

SECOND DIVISION

[G.R. No. 181489, April 19, 2017]

**STEVEN R. PAVLOW, PETITIONER, VS. CHERRY L. MENDENILLA,
RESPONDENT.**

DECISION

LEONEN, J.:

The mother of a victim of acts of violence against women and their children is expressly given personality by Section 9(b)^[1] of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 (the Anti-VAWC Law), to file a civil action petitioning for the issuance of a protection order for her child. In filing such a petition, she avails of a remedy that is distinct from the criminal action under Section 5 of the same law.^[2] The mere filing of such a criminal complaint, without the subsequent filing of an information in court, does not occasion *litis pendentia* or *res judicata* that precludes the filing of a petition for the issuance of a protection order.

The Rules of Court suppletorily apply in proceedings relating to the Anti-VAWC Law. Among the provisions of the 1997 Rules of Civil Procedure that continue to govern proceedings under the Anti-VAWC Law are those on substituted service of summons. This was validly resorted to in this case, thereby enabling the Regional Trial Court to acquire jurisdiction over petitioner's person.

This resolves a Petition for Review on Certiorari^[3] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed October 17, 2007 Decision^[4] and January 25, 2008 Resolution^[5] of the Court of Appeals in CA-G.R. SP No. 94540 be reversed and set aside.

The assailed Court of Appeals Decision dismissed petitioner Steven R. Pavlow's (Pavlow) Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure. The Decision found no grave abuse of discretion on the part of Judge Natividad A. Giron-Dizon (Judge Giron-Dizon) of the Regional Trial Court of Quezon City, Branch 106 in her denial^[6] of petitioner's Omnibus Motion.^[7] Petitioner's Motion included a prayer to dismiss the Petition for Issuance of a Temporary Protection Order or Permanent Protection Order^[8] under the Anti-VAWC Law. This Petition for the issuance of a protection order was filed by respondent Cherry L. Mendenilla (Mendenilla), the mother of petitioner's wife, Maria Sheila Mendenilla Pavlow (Maria Sheila).

In denying petitioner's Omnibus Motion, Judge Giron-Dizon ruled that Mendenilla had personality to file a petition for the issuance of a protection order to benefit her daughter. It was equally ruled that Mendenilla did not engage in forum shopping^[9] despite the prosecutor's prior dismissal^[10] of a criminal complaint^[11] filed by Maria Sheila against petitioner for slight physical injuries and maltreatment in relation to the Anti-VAWC Law. Finally, it was established that jurisdiction over petitioner's person was properly acquired through substituted service.^[12]

On March 11, 2005, petitioner Pavlow, an American citizen and President of Quality Long Term Care of Nevada, Inc., married Maria Sheila, a Filipino, in civil rites in Quezon City. Thereafter, they cohabited as husband and wife.^[13]

Barely three (3) months into their marriage, on May 31, 2005, Maria Sheila filed a Complaint-Affidavit against Pavlow for slight physical injuries.^[14] On June 3, 2005, Maria Sheila filed an Amended Complaint-Affidavit^[15] to include maltreatment in relation to the Anti-VAWC Law as a ground.

Specifically, Maria Sheila alleged that she and Pavlow had fights on February 26, 2005 and on March 10, 2005 over a certain Diane, an employee of the Manila Peninsula Hotel.^[16] As Maria Sheila was told by Monette Tolentino (Tolentino) and Louise Cruz, two (2) of petitioner's employees in Quality Long Term Care of Nevada, Inc., Diane liked Pavlow and was sending him text messages and e-mails.^[17] Maria Sheila added that on March 15, 2005, she and Pavlow quarrelled over their loss of privacy and the intrusion into their affairs of the same employees.^[18] She further claimed that, on March 16, 2005, Pavlow hit her in the stomach and shouted at her for recounting her marital experiences to her mother, respondent Mendenilla, with Pavlow telling her that despite their recent marriage there was nothing to celebrate.^[19] She also recalled that, on April 16, 2005, she and Pavlow again clashed over the phone as regards the messages of one (1) of Steven's female employees, during which, Pavlow slapped her and hit her upper back.^[20] Maria Sheila also disclosed that Pavlow had been compelling her every night to take two (2) small

white tablets, which made her feel dizzy. She contended that she could not disobey petitioner for fear of being hit and maltreated.^[21]

On August 25, 2005, Makati Assistant City Prosecutor Romel S. Odronia (Assistant City Prosecutor Odronia) issued a resolution dismissing Maria Sheila's criminal complaint, holding that Maria Sheila failed to substantiate her allegations.^[22]

Following this, on August 26, 2015, Mendenilla filed with the Quezon City Regional Trial Court a Petition^[23] for Maria Sheila's benefit, praying for the issuance of a Temporary Protection Order or Permanent Protection Order under the Anti-VAWC Law. This Petition was docketed as Civil Case No. Q-05-56169.

In her petition, Mendenilla recalled the same ordeal recounted by Maria Sheila in her own criminal complaint. Mendenilla added that she had been aware of her daughter's ordeal and that on July 21, 2005, Maria Sheila was admitted to St. Agnes General Hospital for injuries borne by Pavlow's alleged acts of violence.^[24]

On August 31, 2005, Judge Giron-Dizon issued a Temporary Protection Order^[25] in favor of Maria Sheila. Issued along with this Order was a Summons^[26] addressed to Pavlow.

In a Sheriff's Report with Clarification dated September 8, 2005,^[27] Deputy Sheriff Arturo M. Velasco (Deputy Sheriff Velasco) recounted that when service of summons with the Temporary Protection Order attached was attempted on September 7, 2005, Pavlow was out of the country.^[28] Thus, summons was served instead through his employee, Tolentino, who also resided at Pavlow's own residence in Unit 1503, Grand Tower Condominium, 150 L.P. Leviste St., Makati City.^[29]

On September 13, 2005, Pavlow filed Omnibus Motions^[30] praying for the dismissal of Mendenilla's petition, the reconsideration of the issuance of the Temporary Protection Order, and the suspension of the enforcement of the Temporary Protection Order. He raised as principal ground the Regional Trial Court's supposed lack of jurisdiction over his person as summons was purportedly not properly served on him.^[31]

In the Order dated December 6, 2005,^[32] Judge Giron-Dizon denied Pavlow's motion to dismiss, reasoning that substituted service of summons sufficed since the case filed by Mendenilla was an action in personam because Pavlow was out of the country during the service of summons.^[33]

Following Judge Giron-Dizon's denial of Pavlow's motion for reconsideration, Pavlow filed a Petition for Certiorari^[34] before the Court of Appeals. He charged Judge Giron-Dizon with grave abuse of discretion in refusing to dismiss Mendenilla's Petition despite the alleged improper service of summons on him.^[35] Petitioner further reasoned that Mendenilla lacked personality to file her Petition^[36] and that her filing of a petition only after Assistant City Prosecutor Odronia dismissed Maria Sheila's criminal complaint was considered forum shopping.^[37]

In its assailed October 17, 2007 Decision,^[38] the Court of Appeals dismissed Pavlow's Petition for Certiorari. Likewise, the Court of Appeals denied Pavlow's motion for reconsideration in its assailed January 25, 2008 Resolution.^[39]

Hence, the present Petition for Review on Certiorari^[40] was filed.

This petition concerns substantially the same issues as those before the Court of Appeals:

First, whether respondent Cherry L. Mendenilla had personality to file a petition for the issuance of a protection order under Section 8 of the Anti-VAWC Law^[41] for the benefit of her daughter, Maria Sheila Mendenilla Pavlow;

Second, whether respondent Mendenilla engaged in forum shopping by filing a petition for the issuance of a protection order after a criminal complaint under the Anti-VAWC Law was dismissed by the prosecutor; and

Finally, whether summons was properly served on petitioner Steven R. Pavlow and jurisdiction over his person was validly acquired.

We sustain the ruling of the Court of Appeals and deny the Petition.

The mother of a victim of acts of violence against women and their children is expressly given personality to file a petition for the issuance of a protection order by Section 9(b) of the Anti-VAWC Law. However, the right of a mother and of other persons mentioned in Section 9 to file such a petition is suspended when the victim has filed a petition for herself. Nevertheless, in this case, respondent Mendenilla filed her petition after her daughter's complaint-affidavit had already been dismissed.

More basic, the filing of Maria Sheila's complaint-affidavit did not even commence proceedings on her own petition for the issuance of a protection order. Preliminary investigation, or proceedings at the level of the prosecutor, does not form part of trial. It is not a judicial proceeding that leads to the issuance of a protection order. Thus, the pendency and subsequent dismissal of Maria Sheila's Complaint-Affidavit did not engender the risk of either *litis pendentia* or *res judicata*, which would serve the basis of a finding of forum shopping by her mother.

I.A

Republic Act No. 9262 specifies three (3) distinct remedies available to victims of acts of "violence against women and their children":^[42] first, a criminal complaint; second, a civil action for damages; and finally, a civil action for the issuance of a protection order.

A criminal complaint may be resorted to when the act of violence against women and their children is committed through any, some, or all of the nine (9) means which Section 5 of the Anti-VAWC Law^[43] specifies as constitutive of "[t]he *crime* of violence against women and their children." If found guilty, the perpetrator shall suffer the penalties stipulated under Section 6,^[44] i.e., imprisonment and payment of a fine. In addition, he or she shall be made to undergo psychological counselling or psychiatric treatment.

A civil action for damages may be resorted to pursuant to Section 36 of the Anti-VAWC Law:

Section 36. Damages. - Any victim of violence under this Act shall be entitled to actual, compensatory, moral and exemplary damages.

Rule V, Section 35 of the Implementing Rules and Regulations of the Anti-VAWC Law^[45] states that when a criminal action is also available and is resorted to, "[t]he civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed."

A protection order is issued "for the purpose of preventing further acts of violence against a woman or her child . . . and granting other necessary relief;"^[46] thereby "safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life."^[47] If issued, it shall specify any, some, or all of the following reliefs:

- (a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;
- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, 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 to the residence, remain there until respondent has gathered his things and escort respondent from the residence;

- (d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by 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;
- (f) Granting a temporary or permanent custody of a child/ children to the petitioner;
- (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;
- (i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;
- (j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and
- (k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and

any designated family or household member consents to such relief.^[48]

Republic Act No. 9262 allows for the issuance of three (3) kinds of protection orders: a Barangay Protection Order, a Temporary Protection Order, and a Permanent Protection Order. A Barangay Protection Order is issued by a Punong Barangay or by a Barangay Kagawad.^[49] Temporary protection orders and permanent protection orders are judicial issuances obtained through trial courts.^[50]

As its name denotes, a temporary protection order is a provisional relief. It shall be effective for 30 days, following a court's "ex parte determination that such order should be issued."^[51] Within these 30 days, a hearing to determine the propriety of issuing permanent protection order must be conducted. The temporary protection order itself "shall include notice of the date of the hearing on the merits of the issuance of a [permanent protection order]." Following the conduct of a hearing, a permanent protection order may be issued and "shall be effective until revoked by a court upon application of the person in whose favor the order was issued."^[52]

I.B

Section 9 of the Anti-VAWC Law enumerates the persons who may apply for the issuance of a protection order:

Section 9. Who May File Petition for Protection Orders. - A petition for protection order may be filed by any of the following:

- (a) the offended party;
- (b) *parents or guardians of the offended party;*
- (c) ascendants, descendants or collateral relatives within the fourth civil degree of consanguinity or affinity;
- (d) officers or social workers of the DSWD or social workers of local government units (LGUs);
- (e) police officers, preferably those in charge of women and children's desks;
- (f) Punong Barangay or Barangay Kagawad;
- (g) lawyer, counselor, therapist or healthcare provider of the petitioner;
- (h) at least two (2) concerned responsible citizens of the city or municipality where the violence against women and their children occurred and who has personal knowledge of the offense committed. (Emphasis supplied)

As is clear from this enumeration, a petition for the issuance of protection order is not limited to the alleged victim herself. The victim's mother - as is the case with respondent Mendenilla - is explicitly given the capacity to apply for a

protection order for the benefit of her child. By this clear statutory provision, Mendenilla had the requisite personality to file a petition for the issuance of a protection order in favor of Maria Sheila.

I.C

Petitioner claims, however, that Maria Sheila's prior filing of a criminal complaint precluded Mendenilla's subsequent filing of a petition for the issuance of a protection order. He capitalizes on the second paragraph of Section 8, as well as on Section 33 of A.M. No. 04-10-11-SC,^[53] the procedural rules issued by this Court governing proceedings under the Anti-VAWC Law.

Section 8 of A.M. No. 04-10-11-SC reads:

Section 8. Who may file petition. — A petition for protection order may be filed by any of the following:

- (a) The offended party;
- (b) Parents or guardians of the offended party;
- (c) Ascendants, descendants or collateral relatives of the offended party within the fourth civil degree of consanguinity or affinity;
- (d) Officers or social workers of the Department of Social Welfare and Development (DSWD) or social workers of local government units (LGUs);
- (e) Police officers, preferably those in charge of women and children's desks;
- (f) Punong Barangay or Barangay Kagawad;
- (g) lawyer, counselor, therapist or healthcare provider of the petitioner; or
- (h) At least two concerned, responsible citizens of the place where the violence against women and their children occurred and who have personal knowledge of the offense committed.

The filing of a petition for protection order by the offended party suspends the right of all other authorized parties to file similar petitions. A petition filed by the offended party after the filing of a similar petition by an authorized party shall not be dismissed but shall be consolidated with the petition filed earlier. (Emphasis supplied)

Section 33 of A.M. No. 04-10-11-SC reads:

Section 33. When petition may proceed separately from or be deemed instituted with criminal action. — (a) An offended party may file a petition for protection order ahead of a criminal action arising from the same act. The same shall proceed separately from the criminal action and shall require only a preponderance of evidence. Upon motion of

the petitioner, the court may consolidate the petition with the criminal action.

(b) *Where the offended party chooses to file a criminal action, the petition for protection order is deemed instituted with the criminal action, unless the offended party reserves the right to institute it separately.* (Emphasis supplied)

Petitioner proceeds to argue that Mendenilla's filing of a separate petition supposedly anchored on the same factual premises, and seeking the same reliefs as those of the criminal complaint filed by Maria Sheila is an act of forum-shopping. He, therefore, claims that Mendenilla's petition should have been dismissed.

I.D

Petitioner's conclusions are misplaced.

The word used by Section 8 is "suspend." To suspend is to momentarily, temporarily, or provisionally hold in abeyance. It is not to perpetually negate, absolutely cancel, or otherwise obliterate. The right of persons other than the victim to file a petition for the issuance of a protection order therefore persists; albeit, they may not exercise such right for as long as the petition filed by the victim subsists.

Mendenilla's petition for the issuance of a protection order was filed with the Quezon City Regional Trial Court after Assistant City Prosecutor Odronia had already dismissed Maria Sheila's complaint for slight physical injuries and maltreatment under the Anti-VAWC Law. Thus, even if Maria Sheila's Complaint came with a petition for the issuance of a protection order and even as Section 8 of A.M. No. 04-10-11-SC stipulates the suspension of other people's right to file petitions for the issuance of a protection order, this suspension is rendered inefficacious by the remission of Maria Sheila's prior petition. Stated otherwise, there was no longer a prior petition to compel a suspension.

