

SECOND DIVISION

[A.M. No. P-07-2384, June 18, 2008]

**KENNETH HAO, COMPLAINANT, VS. ABE C. ANDRES, SHERIFF IV,
REGIONAL TRIAL COURT, BRANCH 16, DAVAO CITY
RESPONDENT.**

R E S O L U T I O N

QUISUMBING, J.:

Before us is an administrative complaint for gross neglect of duty, grave abuse of authority (oppression) and violation of Republic Act No. 3019^[1] filed by complainant Kenneth Hao against respondent Abe C. Andres, Sheriff IV of the Regional Trial Court (RTC) of Davao City, Branch 16.

The antecedent facts are as follows:

Complainant Hao is one of the defendants in a civil case for replevin docketed as Civil Case No. 31, 127-2005^[2] entitled "*Zenaida Silver, doing trade and business under the name and style ZHS Commercial v. Loreto Hao, Atty. Amado Cantos, Kenneth Hao and John Does,*" pending before the RTC of Davao City, Branch 16.

On October 17, 2005, Judge Renato A. Fuentes^[3] issued an Order of Seizure^[4] against 22 motor vehicles allegedly owned by the complainant. On the strength of the said order, Andres was able to seize two of the subject motor vehicles on October 17, 2005; four on October 18, 2005, and another three on October 19, 2005, or a total of nine motor vehicles.^[5]

In his Affidavit-Complaint^[6] against Andres before the Office of the Court Administrator (OCA), Hao alleged that Andres gave undue advantage to Zenaida Silver in the implementation of the order and that Andres seized the nine motor vehicles in an oppressive manner. Hao also averred that Andres was accompanied by unidentified armed personnel on board a military vehicle which was excessive since there were no resistance from them. Hao also discovered that the compound where the seized motor vehicles were placed is actually owned by Silver.^[7]

On October 21, 2005, in view of the approval of the complainant's counter-replevin bond, Judge Emmanuel C. Carpio^[8] ordered Andres to immediately cease and desist from further implementing the order of seizure, and to return the seized motor vehicles including its accessories to their lawful owners.^[9]

However, on October 24, 2005, eight of the nine seized motor vehicles were reported missing. In his report,^[10] Andres stated that he was shocked to find that the motor vehicles were already missing when he inspected it on October 22, 2005. He narrated that on October 21, 2005, PO3 Rodrigo Despe, one of the policemen

guarding the subject motor vehicles, reported to him that a certain "Nonoy" entered the compound and caused the duplication of the vehicles' keys.^[11] But Andres claimed the motor vehicles were still intact when he inspected it on October 21, 2005.

Subsequently, Hao reported that three of the carnapped vehicles were recovered by the police.^[12] He then accused Andres of conspiring and conniving with Atty. Oswaldo Macadangdang (Silver's counsel) and the policemen in the carnapping of the motor vehicles. Hao also accused Andres of concealing the depository receipts from them and pointed out that the depository receipts show that Silver and Atty. Macadangdang were the ones who chose the policemen who will guard the motor vehicles.

In his Comment^[13] dated March 3, 2006, Andres vehemently denied violating Rep. Act No. 3019 and committing gross neglect of duty.

Andres denied implementing the Order of Seizure in an oppressive manner. He said he took the vehicles because they were the specific vehicles ordered to be seized after checking their engine and chassis numbers. Andres likewise denied that he was accompanied by military personnel in the implementation of the order. He claimed that he was merely escorted by policemen pursuant to the directive of Police Senior Supt. Catalino S. Cuy, Chief of the Davao City Police Office. Andres also maintained that no form of harassment or oppression was committed during the implementation of the order, claiming that the presence of the policemen was only for the purpose of preserving peace and order, considering there were 22 motor vehicles specified in the Order of Seizure. Andres added that he exercised no discretion in the selection of the policemen who assisted in the implementation of the order, much less of those who will guard the seized motor vehicles.

