

**ROSARIO R. TUASON, PETITIONER, VS. HON. COURT OF APPEALS,
AND EMILIO R. TUASON, RESPONDENTS.***G.R. No. 124553. February 10, 1997*

Ponente: VITUG, J.

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Petitioner Rosario Tuason, mother of private respondent Emilio R. Tuason, filed, on 21 November 1991, with the Regional Trial Court of Quezon City a petition, docketed Case No. Q-91-10677, for the confinement and treatment of Emilio at the Medical City General Hospital on account of his being a drug dependent. The trial court, acting on the petition, directed the confinement of Emilio at the hospital. About three months later, or on 11 February 1992, Rosario initiated, in SP Proc. M-3051, guardianship proceedings over the person and estate of her son. Corresponding letters of guardianship were forthwith issued in favor of petitioner.

On 06 June 1994, on motion of private respondent Emilio who claimed to have been freed from drug dependence, the trial court dismissed Case No. Q-91-10677. Emilio then filed, on 28 October 1990, a Manifestation and Motion in SP Proc. No. M-3051 asking for the termination of his guardianship or, in the alternative, for the appointment of Mrs. Milagros Balatbat, in lieu of petitioner, as guardian. The motion was denied by the trial court which, later, also rejected a reconsideration thereof.

Private respondent went up to the Court of Appeals on a petition for certiorari. The petition was followed by an exchange of pleadings. In his reply to petitioner's comment, private respondent zeroed in on the nullity of the court's ruling in SP Proc. Case No. M-3051 for alleged lack of jurisdiction. He averred that the guardianship proceedings were null and void, asseverating that the Sheriff's Return, dated 14 February 1991, indicated that copies of the petition and the order setting the case for hearing on 20 February 1992 had been served not on private respondent personally but on the Director of Medical City General Hospital. Private respondent disclaimed having been aware of the petition. In a decision, dated 22 November 1995, the appellate court found the petition meritorious and declared the appealed judgment null and void.

We find merit in the instant petition.

There is sufficient basis to establish that the trial court has validly acquired jurisdiction over the person of private respondent Emilio Tuason. The records show that private respondent did voluntarily submit himself to the court's jurisdiction. Several pleadings have been filed by him that, in fact, accounted for a number of interlocutory orders issued by the trial court; viz:

- 1) Order, dated 14 March 1994, ruling on Emilio R. Tuason's "Motion to Remove Guardianship" (Certified True Copy, Rollo, p. 38);
- 2) Order, dated 28 November 1994 ruling on Emilio R. Tuason's Urgent Omnibus Motion (Certified True Copy, Rollo, pp. 39-41);
- 3) Order, dated 21 December 1994 ruling on Emilio R. Tuason's Urgent Motion for the Issuance of

Temporary Restraining Order and/or Injunction (Certified True Copy, Rollo, p. 42);

4) Order, dated 26 December 1994, resetting the case for presentation of evidence anent Emilio R. Tuason's application for injunction (Certified True Copy, Rollo, p. 43);

5) Order, dated 15 March 1995, denying Emilio R. Tuason's Motion for Reconsideration (Certified True Copy, Rollo, p. 44); and

6) Order, dated 25 July 1996, setting the hearing for Emilio R. Tuason's motion for a restraining order or preliminary injunction and granting him twenty (20) days temporary restraining order (Certified True Copy, Rollo, p. 45).

In not a single instance, in the foregoing incidents, did private respondent appear to have seriously objected to the jurisdiction of the court.

Voluntary appearance could cure a defect in the service of summons. In *La Naval Drug Corporation vs. Court of Appeals*[1] this Court has ruled:

"The lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself to that jurisdiction. The decisions promulgated heretofore by this Court would likewise seemingly apply estoppel to bar the defendant from pursuing that defense by alleging in his answer any other issue for dismissing the action.

"A citation of a few of our decisions might be apropos.

"In *Wang Laboratories, Inc. vs. Mendoza* (156 SCRA 44), this Court has ruled that if the defendant, besides setting up in a motion to dismiss his objection to the jurisdiction of the court, alleges at the same time any other ground for dismissing the action, he is deemed to have submitted himself to the jurisdiction of the court. In the process, it has equated the matter to a situation where, such as in *Immaculata vs. Judge Navarro, et al.* (146 SCRA 5), the defendant invokes an affirmative relief against his opponent.

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"When the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court. A special appearance by motion made for the purpose of objecting to the jurisdiction of the court over the person will be held to be a general appearance, if the party in said motion should, for example, ask for a dismissal of the action upon the further ground that the court had no jurisdiction over the subject matter. (*Syllabus, Flores vs. Zurbito, supra*, at page 751. That rule was followed in *Ocampo vs. Mina and Arejola*, 41 Phil. 308)."[2]

The case of *Yangco vs. CFI of Manila*,[3] cited by the appellate court, is not really in point. The petitioner therein, Yangco, did not seek any affirmative relief, instantly taking, instead, an exception from the trial court's jurisdiction over his person. In the case at bench, Rule 15, Section 23, of the Rules of Court -

"Sec. 23. What is equivalent to service. - The defendant's voluntary appearance in the action shall be equivalent to service." -

is clearly applicable.

WHEREFORE, the petition is GRANTED, and the questioned decision of the Court of Appeals is REVERSED and SET ASIDE. All orders made and entered by the trial court are REINSTATED, and the case is REMANDED

thereto for further proceedings. No costs.
SO ORDERED.

Padilla, Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] 236 SCRA 78.

[2] At pp. 86-87.

[3] 29 Phil. 183.

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