I.E

Petitioner's position, however, fails to account for an even more fundamental and pivotal detail: Assistant City Prosecutor Odronia's dismissal of the complaint-affidavit filed by Maria Sheila came as a result of a preliminary investigation. This meant that, to begin with, there was not even a prior judicial proceeding which could lead to the issuance of a protection order. The criminal action in which Maria Sheila would have been deemed to have impliedly instituted her own petition for the issuance of a protection order did not even commence.

Jurisprudence has long settled that preliminary investigation does not form part of trial.^[54] Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function.^[55] It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication.^[56]

The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment."^[57] As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata* — actual or looming as to bar one (1) of several proceedings on account of *litis pendentia* — as to bar Mendenilla's petition for being an act of forum shopping.

Res judicata is the conceptual backbone upon which forum shopping rests. *City of Taguig v. City of Makati*,^[58] explained in detail the definition of forum shopping, how it is committed, and the test for determining if it was committed. This test relies on two (2) alternative propositions: *litis pendentia* and *res judicata*. Even then, *litis pendentia* is itself a concept that merely proceeds from the concept of *res judicata*:

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation explained that:

Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

....

Jurisprudence has recognized that forum shopping can be committed in several ways:

(1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). (Emphasis in the original)

....

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action.^[59] (Citations omitted)

Encinas v. Agustin^[60] explained how a ruling in an investigative exercise - such as fact-finding investigations and preliminary investigation - could not be the basis of *res judicata*, or of forum shopping. Its exhaustive and extensive discussion is worth quoting at length:

[W]e rule that the dismissal of the BFP Complaint does not constitute *res judicata* in relation to the CSCRO Complaint. Thus, there is no forum-shopping on the part of respondents.

....

In order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be between the first and the second actions (i) identity of parties, (ii) identity of subject matter, and (iii) identity of cause of action.

A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections;" or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."

In this case, there is no "judgment on the merits" in contemplation of the definition above. The dismissal of the BFP Complaint in the Resolution dated 05 July 2005 was the result of a fact-finding investigation for purposes of determining whether a formal charge for an administrative offense should be filed. Hence, no rights and liabilities of parties were determined therein with finality.

The [Court of Appeals] was correct in ruling that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers. Administrative powers here refer to those purely administrative in nature, as opposed to administrative proceedings that take on a quasi-judicial character.

In administrative law, a quasi-judicial proceeding involves (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved. The exercise of quasi-judicial functions involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties ...

....

The Court has laid down the test for determining whether an administrative body is exercising judicial or merely investigatory functions: adjudication signifies the exercise of the power and authority to adjudicate upon the rights and obligations of the parties. Hence, if the only purpose of an investigation is to evaluate the evidence submitted to an agency based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.

In this case, an analysis of the proceedings before the BFP yields the conclusion that they were purely administrative in nature and constituted a fact-finding investigation for purposes of determining whether a formal charge for an administrative offense should be filed against petitioner.

....

The proceedings before the BFP were merely investigative, aimed at determining the existence of facts for the purpose of deciding whether to proceed with an administrative action. ***This process can be likened to a public prosecutor's preliminary investigation, which entails a determination of whether there is probable cause to believe that the accused is guilty, and whether a crime has been committed.***

The ruling of this Court in *Bautista v. Court of Appeals* is analogously applicable to the case at bar. In that case, we ruled that the preliminary investigation conducted by a public prosecutor was merely inquisitorial and was definitely not a quasi-judicial proceeding:

A closer scrutiny will show that preliminary investigation is very different from other quasi-judicial proceedings. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."

....

On the other hand, ***the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication*** nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. ***It is not a trial of the case on the merits*** and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal. (Emphases supplied)

This principle is further highlighted in *MERALCO v. Atilano*, in which this Court clearly reiterated that a public prosecutor, in conducting a preliminary investigation, is not exercising a quasi-judicial function. In a preliminary investigation, the public prosecutor inspects the records and premises, investigates the activities of persons or entities coming under the formers' jurisdiction, or secures or requires the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents. In contrast, judicial adjudication signifies the exercise of power and authority to adjudicate upon the rights and obligations of concerned parties, *viz.*:

This is reiterated in our ruling in *Spouses Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City*, where we pointed out that a preliminary investigation is not a quasi-judicial proceeding, and the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the

presence of probable cause. A quasi-judicial agency performs adjudicatory functions when its awards determine the rights of parties, and its decisions have the same effect as a judgment of a court. [This] is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice [reviews] the former's order[s] or resolutions on determination of probable cause.

In *Odchigue-Bondoc*, we ruled that when the public prosecutor conducts preliminary investigation, he thereby exercises investigative or inquisitorial powers. Investigative or inquisitorial powers include the powers of an administrative body to inspect the records and premises, and investigate the activities of persons or entities coming under his jurisdiction, or to secure, or to require the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents. This power is distinguished from judicial adjudication which signifies the exercise of power and authority to adjudicate upon the rights and obligations of concerned parties. Indeed, it is the exercise of investigatory powers which sets a public prosecutor apart from the court. (Emphasis supplied)^[61] (Emphasis supplied, citations omitted)

Although the prosecutor's dismissal of a criminal complaint does not give rise to *res judicata* vis-a-vis subsequent civil and quasi-judicial proceedings, neither does it engender double jeopardy - so-called "res judicata in prison grey" — should the alleged perpetrator's criminal liability still be subsequently pursued. In *Trinidad v. Marcelo*:^[62]

Petitioner's arguments — that *res judicata* applies since the Office of the Ombudsman twice found no sufficient basis to indict him in similar cases earlier filed against him, and that the *Agan* cases cannot be a supervening event or evidence *per se* to warrant a reinvestigation on the same set of facts and circumstances — do not lie.