Andres disputed the allegation that he neglected his duty to safeguard the seized vehicles by pointing out that he placed all the motor vehicles under police watch. He added that the policemen had control of the compound where the seized motor vehicles were kept.

Andres likewise contended that after the unauthorized duplication of the vehicles' keys was reported to him, he immediately advised the policemen on duty to watch the motor vehicles closely.^[14] He negated the speculations that he was involved in the disappearance of the seized motor vehicles as he claims to be the one who reported the incident to the court and the police.

As to the allegation of undisclosed depository receipts, Andres maintained that he never denied the existence of the depository receipts. He said the existence of the depository receipts was immediately made known on the same day that the subject motor vehicles were discovered missing. He even used the same in the filing of the carnapping case against Silver and her co-conspirators.

Finally, Andres insisted that the guarding of properties under *custodia legis* by policemen is not prohibited, but is even adopted by the court. Hence, he prays that he be held not liable for the loss of the vehicles and that he be relieved of his duty to return the vehicles.^[15]

After the OCA recommended that the matter be investigated, we referred the case to Executive Judge Renato A. Fuentes for investigation, report and recommendation.
[16]

In his Investigation Report^[17] dated September 21, 2006, Judge Fuentes found Andres guilty of serious negligence in the custody of the nine motor vehicles. He recommended that Andres be suspended from office.

Judge Fuentes found numerous irregularities in the implementation of the writ of replevin/order of seizure, to wit: (1) at the time of the implementation of the writ, Andres knew that the vehicles to be seized were not in the names of any of the parties to the case; (2) one vehicle was taken without the knowledge of its owner, a certain Junard Escudero; (3) Andres allowed Atty. Macadangdang to get a keymaster to duplicate the vehicles' keys in order to take one motor vehicle; and (4) Andres admitted that prior to the implementation of the writ of seizure, he consulted Silver and Atty. Macadangdang regarding the implementation of the writ and was accompanied by the latter in the course of the implementation. Judge Fuentes observed that the motor vehicles were speedily seized without strictly observing fairness and regularity in its implementation.^[18]

Anent the safekeeping of the seized motor vehicles, Judge Fuentes pointed out several instances where Andres lacked due diligence to wit: (1) the seized motor vehicles were placed in a compound surrounded by an insufficiently locked see-through fence; (2) three motor vehicles were left outside the compound; (3) Andres turned over the key of the gate to the policemen guarding the motor vehicles; (4) Andres does not even know the full name of the owner of the compound, who was merely known to him as "Gloria"; (5) except for PO3 Despe and SPO4 Nelson Salcedo, the identities of the other policemen tapped to guard the compound were unknown to Andres; (6) Andres also admitted that he only stayed at least one hour each day from October 19-21, 2005 during his visits to the compound; and (7) even after it was reported to him that a certain "Nonoy" entered the compound and duplicated the keys of the motor vehicles, he did not exert his best effort to look for that "Nonoy" and to confiscate the duplicated keys.^[19]

Judge Fuentes also observed that Andres appeared to be more or less accommodating to Silver and her counsel but hostile and uncooperative to the complainant. He pointed out that Andres depended solely on Silver in the selection of the policemen who would guard the seized motor vehicles. He added that even the depository receipts were not turned over to the defendants/third-party claimants in the replevin case but were in fact concealed from them. Andres also gave inconsistent testimonies as to whether he has in his possession the depository receipts.^[20]

The OCA disagreed with the observations of Judge Fuentes. It recommended that Andres be held liable only for simple neglect of duty and be suspended for one (1) month and one (1) day.^[21]

We adopt the recommendation of the investigating judge.

Being an officer of the court, Andres must be aware that there are well-defined steps provided in the Rules of Court regarding the proper implementation of a writ

of replevin and/or an order of seizure. The Rules, likewise, is explicit on the duty of the sheriff in its implementation. To recapitulate what should be common knowledge to sheriffs, the pertinent provisions of Rule 60, of the Rules of Court are quoted hereunder:

SEC. 4. *Duty of the sheriff.*-Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and bond, and **must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody.** If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. **After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.** (Emphasis supplied.)

