

THIRD DIVISION

[A.M. No. P-07-2336 (Formerly OCA I.P.I. No. 07-2524-P), January 24, 2008]

FIDELA Y. VARGAS, Complainant, vs. NOEL G. PRIMO, Sheriff IV, RTC, Br. 65, Bulan, Sorsogon, Respondent.

RESOLUTION

AUSTRIA-MARTINEZ, J.:

Fidela Y. Vargas (complainant) charges Sheriff Noel G. Primo (respondent) of the Regional Trial Court (RTC), Branch 65 of Bulan, Sorsogon City with gross disobedience to court orders, gross dereliction of duty/gross negligence, usurpation of court's functions and grave abuse of discretion.^[1]

In her verified complaint dated September 4, 2006, complainant avers that: she is the prevailing party in CV Case No. 186-0-97;^[2] a writ of execution dated April 25, 2006 was issued by the RTC, Branch 72, of Olongapo City ordering respondent to execute the judgment; respondent's hasty return of the writ failed to mention the date when the writ was served on Salvacion Yap-Lee (Lee), defendant in the civil case; respondent also failed to require documentary proof of rental payments sufficient to cover the amount contained in the writ; respondent submitted his return without giving a summary of the total judgment amount; respondent did not serve on Lee the court's order to vacate the premises, thereby exercising discretion which does not belong to his office; respondent failed to levy on Lee's property to satisfy the judgment and to include in his return why no levy should be made; he also usurped the court's function by causing a BIR deduction which was not ordered in either the writ of execution or the order to vacate.^[3]

In his Comment dated October 23, 2006, respondent alleges: their office received the writ of execution only on May 30, 2006.^[4] His initial return dated June 26, 2006, shows that the writ was served on Lee on June 21, 2006.^[5] The decision of the RTC, Branch 72, where the legal rate concerned is not clear, should have been clarified by complainant herself. His duty is only to enforce court processes and does not include requiring the judgment obligor to present proof of rental payments or to make a summary of any judgment amount. He did not receive a court order for Lee to vacate the premises. The RTC, Branch 72, of Olongapo City issued on July 4, 2006 an order for the Clerk of Court/Ex-Officio Sheriff and/or the Sheriff-in-Charge to issue a Notice to Vacate to Lee immediately upon receipt thereof. Considering that Lee filed a motion for reconsideration, he was of the impression that the matter of the issuance of a notice to vacate was not yet final and executory. He did not neglect his duty as he partially satisfied the judgment in less than 2 months from receipt of the writ with complainant's deposit of P57,800.00. It was also improper for him to levy on any of Lee's property because the latter showed willingness to render payment of the judgment amount. Complainant sent a telegram^[6]

demanding the immediate return of the writ if Lee did not vacate the premises. He believed it impossible for him to comply at that stage since the immediate removal of Lee from the premises was not ordered in the decision. He then decided to make the return final to enable complainant to seek a more specific and detailed order on the judgment amount, or avail of the services of other sheriffs if she believed respondent's performance to be below par, or send back to respondent's office a more specific writ of execution. He also did not usurp the court's function and cause BIR deductions from the judgment amount. When Lee entrusted to the respondent the check in favor of the complainant, the BIR form reflecting the deduction was already attached to the check.^[7]

In the report dated May 18, 2007, the Office of the Court Administrator (OCA)^[8] made the following evaluation and recommendation:

...[Respondent] failed to levy the properties of the defendant to satisfy the judgment after partial satisfaction of the writ by invoking the willingness of the defendant to render payment. The respondent disregarded the rules on execution of judgment which is tantamount to neglect or dereliction of duty. The writ of execution clearly commanded him to cause the execution of the judgment by demanding from the defendant the immediate payment of the amount stated thereon. He was even ordered by the court to issue a notice to vacate. Respondent stated in his defense that he held in abeyance the execution of the RTC judgment because he learned of the pendency of a motion for reconsideration. He also failed to levy the properties of the defendant to satisfy the judgment by invoking the willingness of the defendant to render payment. Even if true, such reason will not completely exculpate him. Sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the executions of judgments are not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible.xxx Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action.

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RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court the recommendation that the instant administrative complaint against Noel G. Primo, Sheriff, Regional Trial Court, Branch 65, Bulan, Sorsogon City be RE-DOCKETED as a regular administrative matter; and he be SUSPENDED for a period of 1 month without pay with a STERN WARNING that a repetition of the same offense will be dealt with more severely.^[9]

In compliance with the Court's Resolution dated July 9, 2007, complainant and respondent submitted their respective manifestations stating their willingness to have the case submitted for decision based on the pleadings filed."^[10]

The Court agrees with the OCA's evaluation but not as to the penalty recommended.

It is settled that when a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate.^[11] As a sheriff, respondent has no discretion whether or not to execute a writ.^[12] Indeed, unless restrained by a court order, a sheriff must act with considerable dispatch and ensure that the execution of a judgment is not unduly delayed.^[13]

The writ of execution dated April 25, 2006 is clear. The defendant was ordered to pay rent of P5,000.00 per month for the first two years, the amount of P6,000.00 per month thereafter, i.e., from January 1998, until defendant vacates the property, and P35,000.00 as attorney's fees and costs of suit, less the amount of P76,491.45 deposited in court. The writ also specified that in default of such payment, the sheriff should cause to be made said sums out of the defendant's goods and chattels; or also her lands and buildings, if her personal properties are still insufficient.^[14]

In his Sheriff's Final Return dated July 24, 2006, respondent reported the deposit of a check in the amount of P57,800.00 broken down as follows: P24,000.00 as balance for 1997-1998 and P35,000.00 as attorney's fee, less withholding tax of P1,200.00. Said amount is clearly insufficient to satisfy the judgment covered by the April 25, 2006 writ.

On July 4, 2006, the RTC, Branch 72, of Olongapo City also issued an Order directing the "Clerk of Court and Ex-Oficio Sheriff and/or the sheriff in-charge of Bulan Sorsogon" to immediately issue a notice to vacate the property subject of this case to the defendant immediately upon receipt of the same.^[15] Respondent, as stated in his final return, however, deferred the issuance of said notice to vacate due to the pendency of the Motion for Reconsideration of the July 4, 2006 Order filed by Lee.^[16]

Such excuse cannot exculpate respondent from liability.

The filing of a motion for reconsideration does not justify respondent's refusal to perform what was otherwise his ministerial duty.^[17] Again, in the absence of any restraining order or instructions to the contrary, a sheriff must proceed with the execution of a judgment with reasonable celerity and promptness; otherwise, the decisions, orders or other court processes would be futile.^[18]

As the Court has often stated, the execution of a judgment is the fruit of the suit and is the life of the law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party.^[19] Sheriffs, who are charged to carry out this important task, play an important role in the administration of justice. And as agents of the law, high standards are expected of them.^[20]

For failing to satisfactorily implement the writ, respondent displayed conduct short of the stringent standards required of court employees. He is guilty of simple neglect of duty which is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is classified as a less grave offense which carries the penalty of