

## **EIGHTEENTH DIVISION**

**[ CA-G.R. CV. NO. 04368, August 28, 2014 ]**

**JOCELYN MAPESO, PLAINTIFF-APPELLEE, VS. VELMUND PAUL VIAJAR, DEFENDANT-APPELLANT.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

#### **THE CASE**

On appeal is the Judgment dated 16 December 2011 of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 6, Cebu City in *Sp. Proc. No. 18563-CEB*, the dispositive portion of which states,

"WHEREFORE, the court hereby grants the petitioner Jocelyn Mapeso's prayer for the issuance of a Permanent Protection Order. The respondent Velmund Paul Viajar is perpetually prohibited from threatening to commit or committing personally or through another, any of the acts mentioned in Section 5 of R.A. No. 9262; from harassing, annoying, telephoning, contacting or communicating with the petitioner, directly or indirectly; removing and excluding the respondent from the residence of the petitioner, regardless of its ownership, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent; directing the respondent to stay away from petitioner and her family members at a distance of at least 200 meters; to stay away from the residence; school, place of employment, or any place frequented by the petitioner and her family members; directing lawful possession and use by the petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects or to supervise the petitioner's or respondent's removal of personal belongings; directing the respondent to provide support to the petitioner; and prohibiting the respondent from any use or possession of any firearm or deadly weapon.

SO ORDERED."

#### **THE FACTUAL ANTECEDENTS**

**Plaintiff-appellee's allegations in her petition:**

That, she and Velmund Paul Viajar (hereinafter defendant-appellant) were married on 9 May 1990 in Cebu City and out of their marriage was born Adrienne Marie M. Viajar on June 9, 1992 and Karl Benedict M. Viajar on December 6, 1994. (Both children choose to live with their mother and not with the defendant-appellant who neglected them, and did not provide them with financial support especially for their education.) They first established their home in Canada. They acquired Canadian citizenship, but, subsequently, re-acquired Philippine citizenship pursuant to RA 9225. Out of the blue, sometime in mid-2009, the defendant-appellant decided to relocate to the Philippines against her will and amidst their children's protestations as they have already made friends and established emotional attachments in Canada since their elementary up to high school. This sudden transfer cause them untold sorrows.

She and the defendant-appellant built apartment units on the lot given to her by her parents sometime in the mid-1990s thru bank financing. They rented these units out and the income derived therefrom provided them the money for their basic needs, in keeping with the means of the family. The income from the rents is badly needed since the defendant-appellant is not a professional and does not earn good income.

In the middle of 2009 that the defendant-appellant started to show his malicious intent to destroy his own family by deliberately and carelessly leaving some incriminating pornographic materials at home. At first, she refused to look at them for fear that it will cause her and her children emotional uproar. Moreover: "In numerous occasions, respondent came along with younger ladies." The defendant-appellant did not want her to accompany him, and found ways to avoid her presence. The defendant-appellant did not want to be asked about his whereabouts and who he was with.

On January 30 January 2011, she found incriminating materials in their room showing a video of the defendant-appellant and his girlfriend, despite this, the defendant-appellant remained remorseless. Too, she found in the defendant-appellant's mobile phone intimate messages sent by the latter's girlfriend. Even his wallet contains love notes from his girlfriend. One Valentine's day, the defendant-appellant refused to spend time with her and their children. In his attempt to deceive her and their children, the defendant-appellant left his mobile phone with her but took out the sim card.

That, the defendant-appellant and his purported high school batch mate planned to meet up in the United States of America in July 2011. That, she became suspicious when sometime in July 2011, the defendant-appellant insisted that she and their children go to Canada for a vacation. That, she saw an envelope in their room which contains a two-way airplane ticket to Manila, where he would be staying overnight there. Inside the said envelope is a picture of the defendant-appellant and a young woman in a compromising situation and a pack of condoms. That, in the past, while going on vacation to Manila, the defendant-appellant refused to meet her and their children at the airport.