Res judicata is a doctrine of civil law and thus has no bearing on criminal proceedings.

But even if petitioner's argument were to be expanded to contemplate "res judicata in prison grey" or the criminal law concept of double jeopardy, this Court still finds it inapplicable to bar the reinvestigation conducted by the Office of the Ombudsman. For the dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.^[63] (Citations omitted)

Likewise, in *Jamaca v. People*:^[64]

It should be borne in mind that for a claim of double jeopardy to prosper, petitioner has to prove that a first jeopardy has attached prior to the second. As stated in *Braza v. Sandiganbayan*, "[t]he first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent." In this case, the complaint before the Office of the Deputy Ombudsman for the Military was dismissed as early as the preliminary investigation stage, thus, there was as yet, no indictment to speak of. No complaint or information has been brought before a competent court. Hence, none of the aforementioned events has transpired for the first jeopardy to have attached.

In *Vincoy v. Court of Appeals*, which is closely analogous to the present case, the private complainant therein initially filed a complaint with the Office of the City Prosecutor of Pasay City, but said office dismissed the complaint. Private complainant then re-filed the complaint with the Office of the City Prosecutor of Pasig City. The Office of the Prosecutor of Pasig City found probable cause and filed the Information against the accused therein. In said case, the Court categorically held that:

The dismissal of a similar complaint . . . filed by [private complainant] before the City Prosecutor's Office of Pasay City will not exculpate the petitioner. The case cannot bar petitioner's prosecution. It is settled that the dismissal of a case during its preliminary investigation does not constitute double jeopardy since a preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties' evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof. For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal.^[65] (Citations omitted)

As deftly noted both by Judge Giron-Dizon and the Court of Appeals, it was not within the prosecutor's competence to issue or to direct the issuance of a protection order. Assistant City Prosecutor Odronia could not have adjudicated the parties' rights and obligation. That is, he was not in a position to rule on Maria Sheila's right to be protected or on petitioner's duty to desist from acts of violence:

Another allegation in the omnibus motion ... is that, plaintiff is engaged in forum-shopping which merits the dismissal of the petition because there is a pending criminal complaint for violation of R.A. 9262 with the City Prosecutor's Office of Makati City, which is docketed as I.S. No. 05E-6413 and handled by Asst. City Prosecutor [Rommel Odronia]. The said criminal complaint involves the same parties and the same issue.

The Court is not persuaded. Granting *arguendo* that violation of R.A. 9262 is included in the criminal complaint; the Asst. City Prosecutor is devoid of power to issue a Temporary Protection Order. Consequently, the aggrieved party in R.A. 9262 would have no other immediate recourse but to file a TPO before the court.^[66]

Failing in the most basic requisites of forum shopping — there not having been an actual or potential final judgment on the merits rendered by a competent court in the course of criminal proceedings - petitioner's allegations regarding respondent Mendenilla's alleged lack of personality to file suit and forum shopping must fail.

II

Petitioner further assails the manner of service of summons. He claims that service of summons upon his employee, Tolentino, at Unit 1503, Grand Tower Condominium, 150 L.P. Leviste St., Makati City,^[67] while he was out of the country was ineffectual and failed to vest jurisdiction over his person in the Regional Trial Court.

He theorizes that in cases where a temporary protection order is issued *ex parte* by a trial court, the temporary protection order itself is the summons.^[68] He adds that Section 15 of the Anti-VAWC Law and Section 15 of A.M. No. 04-10-11-SC stipulate personal service — and absolutely no other means of service — of the temporary protection order upon the respondent.^[69] Thus, service through Tolentino was ineffectual.

II.A

Petitioner's overly pedantic appreciation of the Anti-VAWC Law and of A.M. No. 04-10-11-SC is grossly erroneous. The non-use of the precise term "summons" in the Anti-VAWC Law, its Implementing Rules and Regulations, and its procedural rules provided in A.M. No. 04-10-11-SC does not justify the equation of a temporary protection order with summons and the exclusion of the use of summons.

The nature and purpose of summons is markedly different from those of a protection order. This prevents the latter from being a substitute for the former.

Summons is a procedural tool. It is a writ by which the defendant is notified that an action was brought against him or her.^[70] 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.^[71]

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."^[72] Protection orders issued by courts come in two (2) forms: temporary and permanent. The distinction, as their respective names denote, is their duration. A temporary protection order is provisional, whereas a permanent protection order is lasting or final.

When a case is of particular urgency, a trial court may *ex parte* issue a temporary protection order, granting the reliefs under Section 8 of the Anti-VAWC Law in the interim, that is, for a 30-day period.^[73] Precisely because the case is of such particular urgency that a temporary protection order is deemed necessary. Section 15 of the Anti-VAWC Law includes a stipulation that the temporary protection order must be immediately personally served on the respondent. It provides, "The court shall order the immediate personal service of the [temporary protection order] on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service."