SEC. 6. *Disposition of property by sheriff.*-**If within five (5) days after the taking of the property by the sheriff,** the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party. (Emphasis supplied.)

First, the rules provide that property seized under a writ of replevin is not to be delivered immediately to the plaintiff.^[22] In accordance with the said rules, Andres should have waited no less than five days in order to give the complainant an opportunity to object to the sufficiency of the bond or of the surety or sureties thereon, or require the return of the seized motor vehicles by filing a counter-bond. This, he failed to do.

Records show that Andres took possession of two of the subject motor vehicles on October 17, 2005, four on October 18, 2005, and another three on October 19, 2005. Simultaneously, as evidenced by the depository receipts, on October 18, 2005, Silver received from Andres six of the seized motor vehicles, and three more motor vehicles on October 19, 2005. Consequently, there is no question that Silver was already in possession of the nine seized vehicles immediately after seizure, or no more than three days after the taking of the vehicles. Thus, Andres committed a clear violation of Section 6, Rule 60 of the Rules of Court with regard to the proper disposal of the property.

It matters not that Silver was in possession of the seized vehicles merely for safekeeping as stated in the depository receipts. The rule is clear that the property seized should not be immediately delivered to the plaintiff, and the sheriff must retain custody of the seized property for at least five days.^[23] Hence, the act of Andres in delivering the seized vehicles immediately after seizure to Silver for

whatever purpose, without observing the five-day requirement finds no legal justification.

In *Pardo v. Velasco*,^[24] this Court held that

...Respondent as an officer of the Court is charged with certain ministerial duties which must be performed faithfully to the letter. Every provision in the Revised Rules of Court has a specific reason or objective. **In this case, the purpose of the five (5) days is to give a chance to the defendant to object to the sufficiency of the bond or the surety or sureties thereon or require the return of the property by filing a counterbond....**^[25] (Emphasis supplied.)

In *Sebastian v. Valino*,^[26] this Court reiterated that

Under the Revised Rules of Court, **the property seized under a writ of replevin is not to be delivered immediately to the plaintiff. The sheriff must retain it in his custody for five days** and he shall return it to the defendant, if the latter, as in the instant case, requires its return and files a counterbond....^[27] (Emphasis supplied.)

Likewise, Andres' claim that he had no knowledge that the compound is owned by Silver fails to convince us. Regardless of who actually owns the compound, the fact remains that Andres delivered the vehicles to Silver prematurely. It violates the rule requiring him to safekeep the vehicles in his custody.^[28] The alleged lack of facility to store the seized vehicles is unacceptable considering that he should have deposited the same in a bonded warehouse. If this was not feasible, he should have sought prior authorization from the court issuing the writ before delivering the vehicles to Silver.

Second, it must be stressed that from the moment an order of delivery in replevin is executed by taking possession of the property specified therein, such property is in *custodia legis*. As legal custodian, it is Andres' duty to safekeep the seized motor vehicles. Hence, when he passed his duty to safeguard the motor vehicles to Silver, he committed a clear neglect of duty.

Third, we are appalled that even after PO3 Despe reported the unauthorized duplication of the vehicles' keys, Andres failed to take extra precautionary measures to ensure the safety of the vehicles. It is obvious that the vehicles were put at risk by the unauthorized duplication of the keys of the vehicles. Neither did he immediately report the incident to the police or to the court. The loss of the motor vehicles could have been prevented if Andres immediately asked the court for an order to transfer the vehicles to another secured place as soon as he discovered the unauthorized duplication. Under these circumstances, even an ordinary prudent man would have exercised extra diligence. His warning to the policemen to closely watch the vehicles was insufficient. Andres cannot toss back to Silver or to the policemen the responsibility for the loss of the motor vehicles since he remains chiefly responsible for their safekeeping as legal custodian thereof. Indeed, Andres' failure to take the necessary precaution and proper monitoring of the vehicles to ensure its safety constitutes plain negligence.

Fourth, despite the cease and desist order, Andres failed to return the motor