

WERNER ACAL BALAG, PETITIONER, VS. HON. JAIME B. CABERTE, RTC-BRANCH 23, MOLAVE, ZAMBOANGA DEL SUR, AND DELFA ANN E. BALAG, RESPONDENTS.

Ponente: SINGH, J.

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SINGH, J.:

Petitioner Werner Acal Balag filed a Petition for Certiorari, Prohibition with Application for Temporary Restraining Order ("TRO") and Damages under Rule 65 of the Revised Rules of Court seeking the annulment of the Permanent Protection Order dated 14 November 2013^[1] issued by public respondent Hon. Jaime B. Caberte, Presiding Judge, Branch 23, Regional Trial Court ("RTC"), Molave, Zamboanga del Sur.

In compliance with the Minute Resolution dated 10 March 2014,^[2] the petitioner filed an Amended Petition on 28 April 2014.^[3]

On 6 June 2014, the private respondent Delfa Ann E. Balag was directed to file a comment on the Amended Petition and to show cause why this Court should not issue a TRO.^[4] Pending receipt of the private respondent's compliance, the petitioner filed anew an Application for Issuance of a Temporary Restraining Order on 9 June 2014.^[5]

Acting on the Motion to Hear Temporary Restraining Order filed by the petitioner on 19 August 2014,^[6] this Court issued a Resolution dated 10 September 2014^[7] holding the action on the motion in abeyance pending receipt of the Reply to the Tracer dated 29 August 2014^[8] and the return card for the 6 June 2014 Resolution.

Per the return card for the 6 June 2014 Resolution, the said Resolution was returned to sender, after three attempts of serving the same on the private respondent, for the noted reason "party out."^[9] The Reply to the Tracer dated 29 August 2014 states that the private respondent was "out of town."^[10]

Considering that several attempts were made to serve the 6 June 2014 Resolution on the private respondent to no avail, the right of the private respondent to file a Comment on the Petition is hereby deemed waived.

Acting on the present motion, the Court resolves that the application of the petitioner for the issuance of a temporary restraining order need not be heard, as a hearing is discretionary upon the Court, pursuant to Section 4 of the 2009 Internal Rules of the Court of Appeals.^[11]

The petitioner failed to substantiate his allegation that he stands to suffer irreparable injury through the implementation of the assailed Permanent Protection Order. A mere allegation that the petitioner will be deprived of his property and custody of his child is not sufficient. No concrete proof was submitted by the petitioner to support the allegation of extreme urgency to avoid irreparable injury.

"Writs of injunction do not perfunctorily issue from the courts.

For the issuance of a writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and

that there is an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. In this case, respondents failed to show that they have a right to be protected and that the acts against which the writ is to be directed are violative of the said right. xxx

A preliminary injunction is proper only when the plaintiff appears to be clearly entitled to the relief sought and has substantial interest in the right sought to be defended. Factually, there must exist 'a right to be protected and that the acts against which the writ is to be directed are violative of the said right.' As this Court has previously ruled, '[w]hile the existence of the right need not be conclusively established, it must be clear.' Lacking a clear legal right, the provisional remedy should not have been issued, all the more because the factual support for issuing the writ had not been established. In giving injunctive relief, courts cannot reverse the burden of proof, for to do so 'would assume the proposition which the petitioner is inceptively duty bound to prove.' This concern is not a mere technicality, but lies at the heart of procedural law, for every case before a court of law requires a cause of action." (The Special Audit Team, Commission on Audit vs. Court of Appeals, G.R. No. 174788, 11 April 2013; underscoring supplied)

As the petitioner anchors his application for a TRO on the nullity of the Permanent Protection Order, the Court will now submit the petition for decision and resolve the merits of the case.

WHEREFORE, the petition is now submitted for decision sans Comment.

SO ORDERED.

Badelles, (Chairperson), and Inting,[*] JJ., concur.

[*] New Member vice Justice Romulo V. Borja, who is on Wellness Leave, per Raffle dated October 16, 2014.

[1] Rollo, pp. 20-25.

[2] Rollo, p. 66.

[3] Rollo, pp. 70-80.

[4] Rollo, p. 156.

[5] Rollo, pp. 157-181.

[6] Rollo, pp. 183-199.

[7] Rollo, pp. 202-204.

[8] Rollo, p. 200.

[9] Rollo, p. 206.

[10] Rollo, p. 208.

[11] Section 4. Hearing on Preliminary Injunction. – The requirement of a hearing on an application for preliminary injunction is satisfied with the issuance by the Court of a resolution served upon the party sought to be enjoined requiring him/her to comment on said application within a period of not more than ten (10) days from notice. Said party may attach documents to his/her comment which may show why the application for preliminary injunction should be denied. The Court may require the party seeking the injunctive relief to file a reply to the comment within five (5) days from receipt of the latter.

If the party sought to be enjoined fails to file his/her comment as provided for in the preceding paragraph, the Court may resolve the application on the basis of the petition and its annexes.

The preceding paragraphs notwithstanding, the Court may, in its sound discretion, set the application for preliminary injunction for hearing, during which the parties may present their respective positions or submit evidence in support thereof

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