Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

GEOFFREY BECKETT, Complainant,	**A.M. No. RTJ-12-2326** **(Formerly A.M. OCA I.P.I. No. 11-3692-RTJ)**
- versus -	Present:
JUDGE OLEGARIO R. SARMIENTO, JR., Regional Trial Court, Branch 24, Cebu City, Respondent.	VELASCO, JR., *J.*, Chairperson, PERALTA, ABAD, MENDOZA, and LEONEN, *JJ*
	Promulgated: January 30, 2013

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DECISION

VELASCO, JR., *J.*:

> [I]n all questions relating to the care, custody, education and property of the children, the latter's welfare is paramount. This means that the best interest of the minor can override procedural rules and even the rights of parents to the custody of their children. Since, in this case, the very life and existence of the minor is at stake and the child is in an age when she can exercise an intelligent choice, the courts can do no less than respect, enforce and give meaning and substance to that choice and uphold her right to live in an atmosphere conducive to her physical, moral and intellectual development.[1] x x x

The Case

This case arose from a complaint filed by Geoffrey Beckett charging Judge Olegario R. Sarmiento, Jr. of the Regional Trial Court (RTC) of Cebu City, Branch 24, with gross ignorance of the law, manifest partiality and dereliction and neglect of duty allegedly committed in relation to Sp. Proc.

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[1] *Luna v. Intermediate Appellate Court*, No. L-68374, June 18, 1985, 137 SCRA 7, 16.

No. 18182-CEB, entitled *Geoffrey Beckett v. Eltesa Densing Beckett*, while pending before that court.

The Antecedent Facts

Geoffrey Beckett (Beckett or Complainant), an Australian national, was previously married to Eltesa Densing Beckett (Eltesa), a Filipina. Out of the marriage was born on June 29, 2001, Geoffrey Beckett, Jr. (Geoffrey, Jr.).

In his Complaint-Affidavit,[2] Beckett alleged that their union was, from the start, far from ideal. In fact, according to him, they eventually separated and, worse still, they sued each other.

In 2006, Eltesa filed a case against Beckett for violation of Republic Act No. (RA) 7610, otherwise known as the *Violence against Women and Children Act*, followed by a suit for the declaration of nullity of their marriage, docketed as Civil Case No. CEB -32254. Both cases ended in the sala of Judge Olegario Sarmiento, Jr. (respondent or Judge Sarmiento). For his part, Beckett commenced criminal charges against Eltesa, one of which was for adultery.

The couple's initial legal battle ended when Judge Sarmiento, on September 25, 2006 in Civil Case No. CEB-32254, rendered judgment[3] based on a compromise agreement in which Eltesa and Beckett agreed and undertook, among others, to cause the dismissal of all pending civil and criminal cases each may have filed against the other. They categorically agreed too that Beckett shall have full and permanent custody over Geoffrey, Jr., then five (5) years old, subject to the visitorial rights of Eltesa.

Thereafter, Beckett left for Australia, taking Geoffrey, Jr. with him. As with his three other children from previous relationships, so Beckett alleged, he cared and provided well for Geoffrey, Jr. Moreover, as agreed upon, they would come and see Eltesa in Cebu every Christmas.

In 2007, Beckett obtained a divorce from Eltesa in Australia. This notwithstanding, the yearly Christmas visits continued. In the 2010 visit, Beckett consented to have Geoffrey, Jr. stay with Eltesa even after the holidays, provided she return the child on January 9, 2011. January 9 came and went but Geoffrey, Jr. remained with Eltesa, prompting Beckett to file a petition against Eltesa for violation of RA 7610. Docketed as Sp. Proc. No. 18182-CEB,[4] this petition was again raffled to the sala of Judge Sarmiento. And because Geoffrey remained in the meantime in the custody of Eltesa, Beckett later applied in Sp. Proc. No. 18182-CEB for the issuance of a writ of *habeas corpus*.

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[2] Docketed as OCA I.P.I. No. 11-3692-RTJ.
[3] *Rollo*, pp. 16-18.
[4] Referred to in certain pleadings and documents as a Civil Case No. 18182-CEB.

Beckett further relates that, during the March 1, 2011 conference on the application for *habeas corpus*, Geoffrey, Jr., then nine (9) years old, displayed inside the courtroom hysterical conduct, shouting and crying, not wanting to let go of Eltesa and acting as though, he, the father, was a total stranger. Despite Geoffrey Jr.'s outburst, Judge Sarmiento issued an Order[5], dated March 1, 2011, directing *inter alia* the following: (1) Eltesa to return Geoffrey, Jr. to Beckett; and (2) Beckett to bring the child in the pre-trial conference set for March 15, 2001.

For some reason, the turnover of Geoffrey, Jr. to Beckett did not materialize.

Beckett also alleged that while waiting for the March 15, 2011 pre-trial conference to start, he saw one Helen Sy, purportedly a close friend of Eltesa, enter Judge Sarmiento's chambers. Then, during the conference itself, Eltesa moved for reconsideration of the court's March 1, 2011 Order, praying that it be set aside insofar as it directed her to return the custody of Geoffrey, Jr. to Beckett. To this partial motion, Beckett requested, and was granted, a period of five (5) days to file his comment/opposition. Additionally, Beckett sought the immediate implementation of the said March 1, 2011 Order. But instead of enforcing said order and/or waiting for Beckett's comment, Judge Sarmiento, in open court, issued another order giving Eltesa provisional custody over Geoffrey, Jr. and at the same time directing the Department of Social Welfare and Development (DSWD) to conduct a social case study on the child.

Weeks later, or in the March 30, 2011 setting, Beckett moved for the reconsideration of the judge's March 15, 2011 Order, on the main contention that Judge Sarmiento can no longer grant provisional custody to Eltesa in light of the adverted judgment on compromise agreement. Also, according to him, during this March 30 proceeding, respondent judge conversed with Eltesa in Cebuano, a dialect which neither the former nor his counsel understood, and which they (respondent and Eltesa) persisted on using despite requests that they communicate in English or Filipino. Beckett's lawyer then asked that he be allowed to confer in private with his client for a few minutes but when they returned to the courtroom, the proceedings had already been adjourned.

As his motion for reconsideration had remained unresolved as of June 13, 2011, Beckett filed on that day an urgent motion to resolve. Several hearings on the case were postponed because of the belated submission by the DSWD of the case study report requested by respondent judge.

It is upon the foregoing factual backdrop that Beckett has instituted the instant complaint, docketed as A.M. OCA IPI No. 11-3692- RTJ, later redocketed as A.M. No. RTJ-12-2326. As argued, respondent is liable for (1) gross ignorance of the law for granting Eltesa provisional custody over

[5] *Rollo*, p. 37.

Geoffrey Jr.; and (2) partiality by committing acts of serious misconduct and irregularities in the performance of official duties, such as but not limited to allowing one Helen Sy to enter his chambers before the March 15, 2011 hearing, his habit of conversing with Eltesa in the local dialect and for adjourning a hearing while he was conferring with his counsel in private. Beckett predicates his charge of dereliction and neglect of duty on respondent's alleged failure to resolve his motion for reconsideration of the March 15, 2011 order giving provisional custody of his child to his mother.

In his answer in response to the 1st Indorsement dated July 14, 2011 of the Office of the Court of Administrator (OCA), respondent judge denied complainant's allegations of partiality and of being biased against the latter, particularly describing his order granting Eltesa provisional custody as proper. In this regard, respondent judge averred that, per his Order of March 30, 2011, he deferred action on Beckett's motion for reconsideration of the court's March 15, 2011 Order pending submission of the Social Case Study Report, while the June 21, 2011 Order denying Beckett's said motion for reconsideration was based on that Social Case Study Report[6] of Social Welfare Officer Clavel Saycon, DWSD- Region VII, who recommended that Geoffrey, Jr. be in the care and custody of the mother. As an added observation, respondent judge stated that Beckett did not cry "Bias" when he (respondent) approved the compromise agreement in Civil Case CEB 32254 and when he later urged Beckett to commence *habeas corpus* proceedings. Attached to the letter-answer are the case study reports submitted by the DSWD regional office, one of which was prepared by psychologist Christine V. Duhaylungsod,[7] who elicited from Geoffrey, Jr. the following information: that (1) complainant always leaves him to the care of his older half-brother or his father's girlfriends; (2) he was at one time sent out of the house by one of complainant's girlfriends and he had to stay in the garage alone; and (3) he never wanted to stay with complainant whom he feared and who once locked him in his room without food. In their respective reports, Dr. Obra and Dr. Saycon, a psychiatrist, both strongly recommended that custody over Geoffrey, Jr. be given to Eltesa.

Respondent judge also denied knowing one Helen Sy adverted to in the basic complaint and explained in some detail why he spoke at one instance to Eltesa in Cebuano. He closed with a statement that he issued his assailed Orders in good faith and that he had, as sought by complainant, inhibited himself from further hearing SP Proc. No. 18182-CEB.