That, the defendant-appellant demanded the possession of their conjugal vehicle, a

Mitsubishi Adventure knowing fully well that the same is being used by her and their children. He even threatened her that if she does not give to him the vehicle he would sell it.

They separated albeit *de facto* sometime in June 2011 due to the latter's blatant infidelity without regard to his family's sensibility, violent treatment of her and their children, and absence of sufficient support for the family. She continues that by mere looking at him or hearing his voice already evokes extreme fear and terror in her as his recurrent violence at home and outside thereof has already been ingrained in her mind. She adds that the defendant-appellant's behavioral aberrations caused undue disruptions in her daily activities and that of her children's. The defendant-appellant's personality problems, which are beyond human tolerance, destroyed the sinew of their marriage. That, after their most recent separation, she does not see any chance of reconciliation as it already is the finale of the series of turmoil in their home.

To stress, the acts committed by the defendant-appellant against her and their children constitute a violation of Republic Act No. 9262, otherwise known as "The Anti-Violence Against Women and Their Children Act, specifically the following acts, namely:

- a. Causing physical harm to the petitioner;
- b. Threatening to cause the petitioner or their children physical harm;
- c. Attempting to cause the petitioner or their children physical harm;
- d. Placing the petitioner or their common children in fear of imminent physical harm;
- e. Attempting to restrict or restricting the petitioner's or their children's freedom of movement or conduct by force or threat of force, physical or other harm, or intimidation directed against the petitioner-wife or their children. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the petitioner's or their children's movement or conduct:
  - i. Depriving their common children of the needed financial support legally due the children;
  - ii. Depriving or threatening to deprive the petitioner of a legal right;
  - iii. Misappropriating the conjugal fund or controlling the income which should be due to the conjugal fund for the family's basic necessities while spending his earnings to his womanizing vice.
- f. Engaging in purposeful, knowing or reckless conduct, personally that alarms or causes substantial emotional or psychological distress to the petitioner or their children. This shall include, but not be limited to, the following acts:
  - i. Stalking or following the petitioner or their children in public or private places;

- ii. Lingering outside the residence of the petitioner;
  - iii. Attempting to enter in the dwelling or on the property of the petitioner against her will;
  - iv. Destroying and or attempting to destroy the property and personal belonging of the petitioner; and
  - v. Engaging in any form of harassment or violence.
- g. Causing mental or emotional anguish, public ridicule or humiliation to the petitioner or their children, including, but not limited to, repeated infidelity in offensive and rude manner intended to destroy petitioner's and the children's morale, repeated verbal and emotional abuse, and denial of financial support."

### **The defendant-appellant's Answer with Counterclaim:**

Paragraphs 11, 12, 13, 14, 15, 16, 17, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of the petition are specifically and strongly denied for being baseless, malicious and unfounded. The allegations in paragraphs 4 and 5 insofar as to the fact of their marriage in Toronto, Canada is admitted but the rest therein are specifically and strongly denied. The allegations in paragraphs 6, 7, 8, and 9 with respect to the fact of their having two (2) children; and that the eldest, Andrienne, is taking up pre-dentistry course in Cebu Doctors' Hospital and the youngest, Karl, is still in high school are admitted but the rest are, likewise, specifically and strongly denied for being false, malicious, baseless and unfounded.

If there is any personality problem that destroyed the sinew of the marriage between the plaintiff-appellee and him, which is now beyond human tolerance, it is the plaintiff-appellee's behavior of being an adulterer. It was sometime in August 1997, that he, together with his legal counsel and some police officers, caught the plaintiff-appellee and her paramour in the act of having sexual intercourse in their conjugal dwelling. Thereby, the plaintiff-appellee was arrested and booked but was later released after obtaining his consent. Unfortunately, the incident was reported and entered in the police blotter<sup>[1]</sup> as shown in the Certification dated August 11, 1997, and published in the Banat News<sup>[2]</sup> and The Freeman.<sup>[3]</sup> He was so insulted, ashamed, embarrassed and humiliated by the plaintiff-appellee's despicable act that he was forced to return to Canada. The plaintiff-appellee followed him to Canada and begged for reconciliation for the sake of their children. As their children were still young, he gave their marriage a second chance.

