

THIRD DIVISION

[A.M. No. P-12-3032 [Formerly A.M. OCA IPI No. 11-3652-P], February 20, 2013]

RAY ANTONIO C. SASING, COMPLAINANT, VS. CELESTIAL VENUS G. GELBOLINGO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 20, CAGAYAN DE ORO CITY, RESPONDENT.

DECISION

MENDOZA, J.:

This refers to a complaint^[1] for "Gross Neglect of Duty, Inefficiency, Incompetence in the Performance of Official Duties and Refusal to Perform an Official Duty" filed against respondent Celestial Venus G. Gelbolingo (*Sheriff Gelbolingo*), Sheriff IV, Regional Trial Court, Branch 20, Cagayan de Oro City, concerning the implementation of the Writ of Execution Pending Appeal^[2] in Civil Case No. 2010-331, entitled *Annabelle N. Amores and Nelson Calandria v. Spouses Ray Antonio and Bema Sasing*.

The Facts

Complainant Ray Antonio Sasing (*Sasing*) and his wife were the defendants in Civil Action No. 2010-331, an action for ejectment instituted by Annabelle N. Amores (*Amores*) and Nelson Calandria (*Calandria*) before the Municipal Trial Court in Cities, Branch 5, Cagayan de Oro City (*MTCC*). In its October 15, 2010 Decision,^[3] the MTCC rendered a verdict, unfavorable to Sasing, which he immediately appealed before the Regional Trial Court of Cagayan de Oro City (*RTC*). Eventually, their appeal was raffled to Branch 20, where Sheriff Gelbolingo was holding office. In the Order, dated December 10, 2010, the RTC granted the Motion for Issuance of a Writ of Execution Pending Appeal filed by Amores and Calandria, which it amended on January 31, 2011.^[4] Thereafter, Sheriff Gelbolingo was tasked to implement the Writ of Execution Pending Appeal^[5] issued on March 10, 2011.

On the day of the execution of the writ, Sasing alleged that Sheriff Gelbolingo took personal belongings supposedly exempt from execution. Thus, in a letter,^[6] dated March 25, 2011, Sasing wrote Sheriff Gelbolingo asking her to return the said items on March 28, 2011. As he received no response from her, Sasing wrote a letter,^[7] dated April 5, 2011, addressed to the Court Administrator, expressing his intention to lodge a complaint against her for her failure to turn over their belongings despite previous requests. The Office of the Court Administrator (*OCA*) replied in a letter,^[8] dated April 25, 2011, advising Sasing to fill up the required form in filing an administrative case should he decide to pursue his complaint against Sheriff Gelbolingo.

Determined, Sasing formally charged Sheriff Gelbolingo with "Gross Neglect of Duty,

Inefficiency, Incompetence in the Performance of Official Duties and Refusal to Perform an Official Duty” in an Affidavit-Complaint,^[9] dated May 20, 2011.

In her Comment,^[10] Sheriff Gelbolingo denied all the charges against her. She clarified that prior to the implementation of the writ, she, along with the winning party, requested for two *barangay* officials to be present during the implementation of the writ and to check the inventory of the personal effects found in the premises.

^[11] Sasing and his wife were also present at the time of the execution of the writ and their belongings were properly packed, inventoried and witnessed by the *barangay* officials. The couple apparently preoccupied with other matters, left the place without retrieving their belongings.^[12] She asked the *barangay* officials if they could spare a space in their office, but they declined because the area would be used during the upcoming *barangay's Kauswagan* fiesta. Eventually, she left Sasing's personal effects beside their house for safekeeping until she could properly turn them over to them.^[13]

Sheriff Gelbolingo confirmed receipt of the March 25 and March 31, 2011 letters, but she explained that they were not able to meet. On March 25, she arrived late at the designated meeting place because of other court- related tasks, while on their supposed second appointment date, Sasing failed to appear.^[14]

The OCA, in its Report, dated November 18, 2011,^[15] recommended a formal investigation for the examination of the records and the verification of the allegations of Sasing to determine whether Sheriff Gelbolingo performed her duties within the bounds of her authority. The recommendation of the OCA reads:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that the instant administrative complaint against **Celestial Venus G. Gelbolingo**, Sheriff IV, Regional Trial Court, Branch 20, Cagayan de Oro City, be **RE-DOCKETED** as a regular administrative matter and that the same be **REFERRED** to the Executive Judge of the Regional Trial Court, Cagayan de Oro City, for investigation, report and recommendation within sixty (60) days from receipt of the records hereof.^[16]

On January 25, 2012, the Court resolved to re-docket the administrative complaint as a regular administrative matter and referred the same to the Executive Judge of the RTC, Cagayan de Oro City, for investigation, report and recommendation.^[17]

Executive Judge Evelyn Gamotin Nery (*Judge Nery*), in a resolution,^[18] dated July 30, 2012, found the charges of gross neglect of duty, inefficiency and incompetence unsubstantiated. Judge Nery pointed out that the wife of Sasing was present when the eviction was carried out, but she “did not even bother to retrieve and/or get by herself things they own, from the premises.”^[19] In fact, “respondent had the personal things of the Sasings inventoried and placed inside boxes and sacks in the presence of two *Barangay Kagawads* of their place.”^[20]

Judge Nery, however, found that Sheriff Gelbolingo was remiss in her duty to reply

to Sasing's two prior letters. Judge Nery stated that if Sheriff Gelbolingo only had the courtesy to reply and request for a contact number, then it could have saved the day for her.^[21]

After a careful examination of the records of this case, the Court agrees with the findings of Judge Nery.

Gross neglect of duty refers to negligence that is characterized by glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.^[22] "It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable."^[23] Gross inefficiency is intimately akin to gross neglect as both involve specific acts of omission on the part of the employee resulting in damage to the employer or to the latter's business.^[24]

In this regard, the Court finds the charge baseless. Sheriff Gelbolingo did not disregard the standard procedure for implementing a writ of execution. Contrary to Sasing's allegation that she levied their personal effects, it was found that she never took away their belongings. Perhaps due to confusion or other pressing matters, it appears that Sasing's wife left without pulling out their personal belongings from the premises. Forced by this circumstance, Sheriff Gelbolingo took it upon herself to look for a temporary storage for the personal effects.

Basic is the rule that mere allegation is not evidence and is not equivalent to proof.^[25] Charges based on mere suspicion and speculation likewise cannot be given credence. In administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of his complaint.^[26] A complainant cannot rely on mere conjectures and suppositions. If a complainant fails to substantiate his allegations, the administrative complaint must be dismissed for lack of merit.^[27]

The Court, however, agrees that Sheriff Gelbolingo's failure to properly respond to the communication of Sasing is tantamount to discourtesy. A simple note as to where their personal effects were temporarily stored could have assured him that their belongings were not confiscated but merely stored for safekeeping until the same could be properly turned over to them. The Court is fully aware that a sheriff's schedule can be hectic, but she could have easily relayed the information to the other court staff to address Sasing's concerns. This simple gesture could have avoided this controversy.

Section 1 of Article XI of the Constitution states that a public office is a public trust. "It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to, at all times, remain accountable to the people."^[28] As front liners of the justice system, sheriffs and deputy sheriffs must always strive to maintain public trust in the performance of their duties.^[29] As agents of the law, they are "called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing the orders of the court, they cannot afford to err