

**TINA MARIE L. SABADO, FOR HERSELF AND HER MINOR CHILDREN,
JANA MARIE L. SABADO AND JASTINE MARIE L. SABADO,
PETITIONER-APPELLEE, VS. JAY VILLANUEVA SABADO,
RESPONDENT-APPELLANT.**

Ponente: GARCIA, R.R. J.

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GARCIA, R.R. J.:

Before Us is an appeal from the Decision[1] dated January 30, 2013 of the Regional Trial Court, Branch 136, Makati City in Civil Case No. 12-963 directing respondent-appellant Jay Villanueva Sabado to stay away from petitioner-appellee Tina Marie L. Sabado at a distance of 200 meters and to grant monthly support of P100,000.00 to appellee and their minor children, namely: Jana Marie and Jastine Marie, both surnamed Sabado, the dispositive portion of which reads:

WHEREFORE, the Court renders judgment in favor of the petitioner Tina Marie Leño Sabado and issues a Permanent Protection Order:

1. Ordering respondent Jay Villanueva Sabado to stay away at a distance of 200 meters from the petitioner;
2. Ordering respondent to grant support to the petitioner and the children Jana Marie and Jastine Marie, both surnamed Sabado, in the amount of P100,000 per month.

IT IS SO ORDERED.[2]

THE FACTS

This case stemmed from a Petition for Temporary and Permanent Protection Order, Support and Support Pendente Lite[3] filed by petitioner-appellee Tina Marie L. Sabado against respondent-appellant Jay Villanueva Sabado. It was alleged that on July 24, 1999, appellee and appellant were married at Nuestra Sra. De Gracia Parish, Guadalupe, Makati City.[4] Out of said marriage, they begot two (2) children, namely: Jana Marie who was born on March 2, 2000 and Jastine Marie who was born on July 3, 2005. Appellant is gainfully employed as a Ship Captain in Epsilon Maritime Services, Inc. with an estimated monthly income of US\$6,500. Appellee, on the other hand, is employed in Metrobank but her salary is insufficient to support the two (2) children who are studying in a private school in Makati City. The spouses acquired real properties during their marriage, to wit: a parcel of land containing an area of 100 square meters situated in Mandaluyong City and covered by Transfer Certificate of Title (TCT) No. 20321[5] and a condominium unit[6] at California Garden Square with a total contract price of P1.65 Million.

It was further alleged that during the first few years of their marriage, appellant and appellee often quarreled even during the course of appellee's pregnancy over petty things such as the PBA basketball team that they support, food, movies and the like. Appellant always wanted to be in control and was irritated that appellee had her own opinions. Appellant would also have fits of jealousy and without any basis accused appellee of having an affair

with another man. Sometime in June 2011, appellee and her minor children were kicked out by appellant from their conjugal home. They were merely told to transfer to appellee's mother's house in Makati City. Appellant also humiliated appellee in public by shouting “maghiwalay na tayo” in the presence of her officemates and demanded that they have their marriage annulled. Appellee also discovered that appellant was philandering and dissipating their community funds for the benefit of appellant's mistress. Appellant abandoned appellee and the children and even deprived them of sufficient financial support. Appellant's daughter Jana even wrote a letter^[7] asking appellant why he left the family and likewise requested from him financial assistance. Appellant drastically reduced the allotment from US\$4,000 to US\$2,500 starting in February 2012 despite the fact that his earning based on his last contract was US\$6,500. Likewise, appellant has not visited the children since February 15, 2012 and has completely abandoned them thereafter. Consequently, the children are already becoming anxious and insecure especially in school. During the birthday of their youngest daughter on July 23, 2012, appellant did not even show up nor made a call. Appellee also tried to talk to her mother-in-law seeking support from appellant but according to her, she has no power over her son's dealings. Appellee tried several times to contact appellant and exerted efforts trying to persuade him to settle their financial problem amicably but to no avail. In view of appellant's abandonment and undue disregard of the children, appellee suffered psychological and emotional abuse. The petition thus prayed for the court a quo to issue a Temporary Protection Order (TPO) directing appellant to stay away from appellee and desist from publicly humiliating her and other forms of abuse, to grant support to appellee and their minor children in the amount of P120,000.00, to order the employer of appellant to automatically remit P120,000.00 a month of his salary to appellee and to eventually issue a Permanent Protection Order (PPO).

On October 22, 2012, a Temporary Protection Order (TPO) effective for a period of thirty (30) days from service, subject to automatic renewal thereafter, was issued by the court a quo after finding a reasonable ground that an imminent danger of violence against appellee exists or is about to occur. The decretal portion of the Order reads:

WHEREFORE, the Court issues the following Temporary Protection Order (effective for a period of 30 days from service on the respondent and deemed automatically renewed every 30 days thereafter until the disposition of this case):

The Court orders JAY VILLANUEVA SABADO to stay away at a distance of 200 meters from petitioner Tina Marie L. Sabado and desist from publicly humiliating her and other forms of abuse.

The respondent is given five days from notice within which to file opposition.

IF THE RESPONDENT APPEARS WITHOUT COUNSEL ON THE DATE OF THE PRELIMINARY CONFERENCE AND HEARING ON THE MERITS ON THE ISSUANCE OF A PERMANENT PROTECTION ORDER, WHICH IS HEREBY SET ON JANUARY 17, 2013 AT 3:00 O'CLOCK IN THE AFTERNOON, THE COURT SHALL NOT RESCHEDULE NOR POSTPONE THE PRELIMINARY CONFERENCE AND HEARING BUT SHALL APPOINT A LAWYER FOR THE RESPONDENT AND IMMEDIATELY PROCEED WITH THE HEARING.

IF THE RESPONDENT FAILS TO APPEAR ON THE DATE OF THE PRELIMINARY CONFERENCE AND HEARING ON THE MERITS DESPITE PROPER NOTICE, THE COURT SHALL ALLOW EX PARTE PRESENTATION OF EVIDENCE BY THE PETITIONER AND RENDER JUDGMENT ON THE BASIS OF THE PLEADINGS AND EVIDENCE ON RECORD. NO DELEGATION OF THE RECEPTION OF EVIDENCE SHALL BE ALLOWED.

The Court directs the immediate issuance of the corresponding notice.

SO ORDERED.[8]

On several occasions, the petition and the TPO were served upon appellant but to no avail. The court sheriff also tried to serve the same to the office of appellant's employer but he was merely informed that appellant was abroad. On November 16, 2012, at around 4:05 p.m., appellant's counsel Atty. Gary O. Palmero received the copy of the petition and TPO.[9]

On January 17, 2013, an Entry of Appearance with Opposition to the Issuance of Permanent Protection Order[10] was filed by appellant alleging that he was merely a Chief Officer and not a Captain of Epsilon Maritime Services, Inc. Appellant and appellee have four (4) properties which were bought from their income. While they have disagreements on some things, the same never went to physically hurting each other or even threats of hurting each other. Neither did he humiliate appellee in public nor in the presence of her officemates. Appellant also denied that he always wanted to be in control. In fact, the rights over the condominium unit and the parking lot are under the name of appellee. Appellant has also been a good husband and father to his family. He has been working hard as a seaman in order to provide for the family and to be able to send the children to a good school. Appellant has continuously supported his family. As such, there was no basis for the issuance of the TPO and a PPO.

On January 25, 2013, the court a quo issued an Order[11] denying admission of appellant's Opposition since the same was belatedly filed, or nearly two (2) months after the issuance of the TPO. Administrative Matter (A.M.) No. 04-10-11-SC (Secs. 15 [c], 21 and 22[b]) provides that if appellant fails to timely file an answer or opposition within a non-extendible period of five (5) days, the Court on its own motion shall issue the corresponding order as may be warranted by the facts alleged in the petition. In this case, appellant's counsel received the petition and signed the TPO issued by the court a quo. However, the Opposition was filed two (2) months thereafter.

In the assailed Decision[12] dated January 30, 2013, the court a quo ruled in favor of appellee and made permanent the TPO previously issued. It was held that appellant has already waived his right to oppose the petition, hence, appellee is entitled to a permanent protection order. Appellant subjected appellee to psychological and emotional abuse and deprived the family of sufficient financial support. As such, appellant is directed to stay away at a distance of 200 meters from appellee and to grant her monthly support as well as the two (2) children in the amount of P100,000.00. The pertinent portions of the Decision read:

On October 22, 2012, the Court issued the following Temporary Protection Order:

Petitioner Tina Marie L. Sabado has filed a petition for temporary and permanent protection order, support and support pendente lite. She alleges that she is the wife of respondent Jay Villanueva Sabado and that they have two minor children, namely: Jana Marie, 12 years old and Jastine 7 years old.

