarder in her family's house where she was also staying in 1995.[7] Their house had only one bathroom which adjoined the comfort room.[8] The two rooms were separated by a concrete divider about 2-1/2 meters in height which did not go all the way to the ceiling, such that there was an open space between the ceiling and the top of the divider.[9] This time however she claimed that she did not exactly see respondent looking at her; that she only saw his forehead and that she "simply suspected" that he peeped at her. She also declared that she did not remember if the peeping incident really happened twice.[10]

There appears to be a conflict between Dumayas' sworn statement executed 1 August 1995 and her testimony before the investigating justice on 7 November 1997. As a rule, affidavits are generally considered to be inferior to the testimony given in open court.[11] However, in the instant administrative

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[7] TSN, 7 November 1997, p. 19.

[8] TSN, *id.*, p. 28.

[9] TSN, *id.*, pp. 29-30, 34.

[10] TSN, *id.*, pp. 63-65, 70.

[11] *People v. Conde*, G.R. No. 112034, 31 January 1996, 252 SCRA 681; *People v. Co*, G.R. No. 112046, 11 July 1995.

Supreme Court E-Library

case, the sworn statement of Marilyn C. Dumayas contains a detailed account of the two peeping incidents which is so persuasive as to convince us that it was what actually transpired, and not the version of respondent which is practically a mere denial. Marilyn previously stated —

Q: Will you please state what Judge Pagalilauan did something wrong to you?

A: Sometime in the month of February this year while I was taking a bath in the morning inside our bathroom I noticed someone entered the adjacent comfort room and after I finished taking a bath and I was about to take my towel I saw the face of Judge Pagalilauan over the dividing wall with his eyes looking towards my naked body and I hurriedly wrapped myself with my towel and went out immediately and banged the door.

x x x x x x x x x

Q: Did Judge Pagalilauan do the same wrong again to you?

A: Yes, sir.

Q: When was that second incident happened?

A: A week after, sir.

Q: How did it happen?

A: One morning a week after when I took a bath in the bathroom in a squatting position and being aware that the Judge might do it again I happened to glance at the mirror inside the bathroom and I saw at the mirror a part of his body from chest to head looking at me so I again immediately wrapped myself with my bathrobe and hurriedly left the place screaming: "*Bastos ka nga laklakayan, maysa ka nga Judge ngem awan ti sursurom, pumanaw ka ditoy balay, diak kayat nga agian ka ditoy, addada judge nga kas kenka nga naggigian ditoy balay ngem saan da nga bastos nga kas kenka*" (You foolish old man, you are a Judge but you have no manners, leave the house and I don't want you to stay longer here, there were other Judges who stayed here but they were not as foolish as you) as I went upstairs."[12]

[12] See Note 1.

Supreme Court E-Library

Marilyn apparently has "forgotten" what she had once narrated, specially in this case where the testimony before the investigating justice was given more than two (2) years after the incident. The fact that she has recounted the facts differently now may show a "failure of memory," or could it be that she was swayed by the fact that her husband was a process server of respondent's while her father was respondent's former sheriff? Her sworn statement was replete with details which makes it more convincing and should be given more weight than her testimony simply denying that she saw respondent staring at her. Merely because she testified that what she had declared was false and that what she now says is true is not sufficient ground for concluding that her previous statements were false.

Respondent, in his comment, clearly admits his presence in the adjoining toilet; his defense which consists mainly of the denial that he stared at Marilyn cannot prevail over the latter's positive assertion that she saw respondent looking at her naked body, specially in this case where she identified respondent in two separate peeping incidents as the culprit. We cannot accept his explanation that he had to hold the top of the divider with his hand to balance himself because he was not accustomed to sitting on the toilet bowl. It is a feeble excuse considering his stature and educational background. It was improbable for him to move the clothes of Marilyn and cause them to almost fall off the partition unless he was nervously committing something mischievous. His act of peeping at the married daughter of his landlord while she was taking a bath reflect respondent's obvious ungratefulness and moral depravity. Moreover, he callously abused the confidence of his landlord who had welcomed him into his home. In this administrative case, we are principally concerned with the moral fiber of respondent. We have repeatedly held that while every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary.[13]

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[13] *Legaspi v. Garrete*, A.M. No. MTJ-92-713, 27 March 1995, 242 SCRA 679.

Supreme Court E-Library

People who run the judiciary, particularly justices and judges, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest degree of integrity and probity and an unquestionable moral uprightness both in their public and private lives.[14]

By committing the prurient acts in question, respondent violated the trust reposed in him and utterly failed to live up to the noble ideals and rigid standards of morality required in the judicial profession.[15]

We absolve respondent however of the charge that he was keeping a mistress. From the evidence, the woman alluded to was Divina Calaycay who happened to be the widow of Judge Infante S. Calaycay, respondent's predecessor in office. Gemma Cabading, a court interpreter, testified that Judge Calaycay was a close friend of respondent who frequented his office seeking his help in obtaining the death benefits of her husband from the Employees Compensation Commission.[16] No evidence was produced to prove that there was more than friendship between the two and that Divina was his mistress.

As to the charge that respondent allowed practicing lawyers to write decisions for him, court interpreter Gemma Cabading disclaimed any knowledge thereof. She said that the lawyers came to the court office only when their cases were scheduled in court.[17] There was no proof that respondent allowed practitioners to prepare decisions for him.

WHEREFORE, for his disgraceful acts of voyeurism committed against Marilyn C. Dumayas, respondent Judge Adrian N. Pagalilauan, RTC-Br. 12, Sanchez Mira, Cagayan, is fined ₱10,000.00 with warning that a repetition of the same or similar acts will be dealt with more severely.

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[14] *Talens-Dabon v. Arceo*, A.M. No. RTJ-96-1336, 25 July 1996, 259 SCRA 354.

[15] *Abadilla v. Tabiliran, Jr.*, A.M. No. MTJ-92-716, 25 October 1995, 249 SCRA 447.

[16] TSN, 7 November 1997, p. 109.

[17] *Id.*, pp. 92, 98.

Supreme Court E-Library

SO ORDERED.

Davide, Jr. (Chairman), Panganiban, and *Quisumbing, JJ.,* concur.

Vitug, J., see dissenting opinion.

DISSENTING OPINION

VITUG, *J.*:

With all due respect, I find myself unable to agree with my colleagues in holding respondent Judge guilty of grave misconduct. I am inclined to instead accept the recommendation of Justice Portia Aliño-Hormachuelos of the Court of Appeals who, after conducting her investigation of the charges against respondent Judge, has recommended the dismissal of the complaint.

In her testimony before the Investigating Justice, the complainant, Marilyn Dumayas, said that she saw the forehead of respondent and "suspected" that he had peeped at her. Marilyn's statement was, of course, a far cry from the affidavit she had previously executed where she there claimed to have seen respondent staring at her naked body. This affidavit, in my view, should not be given greater weight than that of her formal testimony. In the first place, the affidavit was not made part of the testimony either by reiteration or incorporation; neither had she been cross-examined thereon. The basic philosophy behind the requirement of due process, I submit, should not be held irrelevant to an administrative proceeding of this kind where at stake is one's moral integrity. Secondly, it would seem improbable for the complainant to have merely "forgotten" what she once narrated; the matter was not a minor detail but, in fact, the very focus of her case against respondent.

Accordingly, I vote for the dismissal of the administrative case filed against respondent Judge as so recommended by the Investigating Justice.