LEONARD GLENN FRANCIS, PETITIONER, VS. HONORABLE JAIME M. GURAY, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PARANAQUE CITY BRANCH 260 AND MORENA DE JESUS,...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court, as amended, seeking to annul and set aside the Order dated October 7, 2010[1] and Order dated November 15, 2010[2] issued by the public respondent judge of the Regional Trial Court of Parañaque City, Branch 260 (RTC) in SP. Proc. Case No. 10-0068.

The factual antecedents are as follows:

On July 2010, private respondent Morena de Jesus filed with the RTC a petition for custody of children and habeas corpus with prayer for support pendente lite[3] against petitioner Leonard Glenn Francis. Private respondent alleged that: she and petitioner, a businessman, met in Singapore while she was doing her on-the-job training and they lived together in a unit at the Grand Shang Tower in Makati City; that she gave birth to two (2) children; that sometime in December 2009, they went to Singapore and stayed at the Orchard Park Sweets Hotel; that on April 2010, petitioner convinced her to entrust the children with him and go back to the Philippines for a short visit and he gave her a roundtrip ticket; that upon her return to the Philippines, private respondent learned that their unit in Grand Shang Tower was already vacated and their lease was terminated; that she called up the petitioner, who refused to communicate with her and prevented her to see the children; and that her return ticket to Singapore was cancelled.

Petitioner was served with summons through substituted service at the office of Glenn Maritime Phils. Inc. on July 20, 2010[4]. The summons was received and acknowledged by Anabelle Bacas, an administrative assistant who claimed to be authorized to receive court process.

On August 2010, petitioner filed a motion to dismiss[5] the petition, alleging that the RTC has not acquired jurisdiction over him since he is a foreigner residing abroad and that any writ issued under the petition is only enforceable within the National Capital Region and not in Singapore. Private respondent filed an opposition[6] to the motion claiming that petitioner is a resident of the Philippines as evidenced by his residence in Glenn Maritime Phils. Inc.'s Articles of Incorporation, a domestic corporation of which he is one of the incorporators.

The RTC resolved to deny the motion to dismiss in its order dated October 7, 2010[7], holding that the summons was properly served pursuant to Section 7, Rule 14[8] of the Revised Rules of Civil Procedure.

Petitioner filed a motion for reconsideration[9] from the order dated October 7, 2010, alleging that he is not a resident as defined under Philippine law and that granting arguendo that he is a resident, there was no proper substituted service on him. Private respondent opposed the motion.[10]

In its order dated November 15, 2010, the RTC denied said motion, to wit:

> "Records show that summons was served in the address alleged in the petition. Respondent cannot deny that he obtained knowledge of the instant case filed against him when summons was served upon his administrative assistant on July 19, 2010 thru substituted service, thus, he filed a motion to Dimiss. He cannot later on claim that he was not afforded due process to answer the claim against him which is one of the essences [sic] of the sercice of summons aside from acquiring jurisdiction over the defendant. What is ostensibly apparent is the fact that personal service of summons cannot be effected within a reasonable time due to the absence of the respondent in this county and substituted service of summons upon him thru his administratice staff is not improper. He knows that this case was filed by the petitioner, the mother of the two children, who are being held by him outside this country after he cajoled the former to leave them in Singapore, who discovered later that it was only a ploy by him to hide from her the children."

Hence, petitioner filed the instant petition claiming that:

> - RESPONDENT COURT ABUSED ITS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN TAKING COGNIZANCE OF A CASE INVOLVING A NON-RESIDENT FOREIGNER IN A PERSONAL ACTION INVOLVING CUSTODY OF MINOR CHILDREN WHO ARE LIKEWISE RESIDING ABROAD, CONTRARY TO EXISTING LAW AND JURISPRUDENCE ON THE MATTER.
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> - RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN ALLOWING SUBSTITUTED SERVICE IN A CUSTODY CASE IN VIOLATION OF SUPREME COURT A.M. No. 03-04-04-SC-2003-04-22.

The Supreme Court exhaustively discussed how jurisdiction is acquired through service of summons in the case of Manotoc vs. Court of Appeals[11]:

> "Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court.When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, "any judgment of the court which has no jurisdiction over the person of the defendant is null and void." In an action strictly in personam, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person. If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. While substituted service of summons is permitted, "it is extraordinary in character and in derogation of the usual method of service." Hence, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. Indeed, "compliance with the rules regarding the service of summons is as much important as the issue of due process as of jurisdiction."
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> Requirements for Substituted Service
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> Section 8 of Rule 14 of the old Revised Rules of Court which applies to this case provides:
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> SEC. 8. Substituted service. – If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service on defendant], 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.

We can break down this section into the following requirements to effect a valid substituted service:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a

"reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party." Under the Rules, the service of summons has no set period. However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriff’s Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff’s Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.

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(4) A Competent Person in Charge

If the substituted service will be done at defendant’s office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the

Return." [Citations omitted, underscore supplied.]

The sheriff's return of summons through substituted service dated July 20, 2010 reads:

> "THIS IS TO CERTIFY that on July 19, 2010, the undersigned caused the service the [sic] summons, together with the copy of the Petition and its annexes, upon respondent Leonard Green [sic] Francis, at the office of GLEEN [sic] Maritime, Unit G-2, 1322 Golden Empire Tower, Roxas Blvd., corner Padre Faura Sts., Ermita, Manila. Summons was served through Ms. Anabelle Bacas, administrative assistant who claimed to be authorized to receive such court process, a person of suitable age and discretion, who signed to acknowledge receipt thereof."

A meticulous scrutiny of the return reveals the absence of material data on the serious efforts to serve the summons on petitioner in person. There was no indication that the sheriff made several attempts to serve the summons to petitioner in person. Further, the administrative assistant who received the summons is not a competent person as defined under the Manotoc doctrine. All in all, this Court holds that there was no proper substituted service and thus, the RTC has not yet acquired jurisdiction over the person of the petitioner. In the case of Richard Teh v. Court of Appeals[12], the Supreme Court held that the trial court was correct in not dismissing the complaint and in ordering instead, the issuance of alias summons on the defendant.

At this point, the Court no longer sees the need to discuss the other issues in the petition.

WHEREFORE, the petition is GRANTED. The orders of the Regional Trial Court of Parañaque City, Branch 260 dated October 7, 2010 and November 15, 2010 are Annulled and Set Aside. This case is referred back to the same court for issuance of alias summons and copy of the petition for custody of children upon petitioner Leonard Glenn Francis and for continuation of proceedings in SP. Proc. Case No. 10-0068 with dispatch.

SO ORDERED.

Lampas Peralta, (Chairperson), and Cruz, JJ., concur.

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[1] Rollo, pp. 17-18.

[2] Rollo, pp. 19-21.

[3] Rollo, pp. 22-27.

[4] Rollo, pp. 32.

[5] Rollo, pp. 33-36.

[6] Rollo, pp. 37-39.

[7] Supra note 1.

[8] SEC. 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.

[9] Rollo, pp. 40-47.

[10] Rollo, pp. 68-71.

[11] G.R. No. 130974, August 16, 2006.

[12] G.R. No. 147038, April 24, 2003.

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