As special and affirmative defenses, the defendant-appellant alleged that he together with the plaintiff-appellee and their children lived in Canada where he worked as a 4<sup>th</sup> Class Stationary Engineer with the Swiss Canadian Management Corporation and the plaintiff-appellee as draftsman with Briggman and Hamman Architects. After Karl was born, the plaintiff-appellee was no longer employed, thus, he became the sole bread winner of the family. Sometime in 1995, the plaintiff-appellee asked that she be allowed to return to Cebu City to build a four (4)-unit apartment on the lot they purchased<sup>[4]</sup> from the former's parents to which he acceded. Pursuant to this deed of sale, the title<sup>[5]</sup> and tax declaration<sup>[6]</sup> to the said lot were transferred to the plaintiff-appellee's name with the addendum "married to

Paul Velmund Viajar". They secured a loan with the Land Bank of the Philippines for the construction of the apartment building and since he was the only one working in the family, it was he who practically paid for the said loan obligation. While he was in Canada, he received news that the plaintiff-appellee has a paramour who she brought to their house. Worst, the plaintiff-appellee's paramour was openly and shamelessly spending most of his time in their house with their children. To validate the information about the plaintiff-appellee, he discreetly went back to Cebu City and had the plaintiff-appellee under surveillance. After confirming the information, he, together with his lawyer, Atty. Pilapil and some police officers went to their house and while there caught the plaintiff-appellee and her paramour in the act of sexual intercourse.

Subsequently, they filed a petition<sup>[7]</sup> with the Regional Trial Court, where the plaintiff-appellee agreed, among others, to give temporary custody of their children to him. The plaintiff-appellee, on the other hand, was given full visitation rights during the pendency of the petition.

That, he returned to Canada to work. Upon the pleading of the plaintiff-appellee and primarily for the sake of their children, he gave their marriage a second chance. Seeing changes made by his the plaintiff-appellee, he purchased a house in Canada out of his wages and salaries.

That, he quit his work after he and the plaintiff-appellee mutually agreed to return to and settle down in Cebu City. They sold their house in Canada to finance the construction of the additional units of their apartment building located in Labangon, Cebu City.

That, their daughter continued with her studies in Cebu City under an educational plan obtained in Canada, which is being controlled by the petitioner. With the rentals as their only source of income, they encountered financial problems more especially with the on-going construction of their apartment building. In order to avoid trouble and not to set a bad example to their children because of frequent bickering about their financial condition, he was forced to leave the conjugal home and transfer to a vacant unit in their apartment building. He and the plaintiff-appellee mutually agreed to contribute equally to the household expenses and education of their children, payment of the loan, construction materials, etc.

That, they agreed that the Mitsubishi Adventure be used solely for the transportation of their children under the condition that only the plaintiff-appellee will drive it. But this was not case because he learned later on that the plaintiff-appellee hired a driver and used the vehicle for her personal use, "sometimes intimately in the company of the driver". Worst, this driver frequently used the vehicle as if he owns it. He asked the plaintiff-appellee to abide with their agreement but to no avail. Because of this, he confronted the driver, who, in the presence of police officers, arrogantly insisted that he can use the vehicle and that he does not know him (defendant-appellant). After a while, the plaintiff-appellee arrived – got angry with him and protected the driver.

That, on July 14, 2011, he filed a complaint against the plaintiff-appellee and the driver for recovery of the vehicle. During the conference on 15 July 2012, the driver did not appear thereat and the plaintiff-appellee refused to divulge the identity of the said driver despite repeated demands.