

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 170701

January 22, 2014

RALPH P. TUA, Petitioner,

vs.

HON. CESAR A. MANGROBANG, Presiding Judge, Branch 22, Regional Trial Court, Imus, Cavite; and **ROSSANA HONRADO-TUA**, Respondents.

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on certiorari which seeks to annul the Decision¹

dated October 28, 2005 of the Court of Appeals (CA) issued in CA-G.R. SP No. 89939.

On May 20, 2005, respondent Rossana Honrado-Tua (respondent) filed with the Regional Trial Court (RTC) of Imus, Cavite a Verified Petition² for herself and in behalf of her minor children, Joshua Raphael, Jesse Ruth Lois, and J ezreel Abigail, for the issuance of a protection order, pursuant to Republic Act (RA) 9262 or the Anti-Violence Against Women and their Children Act of 2004, against her husband, petitioner Ralph Tua. The case was docketed as Civil Case No. 0464-05 and raffled-off to Branch 22. Respondent claimed that she and her children had suffered from petitioner's abusive conduct; that petitioner had threatened to cause her and the children physical harm for the purpose of controlling her actions or decisions; that she was actually deprived of custody and access to her minor children; and, that she was threatened to be deprived of her and her children's financial support.

Respondent and petitioner were married on January 10, 1998 in Makati City. They have three children, namely, Joshua Raphael born on February 9, 1999, Jesse Ruth Lois, born on June 27, 2000, and Jezreel Abigail, born on December 25, 2001. In her Affidavit³ attached to the petition, respondent claimed, among others, that: there was a time when petitioner went to her room and cocked his gun and pointed the barrel of his gun to his head as he wanted to convince her not to proceed with the legal separation case she filed; she hid her fears although she was scared; there was also an instance when petitioner fed her children with the fried chicken that her youngest daughter had chewed and spat out; in order to stop his child from crying, petitioner would threaten him with a belt; when she told petitioner that she felt unsafe and insecure with the latter's presence and asked him to stop coming to the house as often as he wanted or she would apply for a protection order, petitioner got furious and threatened her of withholding his financial support and even held her by the nape and pushed her to lie flat on the bed; and, on May 4, 2005, while she was at work, petitioner with companions went to her new home and forcibly took the children and refused to give them back to her.

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

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

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

1. Enjoin from committing and threatening to commit personally or through another, physical, verbal and emotional harm or abuse against the herein petitioner (respondent) and other family and household members;
2. Restrain from harassing, annoying, texting, telephoning, contacting or otherwise communicating with the petitioner (respondent) whether directly or indirectly or engaged in any psychological form of harassment;

VIOLATION OF THIS ORDER IS PUNISHABLE BY LAW.

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

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

SO ORDERED.⁵

In his Comment⁶ to respondent's Petition with Urgent Motion to Lift TPO, petitioner denied respondent's allegations and alleged, among others, that he had been maintaining a separate abode from petitioner since November 2004; that it was respondent who verbally abused and threatened him whenever their children's stay with him was extended; that respondent had been staying with a certain Rebendor Zuñiga despite the impropriety and moral implications of such set-up; that despite their written agreement that their minor children should stay in their conjugal home, the latter violated the same when she surreptitiously moved out of their conjugal dwelling with their minor children and stayed with said Zuñiga; and, that respondent is mentally, psychologically, spiritually and morally unfit to keep the children in her custody. Petitioner contended that the issuance of the TPO on May 23, 2005 is unconstitutional for being violative of the due process clause of the Constitution.

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

On June 9, 2005, the CA, in order not to render the petition moot and to avoid grave and irreparable injury, issued a temporary restraining order to temporarily enjoin the parties and their agents from enforcing the assailed May 23, 2005 TPO issued in Civil Case No. 0464-05.⁷

Petitioner later filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction with Manifestation,⁸ praying that the enforcement of all orders, decision to be issued by the RTC and all the proceedings therein be restrained. A hearing⁹ was, subsequently, conducted on the motion.

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

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

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

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

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

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

I

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

II

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

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

The issue of constitutionality of RA 9262 was raised by petitioner in his Comment to respondent's Petition with Urgent Motion to Lift TPO dated May 23, 2005 filed with the RTC. However, without awaiting for the resolution of the same, petitioner filed a petition for certiorari with the CA assailing the TPO issued for violating the due process clause of the Constitution. Contrary to the CA's finding that the matter raised in the petition filed with it was the RTC's alleged grave abuse of discretion in issuing the TPO which could be resolved without having to rule on the constitutionality of RA 9262 and its provisions, we find that since petitioner is assailing the validity of RA 9262 wherein respondent's right to a protection order is based upon, the constitutionality of the said law must first be decided upon. After all, the alleged unconstitutionality of RA 9262 is, for all intents and purposes,

a valid cause for the non-issuance of a protection order.¹² Notwithstanding, however, we still find no merit to declare RA 9262 unconstitutional.

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

We are not impressed.

Section 15 of RA 9262 provides:

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

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

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

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

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

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

The grant of a TPO ex parte cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough to enable the defendant to abscond or dispose of his property, in the same way, the victim of VAWC may already have suffered harrowing experiences in the hands of her tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional commonplace that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests, among which is protection of women and children from violence and threats to their personal safety and security.

It should be pointed out that when the TPO is issued ex parte, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. Moreover, the court shall order that notice, copies of the petition and TPO be served immediately on the respondent by the court sheriffs. The TPOs are initially effective for thirty (30) days from service on the respondent.

Where no TPO is issued ex parte, the court will nonetheless order the immediate issuance and service of the notice upon the respondent requiring him to file an opposition to the petition within five (5) days from service. The date of the preliminary conference and hearing on the merits shall likewise be indicated on the notice.

The opposition to the petition which the respondent himself shall verify, must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.

It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. x x x. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.¹⁴

Petitioner also assails that there is an invalid delegation of legislative power to the court and to barangay officials to issue protection orders.

Section 2 of Article VIII of the 1987 Constitution provides that "the Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof." Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature.¹⁵ The act of Congress entrusting us with the issuance of protection orders is in pursuance of our authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights.¹⁶

As to the issuance of protection order by the Punong Barangay, Section 14 pertinently provides:

SEC. 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 of 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.

Hence, the issuance of a BPO by the Punong Barangay or, in his unavailability, by any available Barangay Kagawad, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm.

Such function of the Punong Barangay is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the barangay."¹⁷

Petitioner assails that the CA erred in finding that the RTC did not commit grave abuse of discretion in issuing the TPO dated May 23, 2005 as the petition was bereft of any indication of grounds for the issuance of the same. Petitioner claims that while the issuance of the TPO is ex parte, there must be a judicial determination of the basis thereof. He contends that the allegations in respondent's affidavit attached to the petition, and without admitting the same to be true, are nothing more than normal or usual quarrels between a husband and wife which are not grave or imminent enough to merit the issuance of a TPO.

We are not persuaded.

We quote again Section 15 of RA 9262 for ready reference, thus:

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.

Clearly, the court is authorized to issue a TPO on the date of the filing of the application after ex parte determination that there is basis for the issuance thereof. Ex parte means that the respondent need not be notified or be present in the hearing for the issuance of the TPO. Thus, it is within the court's discretion, based on the petition and the affidavit attached thereto, to determine that the violent acts against women and their children for the issuance of a TPO have been committed.

And Section 5 of the same law 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 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 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 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 access to the woman's child/children.

In this case, the alleged acts of petitioner among others, i.e., he cocked the gun and pointed the same to his head in order to convince respondent not to proceed with the legal separation case; feeding his other children with the food which another child spat out; and threatening the crying child with a belt to stop him from crying which was repeatedly done; and holding respondent by her nape when he got furious that she was asking him not to come often to their conjugal home and hold office thereat after their agreed separation and threatening her of withholding half of the financial support for the kids, while not conclusive, are enough bases for the issuance of a TPO. Petitioner's actions would fall under the enumeration of Section 5, more particularly, paragraphs a, d, e (2), f, h, and i.

It is settled doctrine that there is grave abuse of discretion when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.¹⁸ We find that the CA did not err when it found no grave abuse of discretion committed by the RTC in the issuance of the TPO.

The factual matters herein raised by petitioner should be presented during the hearing on the merits on the issuance of the Permanent Protection Order.

WHEREFORE, the petition is DENIED. The Decision dated October 28, 2005 of the Court of Appeals issued in CA-G.R. SP No. 89939, upholding the Regional Trial Court's issuance of the Temporary Protection Order dated May 23, 2005, is AFFIRMED. The Regional Trial Court of

Imus, Cavite is hereby ORDERED to resolve with dispatch respondent's Petition for a Permanent Protection Order.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

A T T E S T A T I O N

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.

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

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.

MARIA LOURDES P. A. SERENO

Chief Justice

Footnotes

¹ Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Noel G. Tijam and Arturo G. Tayag, concurring; rollo, pp. 54-58.

² Rollo, pp. 129-132.

³ Id. at 133-136.

⁴ Id. at 60-61; per Judge Cesar A. Mangrobang.

⁵ Id. (Emphasis in the original)

⁶ Id. at 62-66.

⁷ Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Hakim S. Abdulhawid and Lucenito N. Tagle, concurring; CA rollo, pp. 86-87.

⁸ Id. at 93-94.

⁹ Id. at 144-177; In attendance were Associate Justices Elvi John S. Asuncion, Hakim S. Abdulhawid and Estela M. Perlas-Bernabe (now a member of the Supreme Court).

¹⁰ Rollo, p. 58. (Emphasis in the original)

¹¹ Id. at 25.

¹² Garcia v. Drilon, G. R. No. 179267, June 25, 2013, 699 SCRA 352, 401.

¹³ Supra.

¹⁴ Id. at 426-429. (Emphasis in the original; citations omitted)

¹⁵ NPC Employees Consolidated Union v. National Power Corporation, 550 Phil. 199, 208-209 (2007).

¹⁶ Philippine Constitution, Art. VIII, Sec. 1.

¹⁷ Garcia v. Drilon, *supra* note 12, at 432.

¹⁸ Chua Huat v. Court of Appeals, 276 Phil. 1, 18 (1991).