490 Phil. 555

SECOND DIVISION

[A.M. NO. RTJ-05-1898 (FORMERLY OCA IPI NO. 04-2037-RTJ), January 31, 2005]

CHARLTON TAN, COMPLAINANT, VS. JUDGE ABEDNEGO O. ADRE, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

The instant administrative complaint arose from the affidavit-complaint[1] of Charlton Tan, charging Judge Abednego O. Adre, Regional Trial Court of Quezon City, Branch 88, with grave abuse of authority and gross ignorance of the law filed before the Office of the Court Administrator (OCA).

Complainant Charlton Tan was the respondent in a *habeas corpus* case[2] filed by his wife Rosana Reyes-Tan. On 24 March 2004, after giving due course to the petition, respondent judge issued the writ prayed for and ordered complainant to bring before the court the body of their daughter, Charlene Reyes Tan on 26 March 2004.[3] On the scheduled date of hearing,[4] the court provisionally turned over the custody of the child to the mother. A motion for reconsideration[5] praying for the return of the child to complainant or a shared custody be given to the parents was filed on 20 April 2004. When the motion was heard on 26 April 2004, the case was rescheduled to 03 August 2004, as Mrs. Tan was indisposed.[6] Allegedly sensing the partiality of respondent judge, complainant on 25 May 2004 filed a motion[7] to inhibit him, but the same was denied in an Order dated 15 June 2004.[8]

In his verified complaint dated 29 June 2004, complainant alleged that respondent judge acted with grave abuse of authority under the following circumstances: 1) when he at once issued the Order[9] granting the issuance of a writ of *habeas corpus* commanding him to appear before the court on 26 March 2004 at 8:30 in the morning and bring with him the subject minor, without first conducting a hearing for that purpose; 2) when he hurriedly turned over the custody of their daughter to his wife Rosana on the day of the hearing on 12 April 2004, immediately after their respective lawyers entered their appearances, without first hearing his side; and 3) respondent judge should have considered the fitness of Rosana as a mother, as the latter is not qualified because she is working in Japan and only comes to the Philippines for a five (5) to ten (10) days vacation; that she is now involved with another man, a Canadian named Marc Beauclair; and she does not possess the financial capacity to support Charlene.

Complainant questions the issuance of the Order[10] dated 26 April 2004, re-setting the hearing of the case on 03 August 2004 or an interval of four (4) months after respondent judge awarded provisional custody in favor of his wife to the detriment of his daughter. He added that respondent judge would be retiring on 10 July 2004,

and this would unduly delay the case for he would have retired before the case can be heard and it may take time before a new judge will be appointed. Complainant also assails the denial of his motion for inhibition.

According to the complainant, the actuations of respondent judge showed abuse of authority and ignorance of the law.

In his comment,[11] respondent judge denied the complainant's allegations and maintained that the questioned order finds support in law and jurisprudence.

On 12 October 2004, the OCA submitted its report[12] recommending the dismissal of the complaint for lack of merit.

The Court finds the recommendation of the OCA to be well-taken.

The issues to be addressed in this complaint are: (1) whether or not the order of respondent judge issuing the writ constitutes abuse of authority; and (2) whether or not the order of respondent judge ordering the provisional custody of the four-year old child to her mother constitutes ignorance of the law.

Complainant asserts[13] that respondent judge acted with grave abuse of authority when he ordered the issuance of the writ, commanding him to appear before the court and bring with him the subject minor, without first conducting a hearing.

The contention is without merit.

A close scrutiny of Section 5, Rule 102 of the Rules of Civil Procedure on *Habeas Corpus*, shows that a court may grant the writ if it appears upon presentation of the petition that the writ ought to be issued. Thus, Section 5 states:

> **SEC. 5. *When the writ must be granted and issued.* –A court or judge authorized to grant the writ must, when a petition therefor is presented and it appears that the writ ought to issue, grant the same forthwith, and immediately thereupon the clerk of court shall issue the writ under the seal of the court; or in case of emergency, the judge may issue the writ under his own hand, and may depute any officer or person to serve it.**

Clearly therefore, respondent judge was well within his authority when he issued the writ as no hearing is required before a writ may be issued.

Anent the grant of provisional custody of the minor, We find the same proper.

The law grants the mother the custody of a child under seven (7) years of age.[14] In the case at bar, it is uncontroverted that the child subject of the *habeas corpus* case is only four years old, thus, the custody should be given to the mother. Be it noted also that the questioned order was only provisional. As the term implies, "provisional" means temporary, preliminary or tentative.[15] The provisional custody granted to the mother of the child does not preclude complainant from proving the "compelling reasons" cited by him which can be properly ventilated in a full-blown hearing scheduled by the court for that purpose. We find the judge's actuation in