To determine whether the temporary protection order should be made permanent and a complete, substantive relief extended to the alleged victim, Section 15 of the Anti-VAWC Law mandates the conduct of hearing within the 30-day effectivity of the temporary protection order. The clear and specific singular purpose of the hearing is manifest in Section 15: "[t]he court shall schedule a hearing *on the issuance of a [permanent protection order]* prior to or on the date of the expiration of the [temporary protection order]." Because a hearing is to be conducted, the respondent must necessarily be informed. Thus, Section 15 further states that, "[t]he [temporary protection order] shall include

notice of the date of the hearing on the merits of the issuance of a [permanent protection order]."

Clearly then, summons 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.

II.B

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.

Petitioner, though an American citizen, was admittedly a resident of the Philippines as of September 7, 2005, the date when Deputy Sheriff Velasco attempted to personally serve summons on him.^[74] On September 7, 2005, however, he was not in the Philippines. It was this circumstance which, according to the Sheriff's Report,^[75] impelled substituted service of summons through Tolentino.

Rule 14, Section 6 of the 1997 Rules of Civil Procedure clearly articulates a preference for personal service of summons:

Section 6. Service in person on defendant. - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Rule 14, Section 6 recognizes two (2) alternative ways through which personal service may be effected: first, by actually handing summons to the defendant, which presupposes the defendant's willingness to accept the summons; and second, by mere tender, if the defendant refuses to accept.

If personal service is impracticable within a reasonable time, substituted service may be resorted to in lieu of personal service. Rule 14, Section 7 states:

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.

In the case of residents who are temporarily not in the Philippines, another alternative means for serving summons is through extraterritorial service. Rule 14, Section 16 states:

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.

The preceding Section 15 spells out the terms of extraterritorial service:

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 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.

II.C

Jurisprudence has long settled that, with respect to residents temporarily out of the Philippines, the availability of extraterritorial services does not preclude substituted service. Resort to substituted service has long been held to be fair, reasonable and just. This Court has noted that a contrary, restrictive view is that which defeats the ends of justice. It has been emphasized that residents who temporarily leave their residence are responsible for ensuring that their affairs are in order, and that, upon their return, they shall attend to exigencies that may have arisen.

In *Montalban v. Maximo*.^[76]

This brings us to the question of procedural due process. Substituted service . . . upon a temporarily absent resident, it has been held, is wholly adequate to meet the requirements of due process. The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.

....

Chief Justice Moran shares this view. Commenting on Section 18, Rule 14, he states: "Since the defendant is residing in the Philippines, jurisdiction over his person may be acquired by Philippine courts by substituted service of summons under section 8. But extraterritorial service is allowed also by leave of court according to the above provision [Section 18]." Justice Martin regards the word "residence" in Section 8 as "the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the state at the time."

This construction is but fair. It is in accord with substantial justice. The burden on a plaintiff is not to be enlarged with a restrictive construction as desired by defendant here. Under the rules, a plaintiff, in the initial stage of suit, is merely required to know the defendant's "dwelling house or residence" or his "office or regular place of business" — and no more. He is not asked to investigate where a resident defendant actually is, at the precise moment of filing suit. Once defendant's dwelling house or residence or office or regular place of business is known, he can expect valid service of summons to be made on "some person of suitable age and discretion then residing" in defendant's dwelling house or residence, or on "some competent person in charge" of his office or regular place of business. By the terms of the law, plaintiff is not even duty-bound to see to it that the person upon whom service was actually made delivers the summons to defendant or informs him about it. The law presumes that for him.

It is immaterial then that defendant does not in fact receive actual notice. This will not affect the validity of the service. *Accordingly, the defendant may be charged by a judgment in personam as a result of legal proceedings upon a method of service which is not personal, "which in fact may not become actual notice to him," and which may be accomplished in his lawful absence from the country.* For, the rules do not require that papers be served on defendant personally or a showing that the papers were delivered to defendant by the person with whom they were left.

Reasons for the views just expressed are not wanting. A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business associates information as to where he may be contacted in the event a question that affects him crops up. *If he does not do what is expected of him, and a case comes up in court against him, he cannot in justice raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from, being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business.*

Not that he cannot be reached within a reasonable time to enable him to contest a suit against him. There are now advanced facilities of communication. Long distance telephone calls and cablegrams make it easy for one he left behind to communicate with him.

In the light of the foregoing, we find ourselves unwilling to concede that substituted service ... may be down-graded as an ineffective means to bring temporarily absent residents within the reach of our courts.^[77] (Emphasis supplied, citations omitted)

We see no reason for holding as ineffectual the substituted service of summons, which was recounted in the Sheriff's Report dated September 8, 2005.

Rule 14, Section 7 stipulates that substituted service may be resorted to "[i]f, for justifiable causes, the defendant cannot be [personally] served within a reasonable time."

This case pertains to alleged acts of violence against a woman. Petitioner was alleged to have physically and psychologically assaulted his wife, Maria Sheila, on multiple occasions. Maria Sheila was noted to have had to be confined in a medical facility on account of petitioner's assaults. Maria Sheila's mother found herself having to intervene to protect her daughter. The totality of these entails an urgency which, by statute, justifies the issuance of a temporary protection order even as the respondent to Mendenilla's petition was yet to be heard. This is an urgency, which the Regional Trial Court actually found to be attendant as it did, in fact, issue a temporary protection order.