In the Agenda Report dated March 8, 2012, the OCA regards the complaint meritorious insofar as the charges for gross ignorance of the law is concerned given that respondent judge issued his March 15, 2011 Order granting provisional custody in favor of Eltesa despite the existence of the judicial compromise. The OCA, thus, recommended that respondent judge be adjudged liable for gross ignorance of the law and fined with stern

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[6] Dated March 28, 2011.
[7] Dated June 22, 2011.

warning. The inculpatory portions of the OCA's evaluation report pertinently read:

> x x x A compromise agreement that is intended to resolve a matter already under litigation is normally called a judicial compromise. Once it is stamped with judicial *imprimatur*, it becomes more than a mere contract binding upon the parties. x x x [I]t has the force of and effect of any other judgment. x x x Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata* x x x.
>
> x x x x
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> The pertinent portion of the judgment on Compromise Agreement x x x, which granted and transferred permanent custody of Geoffrey, Jr. to the herein complainant is unequivocal. Moreover, the same order even allowed complainant to bring with him Geoffrey, Jr. to Australia. Thus, in granting Geoffrey, Jr.'s custody to his mother in an Order issued on 15 March 2011 on a mere Motion for Partial Reconsideration, respondent judge violated a basic and fundamental principle of *res judicata*. When the law is elementary, not to be aware of it constitutes gross ignorance thereof. After all, judges are expected to have more than just a modicum of acquaintance with the statutes and procedural rules. Hence, the respondent judge is guilty of gross ignorance of the law.[8]

The OCA, however, effectively recommends the dismissal of the charge of manifest partiality and other offenses for want of sufficient substantiation, noting that the complainant has failed to adduce substantial evidence to overcome the presumption of regularity in the performance of judicial duties.

> Anent the charge of Manifest Partiality, this Office finds the same not supported by substantial evidence. In administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments in his complaint. Complainant failed to present substantial evidence to show the alleged partiality and ignorance of respondent judge, Mere suspicion that a judge is biased is not enough. Bare allegations of partiality will not suffice in the absence of clear showing that will overcome the presumption that the judge dispensed justice without fear or favor.[9]

The Court also notes that, contrary to complainant's pretense, respondent judge had acted on his motion for reconsideration of the contentious March 15, 2011 Order.

The OCA's recommendation for the dismissal of the complaint insofar as it charges respondent judge with manifest partiality and dereliction and neglect of duties is well-taken. The Court cannot presume partiality and serious misconduct and irregularities based on circumstances alleged in the complaint. Moreover, for serious misconduct to obtain, the judicial act/s complained of should be corrupt or inspired by an intention to

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[8] *Rollo*, pp. 127-128.
[9] Id. at 128.

violate the law or persistent disregard of well-known legal precepts.[10] Nothing in the records tends to suggest that respondent judge was actuated by malice or corrupt motives in issuing his disputed March 15, 2011 order granting Eltesa custody of Geoffrey, Jr. despite the adverted compromise agreement.

The Issue

The remaining issue then boils down to whether or not respondent Judge Sarmiento is guilty of gross ignorance of the law.

The Court's Ruling

Gross ignorance of the law on the part of a judge presupposes an appalling lack of familiarity with simple rules of law or procedures and well-established jurisprudence which tends to erode the public trust in the competence and fairness of the court which he personifies. Not to know the law as basic, almost elementary, as the Rules of Court, or acting in disregard of established rule of law as if he were not aware of the same constitutes gross ignorance whence no one is excused, especially an RTC judge.[11]

Complainant has charged respondent judge with gross ignorance of the law. He states in this regard that respondent judge, in arbitrary defiance of his own Decision of September 25, 2006 which constitutes *res judicata* or a bar to him to pass upon the issue of Geoffrey, Jr's. custody, granted, via his March 15, 2011 Order, provisional custody over Geoffrey, Jr. to Eltesa. The Decision adverted to refers to the judgment on compromise agreement.

The Court cannot go along with complainant's above posture.

Respondent judge, in granting provisional custody over Geoffrey, Jr. in favor of his mother, Eltesa, did not disregard the *res judicata* rule. The more appropriate description of the legal situation engendered by the March 15, 2011 Order issued amidst the persistent plea of the child not to be returned to his father, is that respondent judge exhibited fidelity to jurisprudential command to accord primacy to the welfare and interest of a minor child. As it were, the matter of custody, to borrow from *Espiritu v. Court of Appeals*,[12] "is not permanent and unalterable [and] can always be re-examined and adjusted." And as aptly observed in a separate opinion in *Dacasin v. Dacasin*,[13] a custody agreement can never be regarded as "permanent and unbending," the simple reason being that the situation of the parents and even of the child can change, such that sticking to the agreed arrangement would no longer be to the latter's best interest. In a very real sense, then, a judgment involving the custody of a minor child cannot be accorded the force and effect of *res judicata*.