X X X

Petitioner alleges that she and respondent are now separated because the latter abandoned her and her two minor children in June 2011. While they were living together, petitioner and respondent often quarreled. Respondent is very jealous, accusing petitioner of having an affair with another man when it was respondent who was philandering and dissipating their community funds. Respondent subjected petitioner to psychological and emotional abuse and deprived petitioner of sufficient support. Respondent has not visited the children since February 15, 2012 and has completely abandoned petitioners and totally deprived them of financial support. As a result of deprivation of support, the children are becoming anxious and insecure, especially in school. The petitioner is suffering psychological and emotional harm. Petitioner suffers from serious anxiety, loss of self-esteem and became ill, prompting her to seek medical help.

After carefully evaluating the allegations in support of the petition, the Court is satisfied that there is reasonable

ground to believe that an imminent danger of violence against the petitioner exists or is about to occur.

WHEREFORE, the Court issues the following Temporary Protection Order (effective for a period of 30 days from service on the respondent and deemed automatically renewed every 30 days thereafter until the disposition of this case):

The Court orders JAY VILLANUEVA SABADO to stay away at a distance of 200 meters from petitioner Tina Marie L. Sabado and desist from publicly humiliating her and other forms of abuse.

x x x

On January 25, 2013, the Court issued the following Order denying admission to respondent's Opposition:

Respondent was served with summons, through his counsel, on November 16, 2012 xxx . But he filed his Opposition only on January 17, 2013, nearly two months after.

It is significant that his counsel signed the Temporary Protection Order in this case xxx. By so doing, he (respondent) was bound to file his opposition within the five-day period. Certainly, his counsel knew the legal effect of signing the TPO.

x x x

In view of all the foregoing, with respondent having waived his right to oppose the petition, the Court finds petitioner to be entitled to a permanent protection order.[13]

Aggrieved, appellant filed the instant appeal raising the following Assignment of Errors,[14] to wit:

I.

WHETHER OR NOT THE COURT A QUO GRAVELY ERRED IN ISSUING THE PROTECTION ORDER SINCE APPELLEE FAILED TO PROVE THE NECESSITY THEREOF.

II.

WHETHER OR NOT THE COURT A QUO GRAVELY ERRED IN DIRECTING APPELLANT TO GIVE SUPPORT SINCE APPELLEE FAILED TO PROVE THE AMOUNT OF SUPPORT NEEDED AND THE CAPACITY OF APPELLANT TO PROVIDE THE SAME.

III.

WHETHER OR NOT THE COURT A QUO GRAVELY ERRED IN RENDERING JUDGMENT IN FAVOR OF APPELLEE DESPITE THE IMPROPER SERVICE OF SUMMONS.

THE ISSUE

The pivotal issues that need to be resolved in this appeal are whether or not the court a quo gravely erred in issuing the Permanent Protection Order directing appellant to stay away from his wife appellee and in ordering him to give monthly financial support for his wife and children.

THE RULING

The appeal is bereft of merit.

Appellant contends that appellee's claim for support has no basis since she is the one who has full control of the community property. Appellee has also been the allottee of appellant's salary whenever he goes on deployment

overseas. The contract of employment also reflects the salary and benefits received by appellant from his employment as a Chief Officer and not as a Ship Captain. He has continuously supported the family, especially the children. Furthermore, there was improper service of summons since the same was not served personally upon appellant nor by substituted service. Jurisdiction upon the person of appellant was thus not acquired by the court a quo.

We are not persuaded.

We sustain the court a quo's finding that indeed there was no improper service of summons upon appellant. In *GCP-Manny Transport Services, Inc. vs. Principe*[15], the Supreme Court held that when a party is represented by a counsel in an action in court, notices of all kinds, including motions and pleadings of all parties and all orders of the court must be served on his counsel. Notice to counsel is notice to the client. In the case at bench, the records show that appellant's counsel received the copy of the petition filed by appellee and even signed the TPO. Appellant was thus duly apprised of the petition filed against him and was not deprived of his right to present his side of the case. It appears, however, that the opposition to the petition was filed by appellant only two (2) months after the service of the petition and the TPO, or beyond the non-extendible five(5)-day reglementary period. The court a quo cannot thus be faulted for denying admission of appellant's opposition.

Anent the propriety of the issuance of the PPO in favor of appellee, the same is warranted under the circumstances of the case. Under Section 11, Rule IV of the Implementing Rules and Regulations (IRR) for Republic Act No. 9262, otherwise known as "The Anti-Violence Against Women and their Children Act of 2004", a protection order is an order issued under the Act for the purpose of preventing further acts of violence against a woman or her child. The relief granted under a protection order should serve the purpose of safeguarding the victim-survivor from further harm, minimizing any disruption in the victim-survivor's daily life, and facilitating the opportunity and ability of the victim-survivor to independently regain control over her life. Section 11 of Rule IV is quoted:

SECTION 11. Protection Order. — The victim-survivor may obtain the remedy of a protection order from the barangay or from the court. A protection order is an order issued under the Act for the purpose of preventing further acts of violence against a woman or her child specified in Section 7 of these Rules and granting other necessary reliefs. The relief granted under a protection order should serve the purpose of safeguarding the victim-survivor from further harm, minimizing any disruption in the victim-survivor's daily life, and facilitating the opportunity and ability of the victim-survivor to independently regain control over her life. The provisions of the protection order shall be enforced by law enforcement agencies. The protection order that may be issued by the barangay shall be known as a Barangay Protection Order (BPO). The protection order that may be issued by the court may be a Temporary Protection Order (TPO) or a Permanent Protection Order (PPO).

Section 18 of the same Rule IV further provides that a permanent protection order (PPO) refers to protection order issued by the court after notice and hearing. In case the respondent fails to appear despite proper notice, the court shall allow ex parte presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the application is made. The pertinent portions of Section 18 of Rule IV reads:

SECTION 18. Permanent Protection Order. — Permanent Protection Order (PPO) refers to protection order issued by the court after notice and hearing.

Respondent's non-appearance despite proper notice, or his/her lack of a lawyer, or the non-availability of his/her lawyer, shall not be a ground for rescheduling or postponing the hearing on the merits of the issuance of a PPO. If the respondent appears without counsel on the date of the hearing on the PPO, the court shall appoint

a lawyer for the respondent and immediately proceed with the hearing. In case the respondent fails to appear despite proper notice, the court shall allow ex parte presentation of the evidence by the applicant and render judgment on the basis of the evidence presented. The court shall allow the introduction of any history of abusive conduct of a respondent even if the same was not directed against the applicant or the person for whom the application is made.

x x x

In this case, appellant failed to appear during the scheduled date of hearing. Consequently, appellee was allowed to present ex parte her evidence in order to prove the allegations in the petition. It was duly established that appellee was subjected by appellant to psychological and emotional abuse when the latter publicly humiliated her and threatened her of separation. In fact, appellant abandoned his family and support to the children was drastically reduced. These facts were even stated in the letter^[16] written by appellant's daughter Jana. Appellee and the children were also kicked out of the family home. These acts then on the part of appellant were found by the court a quo as sufficient to justify the issuance of the PPO.

All told, this Court finds no compelling reason to veer from the assailed ruling of the trial court.

WHEREFORE, the instant appeal is hereby DENIED. The assailed Decision dated January 30, 2013 is AFFIRMED.

De Guia-Salvador (Chairperson) and Bueser, JJ., concur.

[1] Rollo, pp. 33-35.

[2] Rollo, p. 35.

[3] Records, pp. 1-10.

[4] Vide: Certificate of Marriage, Annex "A" to the Petition, Records, p. 11.

[5] Annex "E-1" to the Petition, Records, pp. 16-17.

[6] Vide: Certification dated October 2, 2012, Annex "E" to the Petition, Records, p. 15.

[7] Annex "G" to the Petition, Rollo, p. 19.

[8] Records, p. 22.

[9] Vide: Sheriff's Return dated November 19, 2012, Records, p. 24.

[10] Records, pp. 25-44.

[11] Records, p. 131.

[12] Supra at note 1.

[13] Rollo, pp. 33-35.

[14] Rollo, p. 20.

[15] G.R. No. 141484, November 11, 2005.

[16] Annex "G" to the Petition, Rollo, p. 19.

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