

EN BANC

[A.M. No. RTJ-17-2508 [Formerly OCA IPI No. 06-2416-RTJ], November 07, 2017]

MARIE ROXANNE G. RECTO, COMPLAINANT, VS. HON. HENRY J. TROCINO, REGIONAL TRIAL COURT, BRANCH 62, BAGO CITY, NEGROS OCCIDENTAL, RESPONDENT.

DECISION

PER CURIAM:

Before the Court is an administrative complaint^[1] against Judge Henry J. Trocino (*Judge Trocino*), former Executive Judge and Presiding Judge, Regional Trial Court, Branch 62, Bago City (*RTC*), filed by Marie Roxanne G. Recto (*Complainant*) for bias and partiality, ignorance of the law, grave oppression, and violation of the Code of Judicial Conduct for issuing an *ex parte* Temporary Protection Order (*TPO*) in relation to Civil Case No. 1409, a case for Child Custody under the Family Code.

Antecedents:

The controversy stemmed from a petition^[2] for Child Custody with Prayer for Protection Order under A.M. No. 04-10-11-SC^[3] in relation to A.M. No. 03-04-04-SC^[4] and damages filed by Magdaleno Peña (*Peña*) on December 20, 2005 against complainant, entitled *Magdaleno M. Peña, for himself and in behalf of his minor son, Julian Henri "Harry" R. Peña v. Marie Roxanne G. Recto*. The petition was raffled to the RTC-Branch 62.

On December 23, 2005, the RTC issued, *ex parte*, a Temporary Protection Order (*TPO*),^[5] granting, among others, the temporary custody of their fifteen (15) month-old child, Julian Henri "Harry" R. Peña (*Henri*), to her former live-in partner, Magdaleno Peña (*Peña*). Specifically, the December 23, 2005 Order reads:

WHEREFORE, finding the petition to be sufficient in form and substance, the court hereby directs the Clerk of Court to issue Summons which shall be served, together with copy of the petition and its annexes thereto, personally to the respondent.

TEMPORARY CUSTODY OVER JULIAN HENRI "HARRY" R. PEÑA IS HEREBY VESTED UPON THE PETITIONER MAGDALENO M. PEÑA; AND FOR THIS PURPOSE, THE PNP-CIDG (NCR) IS ORDERED TO ASSIST THE SHERIFF OF THIS COURT IN [TAKING CUSTODY] OF JULIAN HENRI "HARRY" R. PEÑA WHEREVER HE MIGHT BE FOUND WHO SHALL THEREAFTER BE IMMEDIATELY TURNED OVER TO HIS FATHER, THE HEREIN PETITIONER.

A protection order, which shall be effective for thirty (30) days from

service upon respondent Marie Roxanne G. Recto, is hereby issued as follows:

1. prohibiting the respondent from threatening to commit or committing, personally or through another, acts of violence against the offended party;
2. prohibiting the respondent from harassing, annoying, contacting or otherwise communicating in any form with the offended party, either directly or indirectly;
3. removing and excluding the offended party from the residence of the respondent or from any other place where said offended party may be found;
4. requiring the respondent to stay away from the offended party and any designated family or household member at a distance of two hundred (200) meters;
5. requiring the respondent to stay away from the residence, or any specified place frequented regularly by the offended party and any designated family or household member;
6. prohibiting the respondent from carrying or possessing any firearms or deadly weapon, and ordering her to immediately surrender the same to the court for proper disposition; and
7. directing the respondent to put up a bond of ONE MILLION PESOS (P1,000,000.00) to keep the peace and to present two sufficient sureties who shall undertake that respondent shall not commit any of the acts of violence on the offended party and/ or the petitioner or violate the protection order.

Lastly, pursuant to Section 16 of A.M. No. 03-04-04-SC (Rule on Custody of Minors) a HOLD DEPARTURE ORDER is hereby issued for the purpose of preventing the minor child from being brought out of the country without prior order from the court, during the pendency of the petition.

Accordingly, the Bureau of Immigration and Deportation is directed NOT to allow the departure of the minor child from the Philippines without the court's permission. Likewise, the Department of Foreign Affairs is ordered NOT to issue any passport to said minor without the prior authority of this court.

For the guidance of said government entities, hereunder are the pertinent information about the subject of the Hold Departure Order:

x x x

Furnish copies of this order the Department of Foreign Affairs, the Bureau of Immigration and Deportation within twenty four (24) hours hereof and through the most expeditious means of transmittal.

Likewise furnish copies hereof the petitioner and counsel.

SO ORDERED.^[6]

The Complaint

In vehement protest, complainant filed this administrative complaint against Judge Trocino alleging that he (1) exhibited bias and gross ignorance of the law; (2) acted with grave oppression; and (3) violated the Code of Judicial Conduct when he issued the TPO, *ex parte*, vesting immediate custody of Henri to Peña based on hypothetical assumptions. Specifically, the complainant alleged as follows:

9. Respondent judge is biased, ignorant of the law, and acted with grave oppression when he issued the TPO based on a complaint for child custody. Respondent judge, in full disregard of the law and rule of the Supreme Court on Custody (A.M. No. 03-04-04-SC), issued ex-parte the so called "TPO" **without giving herein complainant Recto opportunity to file her answer, enter into Pre-trial, and without social worker's case study report.** This conduct of the respondent judge manifests patent bias in favor of Peña, who is a resident of Negros Occidental. Moreover, Peña is not the natural guardian of Julian Harry, being an illegitimate child.

10. Respondent judge **deliberately did not apply the Rule on Custody but instead erroneously used R.A. 9262 to support his order** giving temporary custody of minor Harry Peña to Magdaleno Peña, to the prejudice of herein complainant;

11. Respondent Judge inappropriately issued the so called "TPO" considering that the case filed by Magdaleno Peña is for Child Custody. **The Rule on custody should have been observed by the respondent judge and not the Rule on Anti-Violence against Women and their Children.** A TPO cannot be issued in favor of a man because only women and their children are protected by R.A. 9262. Moreso, respondent's Order giving temporary child custody to Magdaleno Peña has no legal leg to stand on because **in custody cases, only provisional orders for custody is issued after an Answer is filed and after Pre-trial is conducted and a DSWD Social Worker Case Study Report is filed.** Thus, the Temporary Protection Order used by respondent Judge is not proper and patently illegal and void;

12. Respondent's obvious bias is further shown by the fact that he was aware that a TPO was previously issued against Magdaleno Peña who is a respondent in a Petition for Temporary and Permanent Protection Order in the RTC of Mandaluyong City, yet he issued the so called "TPO" by **deliberately mis-applying the provisions of R.A. 9262.** The so called "TPO" of respondent judge was **not a product of innocent error in judgment.** x x x

13. Likewise, it is gross ignorance of the law on the part of respondent judge in awarding temporary custody of minor Harry to Magdaleno Peña

based on hypothetical assumptions. Respondent judge in justifying his unfounded order said, and we quote:

x x x x

14. Under Section 15 of A.M. No. 04-10-11-SC, the Court may issue an ex-parte TPO where there is reasonable ground to believe that an imminent danger of violence against women and their children exists or is about to recur. There is complete absence of allegation to this effect in the petition. Clearly, the basis of the so called "TPO" is hypothetical and not factual. Thus, respondent issued the so called "TPO" without legal basis;

15. There is no legal basis to award custody of minor Harry (an illegitimate child) to Magdaleno Peña, based on the Preamble of the United Nations Convention on the Rights of the Child in the light of **Article 213 of the Philippine Family Code that clearly state: "No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise." Moreover, illegitimate children shall be under the sole parental authority of the mother** (*Briones vs. Miguel*, 440 SCRA 455);

16. The averments in the Petition for Child Custody are not compelling reasons to immediately award custody of the minor child to Magdaleno Peña to overcome Article 213 of the Family Code and the ruling in the case of *Briones vs. Miguel*. Not to be ignored is Article 213 of the Family Code is the caveat that, generally, no child under seven years of age shall be separated from the mother, except when the court finds cause to order otherwise. Only the most compelling reasons, such as the mother's unfitness to exercise sole parental authority, shall justify her deprivation of parental authority and the award of custody to someone else (*Briones vs. Miguel*, *Ibid*). It is elementary that basic Philippine Law has greater weight than any international law;

17. Likewise, Respondent Judge committed grave, whimsical and capricious abuse of discretion in the exercise of his judicial function in taking cognizance over the petition despite apparent lack of jurisdiction and in issuing the so called "Temporary Protection Order" against complainant;

18. Magdaleno M. Peña has no standing to institute an action in behalf of complainant's 15 month old child because being illegitimate, **only complainant has parental authority on Julian Henri "Harry" being the natural guardian**, and yet with such knowledge, the respondent judge abused his power with full disregard for the law and the right of complainant in order to favor Magdaleno Peña;

19. The respondent judge could not have innocently missed the fact that the court had no jurisdiction because Magdaleno M. Peña in filing for himself has no cause of action against herein complainant (Marie Roxanne G. Recto), and avail of TPO [under] RA 9262 because the remedies of the law could not be availed of by a man;

20. Likewise clearly alleged in the petition is that Peña is bringing the action for and in behalf of the offended party JULIAN HENRI (HARRY R. PEÑA) - his minor illegitimate son [with complainant]. As such, it is manifest that the real petitioner is minor Harry Peña who is a resident of Mandaluyong City. Under Sec. 9 of A.M. No. 04-10-11-SC, **the verified petition for Temporary Protection Order may be filed with the Family Court of the place where the offended party resides.** Accordingly, the petition must be filed before the Family Court of Mandaluyong City;

21. Respondent Judge is fully aware of this defect of jurisdiction in the petition considering that the alleged offended party Julian Henri "Harry" R. Peña is **not within his territorial jurisdiction.** His awareness of wrong venue is manifested in his order stating in page 9 paragraph a) that **"Harry" lives in Mandaluyong City and not in Negros.** We quote the following:

x x x x

22. Respondent judge blindly issued the so called "TPO" without serious and judicious assessment of the contents of and averments in the petition filed by Peña. This is an obvious fact because **the hypothetical approach in the petition for custody was based on psychological incapacity for annulment of marriage and not incapacity to rear a child.** The documents speak for themselves;

23. Apparently, respondent has no jurisdiction to take cognizance of the petition before him and to issue the so called "Temporary Protection Order" yet, he did so. In so doing, respondent judge committed grave abuse of jurisdiction. Accordingly, the so called "TPO" issued is null and void;

24. Respondent blindly assumed jurisdiction because respondent Judge Trocino and petitioner Peña were in connivance. Complainant has personal knowledge that respondent judge was working under the dictates of Peña. On several occasions, while complainant and Peña were still live-in partners, she has full personal and direct knowledge that respondent judge was dictated upon by Peña to decide on cases at the desire of Peña in her presence. **Aside from the personal knowledge of complainant, the close relationship of Judge Trocino and Peña is evident in the case entitled Eric L. Lee vs. Hon. Henry J. Trocino, et al., under G.R. No. 164648 x x x before the Supreme Court, where respondent and Judge Trocino and Magdaleno Peña are co-respondents;**^[7] [Emphases supplied]

Respondent's Position

In his Comment,^[8] Judge Trocino denied the allegations and pointed out that the TPO was sanctioned by Sections 11^[9] and 15^[10] of A.M. No. 04-10-11-SC in relation to Section 32^[11] thereof as an ancillary remedy incident to the petition for