Time was of the essence. The exigencies of this case reveal a backdrop of justifiable causes and how, by the convenience of petitioner Steven Pavlow's temporary absence, immediate personal service was rendered impossible. These exigencies justified substituted service of summons upon petitioner during his temporary absence through Monette Tolentino, a person of suitable age and discretion, who also resided at petitioner's own residence. Jurisdiction over petitioner's person was then validly acquired, and the dismissal of respondent Cherry L. Mendenilla's petition on this score was correctly held by Judge Natividad Giron-Dizon to be unwarranted.

WHEREFORE, the Petition is **DENIED**. The assailed October 17, 2007 Decision and January 25, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 94540 are **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

^[1] Rep. Act No. 9262, sec. 9 provides:

Section 9. Who May File Petition for Protection Orders. — A petition for protection order may be filed by any of the following:

....

(b) parents or guardians of the offended party[.]

^[2] Rep. Act No. 9262, sec. 5 provides:

Section 5. Acts of Violence Against Women and Their Children. - The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;

- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or her child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
 - (1) Threatening to deprive or actually depriving the woman or her child of custody or access to her/his family;
 - (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - (3) Depriving or threatening to deprive the woman or her child of a legal right;
 - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
 - (1) Stalking or following the woman or her child in public or private places;
 - (2) Peering in the window or lingering outside the residence of the woman or her child;
 - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
 - (5) Engaging in any form of harassment or violence;
- (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

^[3] *Rollo*, pp. 10-55.

^[4] Id. at 60-87. The Decision was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Mario L. Guarina III and Japar B. Dimaampao of the Sixteenth Division, Court of Appeals, Manila.

^[5] Id. at 89-90. The Resolution was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle of the Former Sixteenth Division, Court of Appeals, Manila.

^[6] Id. at 187-193. Order.

^[7] Id. at 183-186.

^[8] Id. at 148-167.

^[9] Id. at 191.

^[10] Id. at 144-147. Resolution.

^[11] Id. at 91-95.

^[12] Id. at 189-191.

^[13] Id. at 61-62.

^[14] Id. at 62.

^[15] Id. at 91-95.

^[16] Id. at 92-93.

^[17] Id.

^[18] Id. at 93.

^[19] Id.

^[20] Id.

^[21] Id. at 94.

^[22] Id. at 65-66.

^[23] Id. at 148-167.

^[24] Id. at 151.

^[25] Id. at 176-180.

^[26] Id. at 175.

^[27] Id. at 181-182.

^[28] Id. at 19-20.

^[29] Id. at 181 and 81.

^[30] Id. at 183-186.

^[31] Id. at 183.

[32] Id. at 187-193.

[33] Id. at 189-190.

[34] Id. at 205-248.

[35] Id. at 216-229.

[36] Id. at 241-245.

[37] Id. at 229-241.

[38] Id. at 60-87.

[39] Id. at 89-90.

[40] Id. at 10-55.

[41] Section 8. Protection Orders. - A protection order is an order issued under this Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 5 of this Act and granting other necessary relief. The relief granted under a protection order should serve the purpose of safeguarding the victim from further harm, minimizing any disruption in the victim's daily life, and facilitating the opportunity and ability of the victim to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection orders that may be issued under this Act are the barangay protection order (BPO), temporary protection order (TPO) and permanent protection order (PPO). The protection orders that may be issued under this Act shall include any, some or all of the following reliefs:

- (a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts mentioned in Section 5 of this Act;
- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, 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 to the residence, remain there until respondent has gathered his things and escort respondent from the residence;
- (d) Directing the respondent to stay away from petitioner and any designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by 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;
- (f) Granting a temporary or permanent custody of a child/children to the petitioner;

- (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer and for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;
- (i) Restitution for actual damages caused by the violence inflicted, including, but not limited to, property damage, medical expenses, childcare expenses and loss of income;
- (j) Directing the DSWD or any appropriate agency to provide petitioner temporary shelter and other social services that the petitioner may need; and
- (k) Provision of such other forms of relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member, provided petitioner and any designated family or household member consents to such relief.

Any of the reliefs provided under this section shall be granted even in the absence of a decree of legal separation or annulment or declaration of absolute nullity of marriage.

The issuance of a BPO or the pendency of an application for BPO shall not preclude a petitioner from applying for, or the court from granting a TPO or PPO.

^[42] Defined in Section 3(a) of Rep. Act No. 9262, as follows:

Section. 3. Definition of Terms. - As used in this Act, (a) "Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

- A. "Physical violence" refers to acts that include bodily or physical harm;
- B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:
 - a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

- b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;
- c) Prostituting the woman or her child.
- C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and marital infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.
- D. "Economic abuse" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:
 1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
 2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
 3. destroying household property;
 4. controlling the victim's own money or properties or solely controlling the conjugal money or properties.

