

THIRD DIVISION

[G.R. No. 214270, May 12, 2021]

**JAY V. SABADO, PETITIONER, VS. TINA MARIE L. SABADO, FOR
HERSELF AND HER MINOR CHILDREN, RESPONDENT.**

DECISION

HERNANDO, J.:

On appeal is the May 29, 2014 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 100631, affirming the January 30, 2013 Decision and Permanent Protection Order^[2] of the Regional Trial Court (RTC), Branch 136 of Makati City in Civil Case No. 12-963 which ordered petitioner Jay Villanueva Sabado (Jay) to stay away from respondent Tina Marie L. Sabado (Tina) at a distance of 200 meters and to grant monthly support of P100,000.00 to Tina and their minor children.

The Factual Antecedents:

A Petition for Temporary and Permanent Protection. Order, Support and Support *Pendente Lite*^[3] was filed by Tina against her husband Jay. Tina and Jay were married on July 24, 1999 at Nuestra Sra. De Gracia Parish, Guadalupe, Makati City. Their marriage bore two children born on March 2, 2000 and on July 3, 2005.^[4] Tina is a bank employee while Jay works overseas as a ship captain. He has an estimated monthly income of \$6,500.00.^[5] During their marriage, they acquired the following real properties: (1) a 100-sqm parcel of land in Mandaluyong City; and (2) a condominium unit in California Garden Square worth P1,650,000.00.^[6]

Tina alleged that she and Jay would quarrel often over petty things, even during her pregnancy. She claimed that Jay was a controlling husband who would easily get irritated if she expressed her opinions. He would also accuse her of having an affair and throw a fit of jealousy, even if he had no basis for such accusation.^[7] At one point, Tina and the children were allegedly kicked out by Jay from their conjugal home.^[8] He told them to stay with Tina's mother in Makati City. Jay also publicly humiliated Tina by telling her "*maghiwalay na tayo*" in front of her officemates, while demanding for an annulment. Tina also learned that their community funds were being spent on Jay's mistress.^[9]

There came a time when Jay abandoned Tina and their children, depriving them of financial support. By February 2012, the monthly allotment from Jay which previously amounted to \$4,000.00 was reduced to \$2,500.00. Jay also stopped visiting their children.^[10] Tina tried to contact Jay numerous times to settle their issues but her efforts were futile. She even reached out to her mother-in-law but the latter refused to intervene. As a result of Jay's abandonment and utter disregard for his family, Tina suffered psychological and emotional abuse.^[11]

Thus, Tina prayed for the issuance of a Temporary Protection Order (TPO), the grant of P120,000.00 monthly support to be remitted automatically by Jay's employer, and the eventual issuance of a Permanent Protection Order (PPO).^[12]

On October 22, 2012, a TPO^[13] was issued by the trial court in favor of Tina, the pertinent portion of which reads:

WHEREFORE, the Court issues the following Temporary Protection Order (effective for a period of 30 days from service on the respondent and deemed automatically renewed every 30 days thereafter until the disposition of this case):

The court orders JAY VILLANUEVA SABADO to stay away at a distance of 200 meters from petitioner Tina Marie L. Sabado and desist from publicly humiliating her and other forms of abuse.

The respondent is given five days from notice within which to file opposition.

IF THE RESPONDENT APPEARS WITHOUT COUNSEL ON THE DATE OF THE PRELIMINARY CONFERENCE AND HEARING ON THE MERITS ON THE ISSUANCE OF A PERMANENT PROTECTION ORDER, WHICH IS HEREBY SET ON JANUARY 17, 2013 AT 3:00 O'CLOCK IN THE AFTERNOON, THE COURT SHALL NOT RESCHEDULE NOR POSTPONE THE PRELIMINARY CONFERENCE AND HEARING BUT SHALL APPOINT A LAWYER FOR THE RESPONDENT AND IMMEDIATELY PROCEED WITH THE HEARING.

IF THE RESPONDENT FAILS TO APPEAR ON THE DATE OF THE PRELIMINARY CONFERENCE AND HEARING ON THE MERITS DESPITE PROPER NOTICE, THE COURT SHALL ALLOW EX PARTE PRESENTATION OF EVIDENCE BY THE PETITIONER AND RENDER JUDGMENT ON THE BASIS OF THE PLEADINGS AND EVIDENCE ON RECORD. NO DELEGATION OF THE RECEPTION OF EVIDENCE SHALL BE ALLOWED.

The Court directs the immediate issuance of the corresponding notice.

SO ORDERED.^[14]

The court sheriff made several attempts to personally serve the summons, petition, and TPO to Jay at his address but the security guard said he was not around. He also tried to serve them at the office of his employer, only to be told that appellant was abroad for deployment.^[15]

On November 16, 2012, Atty. Gary O. Palmero (Atty. Palmero), counsel of Jay in a criminal case for violation of Republic Act No. 9262 (RA 9262),^[16] went to Branch 136 and received a copy of the Order and Petition^[17] as evidenced by the latter's signature therein.^[18]

On January 17, 2013, Jay filed an Entry of Appearance with Opposition to the Issuance of Permanent Protection Order^[19] where he asserted that he was merely a chief officer and not a ship captain.^[20] He also claimed that the couple acquired four (4) properties during their marriage, and that the condominium unit and parking slot are under the name of Tina.^[21] Although he admitted that he and Tina had disagreements, he denied humiliating her in public in the presence of her officemates.^[22] In truth, he has been a good provider for his family, as he sent his children to good schools.^[23]

In fact, his Certificate of Salary and Allowance from 2005-2012^[24] show that Tina is still the named allottee who receives his remittances in the Philippines. Thus, he prayed for 1) the lifting of the TPO; 2) the denial of the issuance of PPO; 3) the determination of support and support *pendente lite*; and 4) relieving the respondent from posting of bond.^[25]

Ruling of the Regional Trial Court:

On January 25, 2013, the trial court issued an Order^[26] denying the admission of appellant's Opposition for having been belatedly filed two (2) months after the issuance of the TPO. It held that under Administrative Matter (AM) No. 04-10-11-SC, Jay only has a non-extendible period of five (5) days within which to file his answer or opposition. His failure to do so allowed the court to issue the corresponding order as warranted by the facts alleged in the Petition. Thus, having received a copy of the order and TPO on November 16, 2012 through Atty. Palmero, the filing of Jay's opposition on January 13, 2013 was already too late.^[27]

On January 30, 2013, the trial court issued a PPO^[28] in favor of Tina. It pointed out that Jay already waived his opportunity to oppose the petition for his failure to file the necessary pleading on time.^[29] Consequently, it held that Tina was subjected to psychological and emotional abuse, as well as deprivation of financial support.^[30] Thus, Jay was ordered to stay away at a distance of 200 meters from Tina and the children and to pay a monthly support of P100,000.00.^[31]

Aggrieved, Jay elevated the case to the CA^[32] arguing that: (1) Tina failed to prove the necessity for a protection order; (2) Tina failed to prove the amount of support needed and Jay's capacity to provide the same; and (3) the trial court erred in rendering judgment despite the Improper service of summons.^[33]

Ruling of the Court of Appeals:

The CA affirmed the findings of the trial court. It held that there was no improper service of summons. The notice received by counsel representing a party in an action in court is equivalent to notice to the party himself. Consequently, when Atty. Palmero received the copy of the Order and TPO, Jay was considered to have been duly notified as well. Indeed, there was no deprivation of Jay's right to present his

side. Unfortunately, Jay's opposition was only filed two (2) months after the service of the order and TPO. Indubitably, it was filed beyond the non-extendible five (5)-day period. Thus, the trial court correctly denied the admission of Jay's opposition.
[34]

Discontented, Jay elevated the case before Us, adopting the issues that he had raised in the CA. He questions the validity of the service of summons. He claims that from August 7, 2012 up to January 5, 2013, he was out of the Philippines for his overseas work. Hence, Tina should have resorted to substituted service or extraterritorial service of summons if personal service could not be effected, in accordance with Section 16, A.M. No. 04-10-11-SC and Rule 14 of the Rules of Court. He also points out that the Sheriff's Return did not specify the dates the latter went to his residence, thereby fatal to the acquisition of jurisdiction over his person. Consequently, the proceedings before the trial court are null and void.
[35]

Our Ruling

The Petition is without merit.

We have clarified the nature and purpose of summons *vis-a-vis* a TPO in *Pavlow v. Mendenilla*,
[36] to wit:

Summons is a procedural tool. It is a writ by which the defendant is notified that an action was brought against him or her. In an action *in personam*, brought to enforce personal rights and obligations, jurisdiction over the person of the defendant is mandatory. In such actions, therefore, summonses serve not only to notify the defendant of the filing of an action, but also to enable acquisition of jurisdiction over his person.

A protection order is not a procedural mechanism, which is imperative for the progression of an initiated action. Rather, it is itself a substantive relief which "prevent[s] further acts of violence against a woman or her child specified in Section 5 of [the Anti-VAWC Law] and granting other necessary relief." x x x

x x x x

x x x [S]ummons and temporary protection orders are entirely different judicial issuances. It is true that the latter also serves the purpose of conveying information. However, this information pertains not to the filing of an action but merely to the schedule of an upcoming hearing. **The similarities of a summons and a protection order begin and end with their informative capacity. At no point does the Anti-VAWC Law intimate that the temporary protection order is the means for acquiring jurisdiction over the person of the respondent.**

Section 15 of the Anti-VAWC Law's reference to "immediate personal service" is an incident of the underlying urgency which compelled the ex parte issuance of a protection order. **It should not be construed as a restriction on the manner of acquisition of jurisdiction over the person of the respondent.** Otherwise, far from relieving a manifest

urgency, it stifles a civil action for the issuance of a protection order right at the moment of its initiation. Construed as such, a temporary protection order is twisted to a shrewdly convenient procedural tool for defeating the very purposes for which it was issued in the first place.

x x x x

Section 1 of A.M. No. 04-10-11-SC expressly states that while it governs petitions for the issuance of protection orders under the Anti-VAWC Law, "[t]he Rules of Court shall apply suppletorily." **In the silence of A.M. No. 04-10-11-SC, service of summons - the means established by the 1997 Rules of Civil Procedure for informing defendants and/or respondents of the filing of adverse actions, and for the acquisition of jurisdiction over their persons - remains efficacious.**^[37] (Emphasis and underscoring supplied)

Clearly, jurisdiction over the person of the respondent in a petition for TPO/PPO under RA 9262 can be acquired through any of the means of serving summons under the Rules of Court. In an action *in personam* such as a petition for TPO/PPO under RA 9262, the purpose of summons is two-fold: (1) to notify the defendant that an action has been brought against him; and (2) to acquire jurisdiction over the person of the defendant.^[38] When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court which has no jurisdiction over the person of the defendant is null and void.^[39] This underscores the importance of the proof of service of summons under the Rules of Court:

The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place, and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his deputy.^[40]

In the case at bar, the sheriff attempted to personally serve the summons, petition, and TPO in Jay's residence and place of employment as per the Sheriffs Return:

THIS IS TO CERTIFY [that] on several occasions the undersigned tried to serve personally upon respondent JAY VILLANUEVA SABADO a copy of herein summons together with the petition and its annexes as well as the copy of TEMPORARY PROTECTION ORDER dated October 22, 2012 issued by the Honorable Court in the above-entitled case, at the stated address x x x but to no avail for the reason that said respondent were out of his place according to the Guard on Duty.

That on October 30, the undersigned went at the office of respondent at ELMIRA SHIPPING PHILS., INC. x x x as per information given by Ms. Malou, an employee of Elmitra [sic] Shipping Phils. Inc., that according to her the said respondent were on Board, but according to her she did not known [sic] when he [sic] coming back.

IT IS FURTHER CERTIFIED, that on November 16, 2012 at around 4:05 pm the counsel of respondent, Atty. Gary O. Palmero, arrived at the