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[10] *Francisco v. Cosico*, A.M. No. CA-04-37, March 16, 2004, 425 SCRA 521, 525.
[11] *Tiongco v. Salao*, A.M. No. RTJ-06-2009, July 27, 2006, 496 SCRA 575, 585.
[12] G.R. No. 115640, March 15, 1995, 242 SCRA 362, 369.
[13] G.R. No. 168785, February 5, 2010, 611 SCRA 657, 675.

Now to another point. In disputes concerning post-separation custody over a minor, the well-settled rule is that no child under seven (7) years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise.[14]And if already over 7 years of age, the child's choice as to which of his parents he prefers to be under custody shall be respected, unless the parent chosen proves to be unfit.[15] Finally, in *Perez v. Court of Appeals*,[16] We held that in custody cases, the foremost consideration is always the welfare and best interest of the child, as reflected in no less than the U.N. Convention on the Rights of the Child which provides that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."[17]

In the light of the foregoing, respondent judge cannot be held guilty of the charges hurled by the complainant against him for the reason that absent a finding of strong reasons to rule otherwise, the preference of a child over 7 years of age as to whom he desired to live with shall be respected. Moreover, custody, even if previously granted by a competent court in favor of a parent, is not, to reiterate, permanent. In *Espiritu*,[18] We ruled that:

> x x x [T]he matter of custody is not permanent and unalterable. If the parent who was given custody suffers a future character change and becomes unfit, the matter of custody can always be re-examined and adjusted x x x. To be sure, the welfare, the best interests, the benefit, and the good of the child must be determined as of the time that either parent is chosen to be the custodian. x x x

As Rosalind and Reginald Espiritu in *Espiritu*,[19] Geoffrey, Jr., at the time when he persistently refused to be turned over to his father, was already over 7 years of age. As such, he was very much capable of deciding, based on his past experiences, with whom he wanted to stay. Noteworthy too are the results of the interviews which were reflected in the three reports previously mentioned, excerpts from which are hereunder quoted, to wit:

> x x x In so far as [Geoffrey, Jr.'s] account of experience, being with his father's custody is something that he is afraid of and something he does not want to happen again. However, being with his mother is the one (sic) he is looking to (sic) and aspires.[20]
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> x x x x
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> x x x Being in the custody of his mother is something (sic) he feel (sic) secure and protected and this is manifested in the child's craving for his mother's presence all the time and the desire to be always with her that

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[14] FAMILY CODE, Art. 213.

[15] *See* FAMILY CODE, id.

[16] G.R. No. 118870, March 29, 1996, 255 SCRA 661, 669; citations omitted.

[17] Id.; citing Article 3, number 1, CONVENTION ON THE RIGHTS OF THE CHILD, Adopted by the General Assembly of the United Nations on November 20, 1989.

[18] Supra note 12, at 369-370; citation omitted.

[19] Supra note 12.

[20] Annex "E," p. 5; citing Social Worker Clavel Saycon's Report.

> even (sic) he sleeps he wants his mother to embrace and hug him and cries when he wakes up and he cannot see his mother.[21]
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> x x x x
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> x x x [H]e locked me in the room. He always leave (sic) me. x x x they keep fighting, Daddy and his girlfriend... they'll get angry with (sic) me... I'm scared with (sic) Daddy.[22]
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> x x x x
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> Meanwhile, Ms. Barbo (the caregiver or yaya of Geoffrey, Jr.), expressed peculiarities, "Sa Daddy niya, [he] dd (sic) not fear his mom. Sa mommy niya, [he] fear (sic) his dad."[23]

With these, We see no reason to sustain the charge against respondent judge for gross ignorance of the law. For clearly, absent any evidence to the contrary, Geoffrey, Jr. chose to live with his mother for a reason, which respondent judge, consistent with the promotion of the best interest of the child, provisionally granted through the issuance of the disputed March 15, 2011 Order. In fact, in issuing the disputed Order, respondent judge rectified an error previously made when he handed out the Judgment on Compromise Agreement in 2006.

WHEREFORE, premises considered, the complaint is hereby **DISMISSED**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

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[21] Id.

[22] Id. at 6; citing DSWD Psychologist Christine V. Duhaylungsod's Observation Report dated April 22, 2011.

[23] Id.

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice