



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

JAY V. SABADO,

Petitioner,

G.R. No. 214270

Present:

LEONEN, J.,
Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 LOPEZ, J. Y., JJ.

- versus -

**TINA MARIE L. SABADO, for
 herself and her minor children,**
Respondent.

Promulgated:

May 12, 2021

MISAPC-Batt

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DECISION

HERNANDO, J.:

On appeal is the May 29, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CV No. 100631, affirming the January 30, 2013 Decision and Permanent Protection Order² 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 ₱100,000.00 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,

¹ *Rollo*, pp. 29-38; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justice Rebecca De Guia-Salvador and Associate Danton Q. Bueser.

² *CA rollo*, pp. 7-9; penned by Judge Rico Sebastian D. Liwanag.

³ Records, pp. 1-10.

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 ₱120,000.00 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 TPO¹³ 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):

⁴ Id. at 2.

⁵ Id. at 3.

⁶ *Rollo*, p. 30.

⁷ Records, p. 3.

⁸ Id.

⁹ *Rollo*, pp. 30-31.

¹⁰ Records, p. 4.

¹¹ Id. at 6.

¹² Id. at 6-7.

¹³ Id. at 21-22.

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 Petition¹⁷ 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 Order¹⁹ 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

¹⁴ Id.

¹⁵ Id. at 24.

¹⁶ Anti-Violence Against Women, and their Children Act of 2004.

¹⁷ Records, p. 24.

¹⁸ Id. at 22.

¹⁹ Id. at 25-44.

²⁰ Id. at 25-26.

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 2005-2012²⁴ 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 Order²⁶ 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 PPO²⁸ 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 ₱100,000.00.³¹

Aggrieved, Jay elevated the case to the CA³² 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

²¹ Id. at 26-27.

²² Id. at 29-30.

²³ Id. at 30-31.

²⁴ Id. at 49-55.

²⁵ Id. at 41-42.

²⁶ Id. at 131.

²⁷ Id.

²⁸ Id. at 192-194.

²⁹ Id. at 194.

³⁰ Id. at 192-193.

³¹ Id. at 194.

³² CA *rollo*, p. 10.

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-à-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

³³ Id. at 20.

³⁴ *Rollo*, p. 36.

³⁵ Id. at 14-19.

³⁶ 809 Phil. 24 (2017).

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

³⁷ Id. at 58-60.

³⁸ *Ellice Agro-Industrial Corporation v. Young*, 699 Phil. 48, 58-59 (2012).

³⁹ *Manotoc v. Court of Appeals*, 530 Phil. 454, 467 (2006) citing *Domagas v. Jensen*, 489 Phil. 631 (2005), citing *Lam v. Rosillosa*, 86 Phil. 447 (1950).

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 Sheriff's 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 know [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 Regional Trial Court of Makati City, Branch 136, and he received a copy of the Court Order and the Petition for his client.

WHEREFORE, the herein Summons and Temporary Protection Order are hereby returned to this Honorable Court of origin for its record and information.⁴¹

However, records show that Jay was out of the country from August 7, 2012 to January 5, 2013 due to his overseas employment. Since personal service could not be effected upon him, summons should be served through substituted service, extraterritorial service, or by publication in accordance with Sections 7, 15 and 16, Rule 14 of the Rules of Court:

Section 7. Substituted service. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

Section 15. Extraterritorial service. — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in

⁴⁰ RULES OF COURT, Sec. 18, Rule 14.

⁴¹ Records, p. 24.

excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, **by leave of court**, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

Section 16. Residents temporarily out of the Philippines. — When any action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service may, **by leave of court**, be also effected out of the Philippines, as under the preceding section. (Emphases supplied)

Notably, none of these modes of service were resorted to by Tina. While the CA is correct in quoting *GCP-Manny Transport Services, Inc. v. Prinsipe*⁴² that notice to counsel is equivalent to notice to client, the very same case also states that it is **notice sent to counsel of record** which is binding upon the client.⁴³ In the case at hand, Atty. Palmero was Jay's counsel in a separate criminal case filed against the latter for violation of RA 9262 pending at that time before Branch 140 of the RTC of Makati. Therefore, Jay had no counsel of record yet with Branch 136 of the RTC of Makati at the time Atty. Palmero received the copy of the order and TPO.

Granting *arguendo* that Jay knew of the pending TPO case against him, whether through Atty. Palmero or another person, the requirement of summons cannot be dispensed with. Jurisdiction over the person of the defendant cannot be acquired notwithstanding his knowledge of the pendency of a case against him, unless he was validly served with summons.⁴⁴ Thus, serving the order and TPO to Atty. Palmero cannot be considered a valid service of summons.

However, We note that Jay voluntarily submitted himself to the jurisdiction of the trial court when he filed the Entry of Appearance with Opposition to the Issuance of the Permanent Protection Order on January 17, 2013. By seeking affirmative relief in his opposition without objecting to the jurisdiction of the trial court, he thereby voluntarily submitted to its jurisdiction.⁴⁵

In effect, this cured the invalid service of summons. In a catena of cases, this Court has ruled that voluntary appearance by the defendant results to his

⁴² 511 Phil. 176 (2005).

⁴³ *Id.*, citing *Mercury Drug Corp. vs. Court of Appeals*, 390 Phil. 702 (2000).

⁴⁴ *Ellice Agro-Industrial Corporation v. Young*, supra note 38 at 60; *Cezar v. Judge Ricafort-Bautista*, 536 Phil. 1037, 1046 (2006); *United Coconut Planters Bank v. Ongpin*, 420 Phil. 538, 547 (2001);

⁴⁵ *Alvarez v. The Former 12th Division, Court of Appeals*, G.R. No. 192472, June 3, 2019.

submission to the court's jurisdiction.⁴⁶ In *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*,⁴⁷ we held that:

There is voluntary appearance when a party, without directly assailing the court's lack of jurisdiction, seeks affirmative relief from the court. When a party appears before the court without qualification, he or she is deemed to have waived his or her objection regarding lack of jurisdiction due to improper service of summons. When a defendant, however, appears before the court for the specific purpose of questioning the court's jurisdiction over him or her, this is a special appearance and does not vest the court with jurisdiction over the person of the defendant. (Emphasis supplied; citations omitted)

*Frias v. Alcayde*⁴⁸ instructs that -

When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. This is not, however, always the case. Admittedly, and without subjecting himself to the court's jurisdiction, the defendant in an action can, by special appearance object to the court's assumption on the ground of lack of jurisdiction. **If he so wishes to assert this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court, otherwise, he shall be deemed to have submitted himself to that jurisdiction.** (Emphases supplied)

Moreover, *Navale v. Court of Appeals*,⁴⁹ holds that:

Defects of summons are cured by voluntary appearance and by the filing of an answer to the complaint. A defendant [cannot] be permitted to speculate upon the judgment of the court by objecting to the court's jurisdiction over its person if the judgment is adverse to it, and acceding to jurisdiction over its person if and when the judgment sustains its defense.

Clearly, the trial court acquired jurisdiction over Jay through his voluntary appearance when he sought the lifting of the TPO and the denial of the issuance of PPO in his opposition, without raising the issue of lack of jurisdiction over his person. By such conduct, he can no longer subsequently object to the court's jurisdiction.

WHEREFORE, the petition is hereby **DENIED** for lack of merit. The assailed May 29, 2014 Decision of the Court of Appeals in CA-G.R. CV No. 100631, affirming the January 30, 2013 Decision and Permanent Protection Order of the Regional Trial court, Branch 136 of Makati City in Civil Case No. 12-963 which ordered petitioner Jay Villanueva Sabado to stay away from respondent Tina Marie L. Sabado at a distance of 200 meters and to grant monthly support of ₱100,000.00 to Tina and their minor children, is **AFFIRMED**. Costs on petitioner.

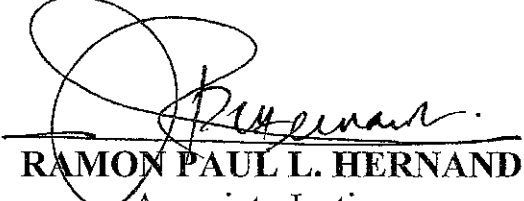
⁴⁶ *People's General Insurance Corporation v. Guansing*, G.R. No. 204759, November 14, 2018.

⁴⁷ *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, G.R. No. 201378, October 18, 2017.

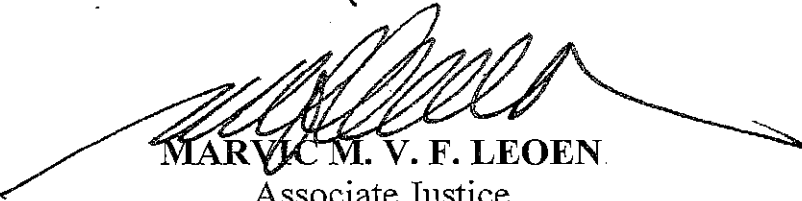
⁴⁸ *Frias v. Alcayde*, G.R. No. 194262, February 28, 2018 citing *Guiguinto Cooperative, Inc. (GUCCI) v. Torres*, 533 Phil. 476, 488-489 (2006).

⁴⁹ 324 Phil. 70 (1996) citing *Republic v. Ker & Company, Ltd.*, 124 Phil. 822 (1966).

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M. V. F. LEOAN
Associate Justice
Chairperson


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

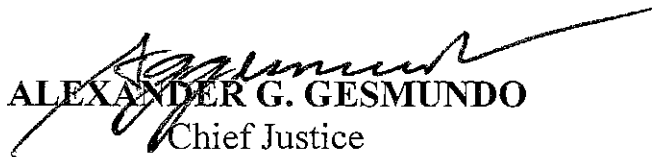


MARVIC M. V. F. LEONEN

Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO

Chief Justice