

JOCELYN MAPESO, PLAINTIFF-APPELLEE, VS. VELMUND PAUL VIAJAR, DEFENDANT-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

THE CASE

On appeal is the Judgment dated 16 December 2011 of the Regional Trial Court, 7[th] Judicial Region, Branch 6, Cebu City in Sp. Proc. No. 18563-CEB, the dispositive portion of which states,

“WHEREFORE, the court hereby grants the petitioner Jocelyn Mapeso's prayer for the issuance of a Permanent Protection Order. The respondent Velmund Paul Viajar is perpetually prohibited from threatening to commit or committing personally or through another, any of the acts mentioned in Section 5 of R.A. No. 9262; from harassing, annoying, telephoning, contacting or communicating with the petitioner, directly or indirectly; removing and excluding the respondent from the residence of the petitioner, regardless of its ownership, 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; directing the respondent to stay away from petitioner and her family members at a distance of at least 200 meters; to stay away from the residence; school, place of employment, or any place frequented by the petitioner and her family members; directing lawful possession and use by the 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; directing the respondent to provide support to the petitioner; and prohibiting the respondent from any use or possession of any firearm or deadly weapon.

SO ORDERED.”

THE FACTUAL ANTECEDENTS

Plaintiff-appellee's allegations in her petition:

That, she and Velmund Paul Viajar (hereinafter defendant-appellant) were married on 9 May 1990 in Cebu City and out of their marriage was born Adrienne Marie M. Viajar on June 9, 1992 and Karl Benedict M. Viajar on December 6, 1994. (Both children choose to live with their mother and not with the defendant-appellant who neglected them, and did not provide them with financial support especially for their education.) They first established their home in Canada. They acquired Canadian citizenship, but, subsequently, re-acquired Philippine citizenship pursuant to RA 9225. Out of the blue, sometime in mid-2009, the defendant-appellant decided to relocate to the Philippines against her will and amidst their children's protestations as they have already made friends and established emotional attachments in Canada since their elementary up to high school. This sudden transfer cause them untold sorrows.

She and the defendant-appellant built apartment units on the lot given to her by her parents sometime in the mid-1990s thru bank financing. They rented these units out and the income derived therefrom provided them the money for their basic needs, in keeping with the means of the family. The income from the rents is badly needed since the defendant-appellant is not a professional and does not earn good income.

In the middle of 2009 that the defendant-appellant started to show his malicious intent to destroy his own family by deliberately and carelessly leaving some incriminating pornographic materials at home. At first, she refused to look at them for fear that it will cause her and her children emotional uproar. Moreover: "In numerous occasions, respondent came along with younger ladies." The defendant-appellant did not want her to accompany him, and found ways to avoid her presence. The defendant-appellant did not want to be asked about his whereabouts and who he was with.

On January 30 January 2011, she found incriminating materials in their room showing a video of the defendant-appellant and his girlfriend, despite this, the defendant-appellant remained remorseless. Too, she found in the defendant-appellant's mobile phone intimate messages sent by the latter's girlfriend. Even his wallet contains love notes from his girlfriend. One Valentine's day, the defendant-appellant refused to spend time with her and their children. In his attempt to deceive her and their children, the defendant-appellant left his mobile phone with her but took out the sim card.

That, the defendant-appellant and his purported high school batch mate planned to meet up in the United States of America in July 2011. That, she became suspicious when sometime in July 2011, the defendant-appellant insisted that she and their children go to Canada for a vacation. That, she saw an envelope in their room which contains a two-way airplane ticket to Manila, where he would be staying overnight there. Inside the said envelope is a picture of the defendant-appellant and a young woman in a compromising situation and a pack of condoms. That, in the past, while going on vacation to Manila, the defendant-appellant refused to meet her and their children at the airport.

That, the defendant-appellant demanded the possession of their conjugal vehicle, a Mitsubishi Adventure knowing fully well that the same is being used by her and their children. He even threatened her that if she does not give to him the vehicle he would sell it.

They separated albeit de facto sometime in June 2011 due to the latter's blatant infidelity without regard to his family's sensibility, violent treatment of her and their children, and absence of sufficient support for the family. She continues that by mere looking at him or hearing his voice already evokes extreme fear and terror in her as his recurrent violence at home and outside thereof has already been ingrained in her mind. She adds that the defendant-appellant's behavioral aberrations caused undue disruptions in her daily activities and that of her children's. The defendant-appellant's personality problems, which are beyond human tolerance, destroyed the sinew of their marriage. That, after their most recent separation, she does not see any chance of reconciliation as it already is the finale of the series of turmoil in their home.

To stress, the acts committed by the defendant-appellant against her and their children constitute a violation of Republic Act No. 9262, otherwise known as "The Anti-Violence Against Women and Their Children Act, specifically the following acts, namely:

- Causing physical harm to the petitioner;
- Threatening to cause the petitioner or their children physical harm;
- Attempting to cause the petitioner or their children physical harm;
- Placing the petitioner or their common children in fear of imminent physical harm;

- Attempting to restrict or restricting the petitioner's or their children's freedom of movement or conduct by force or threat of force, physical or other harm, or intimidation directed against the petitioner-wife or their children. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the petitioner's or their children's movement or conduct:
- Depriving their common children of the needed financial support legally due the children;
- Depriving or threatening to deprive the petitioner of a legal right;
- Misappropriating the conjugal fund or controlling the income which should be due to the conjugal fund for the family's basic necessities while spending his earnings to his womanizing vice.
- Engaging in purposeful, knowing or reckless conduct, personally that alarms or causes substantial emotional or psychological distress to the petitioner or their children. This shall include, but not be limited to, the following acts:
- Stalking or following the petitioner or their children in public or private places;
- Lingered outside the residence of the petitioner;
- Attempting to enter in the dwelling or on the property of the petitioner against her will;
- Destroying and or attempting to destroy the property and personal belonging of the petitioner; and
- Engaging in any form of harassment or violence.
- Causing mental or emotional anguish, public ridicule or humiliation to the petitioner or their children, including, but not limited to, repeated infidelity in offensive and rude manner intended to destroy petitioner's and the children's morale, repeated verbal and emotional abuse, and denial of financial support."

The defendant-appellant's Answer with Counterclaim:

Paragraphs 11, 12, 13, 14, 15, 16, 17, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of the petition are specifically and strongly denied for being baseless, malicious and unfounded. The allegations in paragraphs 4 and 5 insofar as to the fact of their marriage in Toronto, Canada is admitted but the rest therein are specifically and strongly denied. The allegations in paragraphs 6, 7, 8, and 9 with respect to the fact of their having two (2) children; and that the eldest, Andrienne, is taking up pre-dentistry course in Cebu Doctors' Hospital and the youngest, Karl, is still in high school are admitted but the rest are, likewise, specifically and strongly denied for being false, malicious, baseless and unfounded.

If there is any personality problem that destroyed the sinew of the marriage between the plaintiff-appellee and him, which is now beyond human tolerance, it is the plaintiff-appellee's behavior of being an adulterer. It was sometime in August 1997, that he, together with his legal counsel and some police officers, caught the plaintiff-appellee and her paramour in the act of having sexual intercourse in their conjugal dwelling. Thereby, the plaintiff-appellee was arrested and booked but was later released after obtaining his consent. Unfortunately, the incident was reported and entered in the police blotter[1] as shown in the Certification dated August 11, 1997, and published in the Banat News[2] and The Freeman.[3] He was so insulted, ashamed, embarrassed and humiliated by the plaintiff-appellee's despicable act that he was forced to return to Canada. The plaintiff-appellee followed him to Canada and begged for reconciliation for the sake of their children. As their children were still young, he gave their marriage a second chance.

As special and affirmative defenses, the defendant-appellant alleged that he together with the plaintiff-appellee and their children lived in Canada where he worked as a 4[th] Class Stationary Engineer with the Swiss Canadian

Management Corporation and the plaintiff-appellee as draftsman with Briggman and Hamman Architects. After Karl was born, the plaintiff-appellee was no longer employed, thus, he became the sole bread winner of the family. Sometime in 1995, the plaintiff-appellee asked that she be allowed to return to Cebu City to build a four (4)-unit apartment on the lot they purchased[4] from the former's parents to which he acceded. Pursuant to this deed of sale, the title[5] and tax declaration[6] to the said lot were transferred to the plaintiff-appellee's name with the addendum "married to Paul Velmund Viajar". They secured a loan with the Land Bank of the Philippines for the construction of the apartment building and since he was the only one working in the family, it was he who practically paid for the said loan obligation. While he was in Canada, he received news that the plaintiff-appellee has a paramour who she brought to their house. Worst, the plaintiff-appellee's paramour was openly and shamelessly spending most of his time in their house with their children. To validate the information about the plaintiff-appellee, he discreetly went back to Cebu City and had the plaintiff-appellee under surveillance. After confirming the information, he, together with his lawyer, Atty. Pilapil and some police officers went to their house and while there caught the plaintiff-appellee and her paramour in the act of sexual intercourse.

Subsequently, they filed a petition[7] with the Regional Trial Court, where the plaintiff-appellee agreed, among others, to give temporary custody of their children to him. The plaintiff-appellee, on the other hand, was given full visitation rights during the pendency of the petition.

That, he returned to Canada to work. Upon the pleading of the plaintiff-appellee and primarily for the sake of their children, he gave their marriage a second chance. Seeing changes made by his the plaintiff-appellee, he purchased a house in Canada out of his wages and salaries.

That, he quit his work after he and the plaintiff-appellee mutually agreed to return to and settle down in Cebu City. They sold their house in Canada to finance the construction of the additional units of their apartment building located in Labangon, Cebu City.

That, their daughter continued with her studies in Cebu City under an educational plan obtained in Canada, which is being controlled by the petitioner. With the rentals as their only source of income, they encountered financial problems more especially with the on-going construction of their apartment building. In order to avoid trouble and not to set a bad example to their children because of frequent bickering about their financial condition, he was forced to leave the conjugal home and transfer to a vacant unit in their apartment building. He and the plaintiff-appellee mutually agreed to contribute equally to the household expenses and education of their children, payment of the loan, construction materials, etc.

That, they agreed that the Mitsubishi Adventure be used solely for the transportation of their children under the condition that only the plaintiff-appellee will drive it. But this was not case because he learned later on that the plaintiff-appellee hired a driver and used the vehicle for her personal use, "sometimes intimately in the company of the driver". Worst, this driver frequently used the vehicle as if he owns it. He asked the plaintiff-appellee to abide with their agreement but to no avail. Because of this, he confronted the driver, who, in the presence of police officers, arrogantly insisted that he can use the vehicle and that he does not know him (defendant-appellant). After a while, the plaintiff-appellee arrived – got angry with him and protected the driver.

That, on July 14, 2011, he filed a complaint against the plaintiff-appellee and the driver for recovery of the vehicle. During the conference on 15 July 2012, the driver did not appear thereat and the plaintiff-appellee refused to divulge the identity of the said driver despite repeated demands.

On 19 July 2011, he was surprised to receive a Barangay Protection Order dated July 15, 2011 issued by Brgy. Captain Victor M. Buendia on the basis of the plaintiff-appellee's complaint. He was more surprised when he received the Order dated July 18, 2011 issued by the RTC with a copy of the instant petition attached thereto.

Furthermore, he would like to stress that he never threatened, intimidated or inflicted physical harm against the plaintiff-appellee and their children. Nor did he verbally abuse her and their children. He has never failed to give financial support, love and affection to their children. Sadly, he cannot anymore do it now because the plaintiff-appellee is poisoning their children's mind to the extent of hating him.

As to the firearm he possesses, he uses it only for self-defense. He would never use it against his family; on the contrary, he would use it only to protect himself and his family. To say the least, he is a licensed and responsible firearm holder.

To conclude, the manipulations were maliciously and deliberately orchestrated, in gross and evidence bad faith, and with the intention to deprive him of his lawful rights over their properties in Cebu City.

After failing to reach an amicable agreement, the parties submitted their respective position paper.[8]

The plaintiff-appellee attached to her position paper[9] the following:

(1)

USB Data Storage[10] supposedly containing video footage of the defendant-appellant's sexual intercourse with another woman and pictures;

(2)

Affidavit of Karl Benedict,[11]

(3)

Affidavit of Adrienne Marie,[12]

(4)

Affidavit of Agnes Sabanal[13]

(5)

Summary of Expenses[14]

(6)

Vicinity Sketch[15]

(7)

Summons issued by the Office of the Lupong Tagapamayapa[16]

(8)

complaint filed by the defendant-appellant with the barangay[17]

(9)

Letter[18] dated July 20, 2011 of the defendant-appellant requesting investigation;

(10)

Bank document, i.e., withdrawal slip dated May 18, 2011, stamped "Account Closed"[19]

(11)

Cash Deposit Slips[20] dated May 18, 2011 – two for the account of defendant-appellant and one for plaintiff-appellee;

(12)

“My Agreement 7263409”[21] of the University Student's Plan in favor of Adrienne Marie;

(13)

Acknowledgment Receipts[22] dated May 27 and May 28, 2011;

(14)

Acknowledgment Receipt[23] dated May 30, 2011;

(15)

“Net Worth”:[24]

(16)

Photograph of a man and a woman:[25]

(17)

Barangay Protection Order (BPO);[26]

(18)

Initial Assessment Report[27] by Psychologist Rosemarie C. Gonato with the Women and Children Friendly Center of the Vicente Sotto Memorial Medical Center;

(19)

Application for Firearm License of the defendant-appellant:[28] and

(20)

Permit to Purchase Firearms and Ammunition.[29]

In addition to her allegations in the petition she filed with the RTC, she alleged that the defendant-appellant willfully disobeyed the Temporary Protection Order (TPO) issued by the RTC on 18 July 2011. Moreover, the defendant-appellant used his brothers living with him to stalk her and their children. That, the defendant-appellant's presence in the vicinity of their apartment building does not only cause economic loss but it sowed constant terror and fear not only to her and the children but also to their tenants. While she and her children survived without the defendant-appellant's help what she really needs is protection for herself and her children from threats of physical, psychological and emotional harm and to secure economic opportunities due to her and their children from the earnings of their conjugal properties. In support of her plea for issuance of a Permanent Protection Order (PPO), she cites pertinent provisions of RA 9262.

In his “Expanded Discussion on the Grounds Relied Upon”[30] dated 17 October 2011, the defendant-appellant attached the following: (a) documents purporting to show massive withdrawals[31] made by the plaintiff-appellee from their President's Choice Financial under account No. 0023293996; and (b) Notice of Assessment[32] from the Canada Revenue Agency showing the amount of tax refund due him, which to date the plaintiff-appellant has not yet explained where it was spent or used for. On these circumstances, the plaintiff-appellee “is riding high on the technical provisions of Republic Act No. 9262 and thereby undercut the bargaining position of respondent in

the aforementioned accounting of the absolute community of funds, and the eventual dissolution and liquidation of the same to his damage and prejudice”.

The defendant-appellant's Motion for Hearing[33] opposed by the plaintiff-appellee in her “Comments to Respondent's Motion to Set this Case for Hearing and Comments to the Respondent's Position Paper.”[34]

In his Position Paper[35] dated 10 October 2011, the defendant-appellant averred in the main, that, (a) the plaintiff-appellee's claim that the lot on which their apartment building is standing was gratuitously given her to by her parents as 'start-up assistance’ is completely false and malicious considering the deed of conveyance and affidavit signed by the plaintiff-appellee [submitted in Civil Case No. R-55920]; (b) the probative value of the police certification of the incident that happened on August 3, 1997 cannot be disregarded as the certification was not refuted by the plaintiff-appellee and, the entries in the certification are prima facie evidence of the facts state therein; (c) the allegation that he has a history of violent behavior belied by the certification issued by the Canadian police showing that he has no criminal records whatsoever while he was still in Canada; (d) the allegation that he does not anymore support his family is blatant lie as can be readily shown in Annexes “I” to “O”[36] (e) the plaintiff-appellee was not honest with respect to his educational attainment – considered him as a school drop-out, when in fact, he pursued his studies at John Cabot Institute of Technology, Canada and completed with certificate as Stationary Engineer om 1989; (f) the plaintiff-appellee hid the fact of his employment with Swiss Canadian Management Corporation and Dufferin-Peel Catholic District School Board; and (g) the instant petition is a scheme undertaken by the plaintiff-appellee to serve as smokescreen to her acts of defraudation of funds belonging to the community of property and other acts of abuse of administration of the community property. Attached to the position paper are the following documents/papers, to wit:

(1)

Unsigned copy of Compromise Agreement[37]

(2)

Deed of Absolute Sale[38]

(3)

Transfer Certificate of Title No. 134152[39]

(4)

Loan Agreement with the Land Bank of the Philippines, where the principal borrower is the defendant-appellant[40]

(5)

Certification[41] dated 1 August 2011 issued by the PNP stating that the plaintiff-appellee and a certain Jan Eric Abellanosa Geotina were arrested and booked for “Adultery”;

(6)

Copy of the Decision rendered in Sp. Proc. No. 6819-CEB,[42] the dispositive portion of which reads,

“WHEREFORE, judgment is hereby rendered ordering the dissolution of the conjugal partnership of gains of the petitioners and ordering the separation of petitioners' conjugal properties in the manner agreed upon by the parties. The petitioners are enjoined to comply strictly with their respective undertaking as stated in the joint petition. The custody of the children of the petitioners shall temporarily be with the petitioner-husband. Petitioner-wife shall have full visitatorial rights. The custody of the children with the husband shall continue

until the matter shall finally be decided in an appropriate proceeding.

SO ORDERED.”

(7)

Affidavit[43] dated January 13, 2010 executed by the plaintiff-appellee attesting, among others, that the land where their apartment building is standing on was purchased by her and defendant-appellant;

(8)

Criminal Records Search[44] by the Canadian Police Information Center;

(9)

Acknowledgment of receipt[45] by both the plaintiff-appellee and defendant-appellant of various amounts representing their respective share in the household expenses, children's allowance, cost of labor and building/construction materials, loan amortization, and income from rental;

(10)

Certification[46] issued by the College of North Atlantic (formerly Cabot Institute of Applied Arts & Technology) stating that he graduated therefrom and received his diploma for Power Engineering Program;

(11)

Official Transcript of Academic Record[47] of the defendant-appellant from the Cabot Institute of Applied Arts and Technology;

(12)

Certification[48] dated September 15, 2011 issued by the Dufferin-Peel Catholic District School Board stating that the defendant-appellant worked with them as Building Operator from December 2, 2002 to November 30, 2009 earning an annual income of \$56,905.00;

(13)

Certification[49] dated September 28, 2011 issued by the Dufferin-Peel Catholic District School Board stating that the defendant-appellant during his employment with them was a great team leader and accomplished tasks independently and in a timely fashion when required. That, he was a good communicator and was a very conscientious, reliable and honest employee. That, according to his co-employees, he was always positive;

(14)

Communication[50] dated July 5, 2010 from Barrister & Solicitor Amado F. Cabanela informing the plaintiff-appellee and defendant-appellant that the transaction re: purchase and sale of their house in Canada, has already been completed (the communication was received[51] by the plaintiff-appellee);

(15)

Re-Direction of Funds[52] sent by the Barrister & Solicitor Cabanela to the spouse-purchasers of the house and the said purchasers' own barrister & solicitor asking them to pay the “balance due the closing” of the sale transaction;

(16)

Download transactions (from Jan. 1, 2011 to September 24, 2011) – preview;[53] and

(17)

Affidavit[54] of Vincent B. Viajar, brother of the defendant-appellant.

In reply[55] to the plaintiff-appellee's Comment, the defendant-appellant averred that “it is not true that the Honorable Court is restricted to the position papers and/or affidavits submitted by the parties because Sec. 25 and Sec. 26 of the Rule on Violence Against Women and Their Children [A.M. No. 04-10-11-SC], provides that the court may conduct hearing in the manner set forth therein, thus:

'x x x x'

x x x. In other words, what is controlling is the Rule on Violence Against Women and Their Children where the aforementioned Sections 25 and 26 thereof allow the conduct of hearing”.

By its Order[56] dated 6 December 2011, the RTC denied the defendant-appellant's motion for hearing.

The Ruling of the Regional Trial Court

On 16 December 2011, the RTC rendered the assailed judgment, ratiocinating, viz -

“On the basis of the evidence at hand, it is quite obvious to the court that the parties are going through a very troubled marriage. The spouses' continuing disagreements and animosity on practically every matter and their seemingly irreconcilable differences have instilled fear upon the petitioner and her children. Such psychological and emotional abuse, couple with the physical violence, is enough to warrant the issuance of a permanent protection order, pursuant to Section 5 of the Rule on Violence Against Women and their Children.

Under Section 3(a) of R.A. 9262, 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, 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. This includes, inter alia, bodily or physical harm and psychological violence, which are 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 mental infidelity. Based on the evidence submitted by the petitioner, the court finds that she has been subjected to physical and psychological violence, mental and emotional anguish, and repeated verbal and emotional abuse by the respondent, such that she is entitled to a Permanent Protection Order.

With respect to the properties of the spouses, however, the court believes that this should be properly addressed in the appropriate case and not in this present action.”

Hence, this appeal wherein the defendant-appellant make the following assignment of errors, to wit:

“I

The Decision of the trial court is null and void for it violates Section 1, Rule 36 of the Revised Rules of Court, as well as Section 14, Article VIII of the Philippine Constitution.

II

The assailed Decision made conclusions not supported by the evidence on record.

III

The conclusions and findings of the court a quo are based on surmises, speculations and conjectures.

IV

The trial court totally disregarded the factual matters vital to the cause and/or defenses of defendant-appellant.

V

The lower court misapplied plain provisions of the law on evidence and jurisprudential doctrine.”

Defendant-appellant's Brief:

The defendant-appellant first contends that the assailed decision failed to mention any particular evidence to support its finding that he is guilty of psychological and emotional abuse and physical violence. In fact, the plaintiff-appellee did not present any competent proof to prove that, indeed, she was abused – psychologically, emotionally and physically, to warrant the issuance of a permanent protection order. He adds that Section 1, Rule 36 is clear that the decision shall clearly and distinctly state the facts and the law on which it is based. That, the purpose of this specific rule is to inform the person reading the decision, more specially the parties, how the same was reached. In *Valdez v. CA* (G.R. No. 85082, February 25, 1991), the Supreme Court held that the decision of the trial court does not show any findings of facts to serve as basis for its conclusions. Verily, pursuant to the mandate in Administrative Circular No.1 dated January 28, 1988 the judges “should avoid the tendency to generalize and form conclusions without detailing the facts from which such conclusions are deduced”.

Plaintiff-appellee's Brief:

The plaintiff-appellee re-iterates her allegations in her petition. She maintains that even with the Temporary Protection Order, the defendant-appellant continued to stay near her and their children's place in direct defiance of the said Order. Too, the said appellant, with show of strength and force, personally warned their tenants that he will be the one to personally collect the rentals, thus, disturbing the orderly management of their apartment. Surely, the defendant-appellant's conduct would scare away their tenants, which could result to loss of income. To stress, the earning from the rentals is the only source of income for her and her children.

Plaintiff-appellee posits that she did not intent to strip the defendant-appellant of his share; but just wants to protect the interest of her children and to maintain a peaceful environment in the premises so that the tenants would not have any reason to leave. With respect to the monthly expenses, instead of sharing half of the monthly expenses which amount to P43,400.00 she suggested to defendant-appellant a reduced amount of P15,000.00 as his share in the family expenses. She did this in order to avoid a prolong legal battle which necessarily would involve their children. But this amount is not acceptable to the defendant-appellant. To the defendant-appellant, P5,000.00 is enough contribution to the expenses. Too, the defendant-appellant got half of their savings in bank accounts here and abroad, without setting aside anything for their children. Not contended, the defendant-appellant demanded that the college education fund of Adrienne deposited with a local bank, which was partly provided by the Canadian government and partly by a private insurance firm, be withdrawn. She acceded to the demand of the defendant-appellant by depositing half the amount of the fund in the latter's bank account and the other half she retained to be set aside for Adrienne's college education. She has, a couple of times, gave in to the defendant-appellant's demands to get his share of the conjugal funds but after he committed a series of acts unduly disturbing her peace and that of her children sometime in July 2011, she ordered a “stop payment” of the check she issued to him in the amount of “CAD12,000.00”. To add, the defendant-appellant is expected to earn CAD1334,700.00 from his insurance; all she asks is that their children be given a portion of it.

In separate occasions, the defendant-appellant, with force, threat and intimidation, wanted to deprive their children of the family-owned vehicle, a Mitsubishi Adventure by knocking hard on the glass. He even attempted to attack the driver. These incidents are attested to by their son, Karl, and their househelp, Agnes Sabanal. Not satisfied, the defendant-appellant filed with the barangay a complaint for the recovery of the vehicle. Worthy of noting is that the defendant-appellant has exclusive use of the other two conjugal vehicles.

On these considerations, the RTC did not err in issuing the Permanent Protection Order. With respect to their

children's affidavits, Section 25, Rule 130 of the Revised Rules of Court refers to a privilege not to testify, which, by the way, may be invoked or waived just like any other privileges. This, their children precisely did – they chose to waive their filial privilege when they executed sworn statements against their father, herein defendant-appellant.

Anent the appreciation and taking into consideration by the RTC of the video and photographs she submitted, such is sanctioned as the present case is summary in nature. Section 35 of Rule 132 of the Rules of Court provides that documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. There being no testimony after the same was duly dispensed with the submission of position papers, formal offer of the party's documentary evidence may be dispensed with. Furthermore, with the suppletory application of the Rules on Summary Procedure as provided in RA 9262, specifically Sections 9 and 10 thereof, the RTC was correct in giving due consideration to the video and photographs submitted by her.

In conclusion, RA 9262 expressly provides for the liberal interpretation of the provisions therein in line to attain the object of the said law which is primarily to promote the protection and safety of women and children from violence and threats to their personal safety and security. Furthermore, as provided in Section 16 of RA 9262, viz

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“The Court shall not deny the issuance of protection order on the basis of the lapse of time between the act of violence and the filing of the application.

Regardless of the conviction or acquittal of the respondent, the Court must determine whether or not the PPO shall become final. Even in a dismissal, a PPO shall be granted as long as there is no clear showing that the act from which the order might arise did not exist.”

hence, she prays that the RTC's grant of the PPO be affirmed and the instant appeal be denied.

Defendant-appellant's Expanded Discussion

(which may be considered as Reply):

He re-iterates that the assailed decision made conclusions and findings not supported by the evidence on records but on surmises, speculations and conjectures. He maintains that no witness was ever presented to establish the authenticity and genuineness of the photographs submitted by the plaintiff-appellee. It is for this reason that he asked for the conduct of a hearing in order to afford him the opportunity to test the veracity of the same. It would be unfair for the RTC to take the photograph hook, line and sinker. The same is true with respect to the psychologist's Initial Assessment Report, which is one-sided and does not contain any independent evaluation. The psychologist merely relied on the unverified allegations of the plaintiff-appellee. It would have been a different story if the psychologist was presented on the witness stand or submitted her sworn statement to authenticate her report.

In any event, the automaton pronouncement of the RTC that the plaintiff-appellee was subjected to physical and psychological violence, mental and emotional anguish, and repeated verbal and emotional abuse is without any competent evidence to stand on. If at all, this pronouncement is a “plunge into the sea of conjectures and speculation”.

Furthermore, as elucidated in the case of *Ang Tibay v. CIR* (G.R. No. L-46496, Feb. 27, 1940), “not only must a party be 'given an opportunity to present his case and adduce evidence tending to establish the rights which he asserts, but the court must consider the evidence presented”. In line with this pronouncement, the Supreme Court held in *Peter Paul v. CIR* (G.R. No. L-6491, October 20, 1954) “that the failure of the court to consider the facts on record was infringement of due process”.

Finally, the pieces of evidence he submitted were not even evaluated by the RTC. In fact, he vigorously insisted that the plaintiff-appellee had already poisoned the minds of their children. Without intending to impose his position, the RTC should have taken a hard look at the possibility that their daughter, Adrienne Marie, was coerced to execute an affidavit against him.

THE ISSUES

(1)

whether or not the assailed decision is null and void for being violative of Section 1, Rule 36 of the Revised Rules of Court and Section 14, Article VIII of the Constitution;

(2)

whether or not the defendant-appellant was denied due process; and

(3)

whether or not the issuance of the permanent protection order has basis both in fact and law.

THIS COURT'S RULING

We dismiss the appeal.

Prefatorily, we agree with the RTC that,

“With respect to the properties of the spouses, however, the court believes that this should be properly addressed in the appropriate case and not in this present action.”[57]

Now, on the issues on hand.

Re: nullity of the assailed decision

Defendant-appellant strongly contends that the assailed decision is not in accordance with Section 1, Rule 36 of the Rules of Court and Section 14, Article VIII of the 1987 Constitution

We are not convinced.

For easy reference, the foregoing provisions are quoted hereunder:

“Section 1. Rendition of judgments and final orders. – A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.”

“Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration or a decision of the court shall be refused due course or denied without stating the legal basis therefor.”

In resolving this issue, this court is ever mindful of the case of *Yao v. CA*,[58] wherein the Supreme Court held that,

Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is

rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding ipse dixit. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision.

Thus the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution.

Thus, we nullified or deemed to have failed to comply with Section 14, Article VIII of the Constitution, a decision, resolution or order which: contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions; contained nothing more than a summary of the testimonies of the witnesses of both parties; convicted the accused of libel but failed to cite any legal authority or principle to support conclusions that the letter in question was libelous; consisted merely of one (1) paragraph with mostly sweeping generalizations and failed to support its conclusion of parricide; consisted of five (5) pages, three (3) pages of which were quotations from the labor arbiter's decision including the dispositive portion and barely a page (two [2] short paragraphs of two [2] sentences each) of its own discussion or reasonings; was merely based on the findings of another court sans transcript of stenographic notes; or failed to explain the factual and legal bases for the award of moral damages.

vis-a-vis the landmark case of *Air France v. Carrascoso*,^[59] wherein the Supreme Court explained that,

Coming into focus is the constitutional mandate that "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based". This is echoed in the statutory demand that a judgment determining the merits of the case shall state "clearly and distinctly the facts and the law on which it is based", and that "Every decision of the Court of Appeals shall contain complete findings of fact on all issues properly raised before it."

A decision with absolutely nothing to support it is a nullity. It is open to direct attack. The law, however, solely insists that a decision state the "essential ultimate facts" upon which the court's conclusion is drawn. A court of justice is not hidebound to write in its decision every bit and piece of evidence presented by one party and the other upon the issues raised. Neither is it to be burdened with the obligation "to specify in the sentence the facts" which a party "considered as proved". This is but a part of the mental process from which the Court draws the essential ultimate facts. A decision is not to be so clogged with details such that prolixity, if not confusion, may result. So long as the decision of the Court of Appeals contains the necessary facts to warrant its conclusions, it is no error for said court to withhold therefrom "any specific finding of facts with respect to the evidence for the defense". Because, as this Court well observed, "There is no law that so requires". Indeed, "the mere failure to specify (in the decision) the contentions of the appellant and the reasons for refusing to believe them is not sufficient to hold the same contrary to the requirements of the provisions of law and the Constitution". It is in this setting that in *Manigque*, it was held that the mere fact that the findings "were based entirely on the evidence for the prosecution without taking into consideration or even mentioning the appellant's side in the controversy as shown by his own testimony", would not vitiate the judgment. If the court did not recite in the decision the testimony of each witness for, or each item of evidence presented by, the defeated party, it does not mean that the court has overlooked such testimony or such item of evidence. At any rate, the legal presumptions are that official duty has been regularly performed, and that all the matters within

an issue in a case were laid before the court and passed upon by it.

Prescinding from the foregoing, the assailed Decision sufficiently complies with Section 14 (1), Article VIII of the 1987 Constitution and Section 1, Rule 36. To stress, these provisions require that decisions of the courts shall clearly state how the court reached its conclusion taking into consideration the applicable law and the facts established. It may well to note that the assailed decision contains the facts as narrated by the plaintiff-appellee and defendant-appellant in the pleadings they filed with the RTC, thus, it cannot be said that the defendant-appellant's side was not heard. True, the RTC's assessment of the facts may be short, even so, this is sufficient compliance with the Constitution and the Rules of Court. In any event, we hold that the conclusions of the RTC are supported by the evidence on record like the affidavits of the parties' children and the household help, the psychologist's initial assessment report, documents/papers showing bank withdrawals, deposits, receipts of payment, acknowledgment receipts of share of the herein parties in the family expenses, and license to own/possess firearm.

Re: no denial of due process

The defendant-appellant claims that the RTC denied him due process when it did not consider and evaluate the evidence he submitted. He adds that the RTC should have allowed the conduct of a hearing in order to authenticate the documents presented by the plaintiff-appellee in support of her plea for the issuance of a permanent protection order and to give him the opportunity to face the herein plaintiff-appellee's witnesses.

We are not persuaded.

Section 25 of the Implementing Rules of RA 9262 provides, that,

“SEC. 25. Order for further hearing. - In case the court determines the need for further hearing, it may issue an order containing the following:

(a)

Facts undisputed and admitted;

(b)

Factual and legal issues to be resolved;

(c)

Evidence, including objects and documents that have been marked and will be presented;

(d)

Names of witnesses who will be ordered to present their direct testimonies in the form of affidavits; and

(e)

Schedule of the presentation of evidence by both parties which shall be done in one day, to the extent possible, within the 30-day period of the effectivity of the temporary protection order issued.

Verily, it is within the RTC's sound judgment whether to set the case for hearing or not. Due process of law is not only all about a formal-type of hearing where the parties present and offer the testimonies of their respective witnesses. Due process is satisfied where a party was given ample opportunity to be heard to adduce evidence of his/her version of the material factual occurrences and controvert that of the adverse party, including affidavits. What is abhorred by law is the lack of opportunity to be heard and not the lack of a formal-type of hearing. In this instance, the defendant-appellant was duly notified about the petition filed by the plaintiff-appellee; he filed his

opposition thereto, participated in the preliminary conference, filed a pleading denominated as “Expanded Discussion on Grounds Relied Upon”, filed a motion for hearing, submitted a position paper with supporting affidavits and documents, and filed a reply to the plaintiff-appellee's position paper. Under the circumstances, a claim of denial of due process on the part of the defendant-appellant is completely unavailing. The essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. In other words, the absence of a formal-type of hearing where he can cross-examine a particular witness is not denial of due process but the opportunity to be heard of which as earlier stated, the defendant-appellant has extensively availed. “As Justice Frankfurter emphasized, procedural due process is a restatement of the 'sporting idea of fair play'.”[60]

Significantly, in cases filed under RA 9262, time is of an essence. As can be inferred from Sections 18, 19 and 20 thereof, these cases are given priority over any other cases or business. Thus -

“SECTION 18. Mandatory Period For Acting on Applications For Protection Orders – Failure to act on an application for a protection order within the reglementary period specified in the previous section without justifiable cause shall render the official or judge administratively liable.”

“SECTION 19. Legal Separation Cases. – In cases of legal separation, where violence as specified in this Act is alleged, Article 58 of the Family Code shall not apply. The court shall proceed on the main case and other incidents of the case as soon as possible. The hearing on any application for a protection order filed by the petitioner must be conducted within the mandatory period specified in this Act.”

“SECTION 20. Priority of Application for a Protection Order. – Ex parte and adversarial hearings to determine the basis of applications for a protection order under this Act shall have priority over all other proceedings. Barangay officials and the courts shall schedule and conduct hearings on applications for a protection order under this Act above all other business and, if necessary, suspend other proceedings in order to hear applications for a protection order.”

In addition, Section 29 of RA 9262 prescribes the period within which the courts hearing the petitions filed pursuant thereto must decide. Section 29, thereof, reads,

“SECTION 29. Period to decide. - (a) The court shall decide the petition within thirty days after termination of the hearing on the merits.

(b) Where no hearing has been conducted, the court shall decide the petition within ten days after the termination of the preliminary conference.”

The urgency of the matter of issuance of a permanent protection order and the execution of the grant thereof is made more manifest by Section 30 of RA 9262. To wit -

SEC. 30. Judgment. - If the court finds the petition meritorious, it shall render judgment granting the offended party permanent protection against acts of violence and such other necessary reliefs provided in Section 11 of this Rule. The court shall not deny the issuance of a permanent protection order due to the lapse of time between the act of violence and the filing of the petition, subject to Section 24, R.A. No. 9262. The judgment shall be immediately executory.

Re: sworn statement of defendant-appellant's daughter

The defendant-appellant maintains that their daughter was coerced to execute a sworn statement against him.

We are not convinced.

Sans any proof that their daughter would maliciously fabricate such serious, damning charges against him or that

her daughter's sworn statement was involuntary and executed under duress, the defendant-appellant's allegation remains as such, that is, an allegation without any leg to stand – be it a sworn statement from an independent source, or, retraction by their daughter, or, any other document to prove the allegation of coercion, force, intimidation or duress. Basic is the rule that mere allegation is not evidence.

Re: issuance of the PPO

Onset, the clear purpose of the framers of RA 9262 is readily discernible from Section 3 thereof, which states and enumerates the objectives of the said law.

“SEC. 3. Objectives. - The objectives of this Rule are:

(a)

To protect the rights of the family and its members particular women and children from violence and threats to their personal safety and security;

(b)

To enable the courts to manage and monitor cases involving violence against women and children and the members of their family or household;

(c)

To prevent any disruption in the daily lives of the offended parties and assist them to regain control of their lives;

(d)

To ensure that treatment is provided for the offended parties and offenders; and

(e)

To hold the offenders accountable for their acts.

To the mind of this court, these objectives shall serve as guide to the bar and the bench and, perhaps as reminder about the utmost importance of this law and the extreme urgency that goes with every petition filed thereunder.

That, in giving spirit to the law, and to realize in the fullest manner for which the law was purposely created, the framers made sure that swift temporary and/or permanent relief be granted to the petitioner. Pertinently, Section 8 of RA 9262 provides, to wit,

“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 serves 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.”

As explained in *Garcia v. Drilon*,^[61] viz -

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. x x x

"SEC. 11. Reliefs available to the offended party. — The protection order shall include any, some or all of the following reliefs:

xxx xxx xxx

(c)

Removing and excluding the respondent from the residence of the offended party, regardless of ownership of the residence, either temporarily for the purpose of protecting the offended party, or permanently where no property rights are violated. If the 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 the respondent has gathered his things and escort him from the residence;

xxx xxx xxx"

True, the defendant-appellant was ordered to leave their apartment building and to remove his personal belongings from the unit he was occupying, among others. It cannot be overemphasized, however, that such removal or exclusion is only temporary and will not, in any way, leave him out from his share in the conjugal properties and funds, as held in *Garcia v. Drilon*, supra,

Indubitably, petitioner may be removed and excluded from private respondent's residence, regardless of ownership, only temporarily for the purpose of protecting the latter. Such removal and exclusion may be permanent only where no property rights are violated. How then can the private respondent just claim any property and appropriate it for herself, as petitioner seems to suggest? (Underscoring ours)

Tellingly, the petition for issuance of protection order must be signed and verified by the petitioner. Hence, whatever untruthfulness may have been perpetrated therein may hold the petitioner liable, civilly and criminally.

Anent the alleged infidelity of herein plaintiff-appellee, this court opines that it has no relevance in this instance. Firstly, the alleged infidelity alluded to was committed prior to the acts complained of. Secondly, as admitted by the defendant-appellant, he and the plaintiff-appellee reconciled after the alleged incident. Thirdly, and most importantly, the defendant-appellant cannot use the supposed infidelity as a ground to reject the plaintiff-appellee's plea for the issuance of a protection order. All he needed to do is to prove that the acts complained of did not happen and could not have happened.

As final word, the final consideration in carrying out and implementing the provisions of RA 9262 is that the welfare of the women and their children is the primordial and paramount consideration.

Prescinding therefrom, we do not find any cogent reason to reverse, much less modify, the RTC's issuance of a permanent protection order and the directives embodied therein.

WHEREFORE, the appeal is DISMISSED, the Judgment dated 16 December 2011 of the Regional Trial Court, 7[th] Judicial Region, Branch 6, Cebu City in Sp. Proc. No. 18563-CEB is hereby AFFIRMED in toto.

Costs against the defendant-appellant.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Annex “A”, Original Records, p. 47.

[2] Annex “B”, Original Records, p. 48.

[3] Annex “C”, Original Records, p. 49.

[4] Deed of Absolute Sale marked as Annex “D”, Original Records, pp. 50-51.

[5] Annex “E”, Original Records, p. 52.

[6] Annex “F”, Original Records, p. 53.

[7] Annex “G”, Original Records, pp. 54-57. In the Matter of the Voluntary Dissolution of the Conjugal Partnership of Gains and Separation of Property of the Spouses Velmund Paul Viajar and Jocelyn Mapeso Viaja docketed as Sp. Proc. No. 6819-CEB.

[8] Defendant-appellant's position paper, Original Records, pp. 71-81. Plaintiff-appellee's position paper, Original Records, pp. 93-113.

[9] Original Records, pp. 93-113.

[10] Original Records, p. 114.

[11] Original Records, pp. 116-121.

[12] Original Records, pp. 122-123.

[13] Original Records, pp. 124-126.

[14] Original Records, p. 127.

[15] Original Records, p. 128.

[16] Original Records, p. 129.

[17] Original Records, p. 130.

[18] Original Records, p. 131.

[19] Original Records, p. 132.

[20] Original Records, p. 133.

[21] Original Records, p. 134.

[22] Original Records, p. 135.

[23] Original Records, p. 136.

[24] Original Records, p. 137.

[25] Original Records, p. 138.

[26] Original Records, p. 139.

- [27] Original Records, pp. 140-141.
- [28] Original Records, p. 142.
- [29] Original Records, p. 143.
- [30] Original Records, pp. 144-146.
- [31] Annexes “W”, “W-1” and “W-3”, Original Records, pp. 147-148, 149-150; and 151.
- [32] Annex “X”, Original Records, p. 152.
- [33] Original Records, pp. 153-155.
- [34] Original Records, pp. 166-172.
- [35] Original Records, pp. 181-233.
- [36] Original Records, pp. 235-241.
- [37] Annex “A”, Original Records, pp. 210-218.
- [38] Annex “B”, Original Records, pp.219-220.
- [39] Annex “C”, Original Records, p.221.
- [40] Annex “D”, Original Records, pp.222-226.
- [41] Annex “E”, Original Records, p. 227.
- [42] Annex “F”, Original Records, pp. 228-230.
- [43] Annex “G”, Original Records, pp. 231-233.
- [44] Annex “H”, Original Records, p. 234.
- [45] Annexes “I”-“O”, Original Records, pp. 235-241.
- [46] Annex “P”, Original Records, p. 242.
- [47] Annex “Q”, Original Records, p. 243.
- [48] Annex “R”, Original Records, p. 244.
- [49] Annex “S”, Original Records, p. 245.
- [50] Annex “T”, Original Records, p. 246.
- [51] Stamped on the last page of the letter from the barrister & solicitor Cabanela, Ibid., p. 247.
- [52] Annex “U”, Original Records, p. 248.
- [53] Annexes “V” to “V-6”, Original Records, pp. 249-255.
- [54] Annex “W”, Original Records, pp. 256-259.
- [55] Original Records, pp. 176-180.
- [56] Original Records, pp. 260-261.
- [57] Rollo, p. 78.

[58] George Yao v. Hon. Court of Appeals, and The People of the Philippines, G.R. No. 132428, October 24, 2000.

[59] En Banc. Air France v. Rafael Carrascoso and The Honorable Court of Appeals, G.R. No. L-21438. September 28, 1966.

[60] En Banc. Maximo G. Rodriguez v. The Hon, Sandiganbayan, Second Division, et. al., G.R. No. L-61355, February 18, 1983.

[61] En Banc. Jesus C. Garcia, vs. The Honorable Ray Alan T. Drilon, Presiding Judge, Regional Trial Court-Branch 41, Bacolod City, and Rosalie Jaype-Garcia, for herself and in behalf of minor children, namely: J-Ann, Joseph Eduard, Jesse Anthone, all surnamed Garcia,. G.R. No. 179267, June 25, 2013.

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