^[43] Rep. Act No. 9262, sec. 5 provides:

Section 5. Acts of Violence Against Women and Their Children. — The crime of violence against women and their children is committed through any of the following acts:

- (a) Causing physical harm to the woman or her child;
- (b) Threatening to cause the woman or her child physical harm;
- (c) Attempting to cause the woman or her child physical harm;
- (d) Placing the woman or her child in fear of imminent physical harm;
- (e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or her child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
 - (1) Threatening to deprive or actually depriving the woman or her child of custody or access to

her/his family;

- (2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
 - (3) Depriving or threatening to deprive the woman or her child of a legal right;
 - (4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;
- (f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
- (g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
- (h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
- (1) Stalking or following the woman or her child in public or private places;
 - (2) Peering in the window or lingering outside the residence of the woman or her child;
 - (3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
 - (4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
 - (5) Engaging in any form of harassment or violence;
- (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

^[44] Republic Act No. 9262, sec. 6 provides:

Section. 6. Penalties. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

(a) Acts falling under Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code. If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prision mayor; those constituting less serious physical injuries shall be punished by prision correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two (2) degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

- (b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;
- (c) Acts falling under Section 5(e) shall be punished by prision correccional;
- (d) Acts falling under Section 5(f) shall be punished by arresto mayor;
- (e) Acts falling under Section 5(g) shall be punished by prision mayor;
- (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in this section. In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than Three hundred thousand pesos (P300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

^[45] Rep. Act No. 9262, sec. 35 provides:

Section 35. Damages. - Any victim-survivor of violence under the Act shall be entitled to actual, compensatory, moral and exemplary damages.

The civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed.

^[46] Rep. Act No. 9262, sec. 8.

^[47] Rep. Act No. 9262, sec. 8.

^[48] Rep. Act No. 9262, sec. 8.

^[49] Rep. Act No. 9262, sec. 14 provides:

Section 14. Barangay Protection Orders (BPOs); Who May Issue and How. - Barangay Protection Orders (BPOs) refer to the protection order issued by the Punong Barangay ordering the perpetrator to desist from committing acts under Section 5(a) and (b) of this Act. A Punong Barangay who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after ex parte determination of the basis of the application. If the Punong Barangay is unavailable to act on the application for a BPO, the application shall be acted upon by any available Barangay Kagawad. If the BPO is issued by a Barangay Kagawad, the order must be accompanied by an attestation by the Barangay Kagawad that the Punong Barangay was unavailable at the time for the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an ex parte BPO, the Punong Barangay or Barangay Kagawad shall personally serve a copy of the same on the respondent, or direct any barangay official to effect its personal service.

The parties may be accompanied by a non-lawyer advocate in any proceeding before the Punong Barangay.

^[50] The second sentence of Section 10 of Rep. Act No. 9262 states: "An application for a TPO or PPO may be filed in the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court with territorial jurisdiction over the place of residence of the petitioner: Provided, however, That if a family court exists in the place of residence of the petitioner, the application shall be filed with that court."

^[51] Rep. Act No. 9262, sec. 15 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 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.

[52] Rep. Act No. 9262, sec. 16.

[53] Rule on Violence Against Women and Their Children, (2004).

[54] *Trinidad v. Marcelo*, 564 Phil. 382, 389 (2007) [Per J. Carpio-Morales, En Banc].

[55] *Encinas v. Agustin*, 709 Phil. 236, 257 (2013) [Per C.J. Sereno, En Banc].

[56] *Id.*

[57] *Apolinario v. Flores*, 541 Phil. 108, 118 (2007) [Per J. Carpio, Second Division].

[58] *City of Taguig v. City of Makati*, G.R. No. 208393, June 15, 2016 [Per J. Leonen, Second Division].

[59] *Id.*

[60] *Encinas v. Agustin*, 709 Phil. 236 (2013) [Per C.J. Sereno, En Banc].

[61] *Id.* at 254-260.

[62] *Trinidad v. Marcelo*, 564 Phil. 382 (2007) [Per J. Carpio-Morales, En Banc].

[63] *Id.* at 389.

[64] G.R. No. 183681, July 27, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/183681.pdf>> [Per J. Peralta, Third Division].

[65] *Id.* at 4-5.

[66] *Rollo*, p. 84. The Assistant City Prosecutor's name was mistakenly typed as "Rommel Ordonio."

[67] *Id.* at 181 and 81.

[68] *Id.* at 29.

[69] *Id.* at 27-30.

[70] *Cano-Gutierrez v. Gutierrez*, 395 Phil. 903, 910 (2000) [Per J. Kapunan, First Division]; *Guanzon v. Arradaza*, 539 Phil. 367, 374 (2006) [Per J. Chico-Nazario, First Division].

[71] *Umandap v. Sabio*, 393 Phil. 657, 663 (2000) [Per J. Gonzaga-Reyes, Third Division]. Cf. actions in rem or quasi in rem where what is imperative is jurisdiction over the res. In these actions, service of summons upon the defendant primarily serves the interest of due process, and not so much the purpose of acquiring jurisdiction over his or her person.

[72] Rep. Act No. 9262, sec. 8.

[73] Rep. Act No. 9262, sec. 15.

[74] *Rollo*, p. 81.

[75] *Id.* at 181-182.

[76] 131 Phil. 154 (1968) [Per J. Sanchez, En Banc].

[77] Id. at 162-165.