

THIRD DIVISION

[G.R. No. 170701, January 22, 2014]

RALPH P. TUA, PETITIONER, VS. HON. CESAR A. MANGROBANG, PRESIDING JUDGE, BRANCH 22, REGIONAL TRIAL COURT, IMUS, CAVITE; AND ROSSANA HONRADO-TUA, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on *certiorari* which seeks to annul the Decision^[1] dated October 28, 2005 of the Court of Appeals (CA) issued in CA-G.R. SP No. 89939.

On May 20, 2005, respondent Rossana Honrado-Tua (*respondent*) filed with the Regional Trial Court (RTC) of Imus, Cavite a Verified Petition^[2] for herself and in behalf of her minor children, Joshua Raphael, Jesse Ruth Lois, and Jezreel Abigail, for the issuance of a protection order, pursuant to Republic Act (RA) 9262 or the Anti-Violence Against Women and their Children Act of 2004, against her husband, petitioner Ralph Tua. The case was docketed as Civil Case No. 0464-05 and raffled-off to Branch 22. Respondent claimed that she and her children had suffered from petitioner's abusive conduct; that petitioner had threatened to cause her and the children physical harm for the purpose of controlling her actions or decisions; that she was actually deprived of custody and access to her minor children; and, that she was threatened to be deprived of her and her children's financial support.

Respondent and petitioner were married on January 10, 1998 in Makati City. They have three children, namely, Joshua Raphael born on February 9, 1999, Jesse Ruth Lois, born on June 27, 2000, and Jezreel Abigail, born on December 25, 2001. In her Affidavit^[3] attached to the petition, respondent claimed, among others, that: there was a time when petitioner went to her room and cocked his gun and pointed the barrel of his gun to his head as he wanted to convince her not to proceed with the legal separation case she filed; she hid her fears although she was scared; there was also an instance when petitioner fed her children with the fried chicken that her youngest daughter had chewed and spat out; in order to stop his child from crying, petitioner would threaten him with a belt; when she told petitioner that she felt unsafe and insecure with the latter's presence and asked him to stop coming to the house as often as he wanted or she would apply for a protection order, petitioner got furious and threatened her of withholding his financial support and even held her by the nape and pushed her to lie flat on the bed; and, on May 4, 2005, while she was at work, petitioner with companions went to her new home and forcibly took the children and refused to give them back to her.

On May 23, 2005, the RTC issued a Temporary Protection Order (TPO),^[4] which we quote in full:

Pursuant to the provisions of R.A. 9262, otherwise known as the "Anti-Violence Against Women and their Children Act of 2004, a Temporary Protection Order (TPO) effective for thirty (30) days from date of receipt is hereby issued against respondent Ralph P. Tua.

For the purpose of the implementation of the Temporary Protection Order, the respondent (herein petitioner Ralph) is hereby ordered to:

1. Enjoin from committing and threatening to commit personally or through another, physical, verbal and emotional harm or abuse against the herein petitioner (respondent) and other family and household members;
2. Restrain from harassing, annoying, texting, telephoning, contacting or otherwise communicating with the petitioner (respondent) whether directly or indirectly or engaged in any psychological form of harassment;
3. Stay away from the petitioner (respondent) and other family and household members at a distance of 100 meters radius from the place of residence of the plaintiff and likewise to stay away from the residence, school, place of employment and other places frequented by the herein petitioner (respondent), and other family and household members.
4. Give and deliver the three (3) minor children of the petitioner (respondent) to the [latter] who shall have their temporary custody pending the determination of whether or not a permanent protection order shall issue.

VIOLATION OF THIS ORDER IS PUNISHABLE BY LAW.

The Sheriff of this Court, the PNP Imus, Cavite, or any Officers of the Law are hereby commanded to effect this Order immediately and to use necessary force and measures under the law to implement this Order.

Let the hearing for Permanent Protection Order be set on June 9, 2005 at 2:00 o'clock in the afternoon.

SO ORDERED.^[5]

In his Comment^[6] to respondent's Petition with Urgent Motion to Lift TPO, petitioner denied respondent's allegations and alleged, among others, that he had been maintaining a separate abode from petitioner since November 2004; that it was respondent who verbally abused and threatened him whenever their children's stay with him was extended; that respondent had been staying with a certain Rebendor Zuñiga despite the impropriety and moral implications of such set-up; that despite their written agreement that their minor children should stay in their conjugal home, the latter violated the same when she surreptitiously moved out of their conjugal

dwelling with their minor children and stayed with said Zuñiga; and, that respondent is mentally, psychologically, spiritually and morally unfit to keep the children in her custody. Petitioner contended that the issuance of the TPO on May 23, 2005 is unconstitutional for being violative of the due process clause of the Constitution.

Without awaiting for the resolution of his Comment on the petition and motion to lift TPO, petitioner filed with the CA a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order and preliminary injunction and hold departure order assailing the May 23, 2005 TPO issued by the RTC.

On June 9, 2005, the CA, in order not to render the petition moot and to avoid grave and irreparable injury, issued a temporary restraining order to temporarily enjoin the parties and their agents from enforcing the assailed May 23, 2005 TPO issued in Civil Case No. 0464-05.^[7]

Petitioner later filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction with Manifestation,^[8] praying that the enforcement of all orders, decision to be issued by the RTC and all the proceedings therein be restrained. A hearing^[9] was, subsequently, conducted on the motion.

On October 28, 2005, the CA issued its assailed decision, the decretal portion of which reads:

WHEREFORE, based on the foregoing premises, the instant petition is hereby **DENIED** for lack of merit. Accordingly, the assailed Temporary Protection Order dated May 23, 2002 (sic) issued by the Regional Trial Court of Imus, Cavite, Branch 22 in Civil Case No. 0464-05 is **UPHELD**.
^[10]

In so ruling, the CA found that the petition filed by respondent under RA 9262 is still pending before the RTC; thus, the factual matters raised therein could not be passed upon in the petition for *certiorari* filed with it. The CA noted that during the pendency of the herein proceedings, petitioner filed an urgent motion to quash warrant issued by the RTC and which matter could not also be a subject of this petition which assails the TPO dated May 23, 2005 and that the motion to quash should have been filed with the RTC.

The CA found that the TPO dated May 23, 2005 was validly issued by the RTC and found no grave abuse of discretion in the issuance thereof as the same were in complete accord with the provision of RA 9262.

As to petitioner's argument that there was no basis for the issuance of the TPO, considering that the provision authorizing such issuance is unconstitutional, the CA ruled that since the matter raised herein was the RTC's alleged grave abuse of discretion in issuing the TPO, such matter could be resolved without having to rule on the constitutionality of RA 9262 and its provisions. And that the requisites that the constitutionality of the law in question be the very *lis mota* of the case was absent.

Dissatisfied, petitioner files the instant petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS WITH DUE RESPECT SERIOUSLY ERRED IN HOLDING AND FINDING IN A MANNER CONTRARY TO ESTABLISHED RULES AND JURISPRUDENCE THAT PUBLIC RESPONDENT COMMITTED NO GRAVE ABUSE OF DISCRETION WHEN THE LATTER ISSUED THE TEMPORARY PROTECTIVE ORDER (TPO) DATED 23 MAY 2005 WITHOUT OBSERVING DUE PROCESS OF LAW AND CONSIDERATIONS OF JUSTICE AND BASIC HUMAN RIGHTS.

II

THE HONORABLE COURT OF APPEALS IN REFUSING TO RULE ON THE CONSTITUTIONALITY OF THE PROVISIONS OF RA 9262 HAS DECIDED THE CASE IN A MANNER NOT IN ACCORD WITH ESTABLISHED LAWS AND JURISPRUDENCE CONSIDERING THAT CONTRARY TO ITS FINDINGS THE CONSTITUTIONALITY OF THE SAID LAW IS THE *LIS MOTA* OF THE CASE.^[11]

Petitioner claims that contrary to the stance of the CA in not deciding the issue of the constitutionality of RA 9262, the issue presented is the very *lis mota* in the instant case.

The issue of constitutionality of RA 9262 was raised by petitioner in his Comment to respondent's Petition with Urgent Motion to Lift TPO dated May 23, 2005 filed with the RTC. However, without awaiting for the resolution of the same, petitioner filed a petition for *certiorari* with the CA assailing the TPO issued for violating the due process clause of the Constitution. Contrary to the CA's finding that the matter raised in the petition filed with it was the RTC's alleged grave abuse of discretion in issuing the TPO which could be resolved without having to rule on the constitutionality of RA 9262 and its provisions, we find that since petitioner is assailing the validity of RA 9262 wherein respondent's right to a protection order is based upon, the constitutionality of the said law must first be decided upon. After all, the alleged unconstitutionality of RA 9262 is, for all intents and purposes, a valid cause for the non-issuance of a protection order.^[12] Notwithstanding, however, we still find no merit to declare RA 9262 unconstitutional.

Petitioner particularly directs his constitutional attack on Section 15 of RA 9262 contending that had there been no *ex parte* issuance of the TPO, he would have been afforded due process of law and had properly presented his side on the matter; that the questioned provision simply encourages arbitrary enforcement repulsive to basic constitutional rights which affects his life, liberty and property.

We are not impressed.

Section 15 of RA 9262 provides:

SECTION 15. *Temporary Protection Orders*. – Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a [Permanent Protection Order] PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

In *Garcia v. Drilon*,^[13] wherein petitioner therein argued that Section 15 of RA 9262 is a violation of the due process clause of the Constitution, we struck down the challenge and held:

A **protection order** is an order issued to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary reliefs. Its purpose is to safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life.

The scope of reliefs in protection orders is broadened to ensure that the victim or offended party is afforded all the remedies necessary to curtail access by a perpetrator to the victim. This serves to safeguard the victim from greater risk of violence; to accord the victim and any designated family or household member safety in the family residence, and to prevent the perpetrator from committing acts that jeopardize the employment and support of the victim. It also enables the court to award temporary custody of minor children to protect the children from violence, to prevent their abduction by the perpetrator and to ensure their financial support.

The rules require that petitions for protection order be in writing, signed and verified by the petitioner thereby undertaking full responsibility, criminal or civil, for every allegation therein. Since "time is of the essence in cases of VAWC if further violence is to be prevented," the court is authorized to issue *ex parte* a TPO after raffle but before notice and hearing when the life, limb or property of the victim is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the immediate and imminent danger of VAWC or to prevent such violence, which is about to recur.

There need not be any fear that the judge may have no rational basis to issue an *ex parte* order. The victim is required not only to verify the allegations in the petition, but also to attach her witnesses' affidavits to the petition.

The grant of a TPO *ex parte* cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment