

**RENE UY GOLANGCO, PETITIONER, VS. THE COURT OF APPEALS,
HON. CANDIDO VILLANUEVA, PRESIDING JUDGE OF THE REGIONAL
TRIAL COURT, BRANCH 144, MAKATI CITY AND LUCIA GOLANGCO,
RESPOND...**

G.R. No. 124724. December 22, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari which seeks to annul and set aside the resolution of the Court of Appeals dated January 10, 1996 in CA-G.R. SP No. 38866,[1] dismissing the petition for violation of Supreme Court Circular No. 28-91 on forum-shopping.

The facts of the case are as follows:

A petition for annulment of marriage was filed by private respondent Lucia Carlos Golangco against petitioner Rene Uy Golangco before the Regional Trial Court of Makati, Branch 144.[2] The couple had two children, Justin Rene and Stefan Rafael. During the proceedings of the case, a hearing for custody pendente lite of the two children was held. In an order dated July 21, 1994,[3] the trial court awarded the two children to Lucia while Rene was given visitation rights of at least one week in a month. Thereafter Rene questioned the order dated July 21, 1994 with the Court of Appeals. The Court of Appeals, however, dismissed the petition and instead affirmed the order of the trial court. Not contented, Rene appealed the resolution of the Court of Appeals affirming the order dated July 21, 1994 before this Court, and the case was docketed as G.R. No. 120831. On July 17, 1995, the Court resolved to dismiss the petition for failure of petitioner Rene to show that grave abuse of discretion had been committed by the appellate court.

On August 15, 1995, Lucia filed with the trial court a motion for reconsideration with prayer for the issuance of a writ of preliminary injunction.[4] She sought redress due to an alleged incident on July 5, 1995, in which her estranged husband physically abused their son Justin. On said date, he allegedly went to the art class of Justin at 2167 Paraiso Street, Dasmarinas Village, Makati. When they met, he asked his son to kiss him, but Justin refused. Irrked by his son's reaction, Rene hit him which produced contusions.[5]

Due to the incident, a criminal complaint for slight physical injuries was filed on July 1995 against Rene by his son Justin with the Metropolitan Trial Court of Makati on the basis of Justin's complaint-affidavit. On August 16, 1995, the trial court issued a temporary restraining order[6] against him and set the hearing of the motion. The spouses thereafter presented their respective evidence and witnesses. In an order dated October 4, 1995, [7] the trial court granted the writ of preliminary injunction restraining Rene from seeing his children.

Aggrieved, Rene filed a petition for certiorari under Rule 65 of the Revised Rules of Court before the Court of Appeals (docketed as CA-G.R. SP. No. 38866), alleging grave abuse of discretion on the part of the trial court in issuing the October 4, 1995 order.

In a resolution dated January 10, 1996, the Court of Appeals dismissed the petition for violation of Circular No. 28-91 on non- forum shopping.[8] Hence, this petition.

The issue before us is whether or not petitioner violated the rule on non- forum shopping.

There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) from another. [9]

In this case, the Court of Appeals dismissed the petition questioning the order dated October 4, 1995, on the ground that there was a petition for review filed before this Court (G.R. No. 120381) questioning the order dated July 21, 1994 regarding the award of custody of the two children to Lucia.[10]

We should first distinguish between what is being questioned in G.R. No. 120381, that is the order dated July 21, 1994 and in CA-G.R. SP No. 38866, the order dated October 4, 1995.

The latter case questioned the October 4, 1995 order of the trial court granting the writ of preliminary injunction prayed for by Lucia, which enjoined her husband from seeing their children. On the other hand, G.R. No. 120381 questioned the order dated July 21, 1994, affirmed by the Court of Appeals, which granted custody pendente lite of the children to their mother.

In the case at bar, the Court of Appeals ruled that there was forum-shopping since the two petitions, (G.R. No. 120381 and CA-G.R. SP No. 38866) dealt with the same question or issue, that is, whether Rene should be prohibited from seeing his children.[11]

We disagree.

In assailing the October 4, 1995 order, petitioner was actually questioning the propriety of the issuance of the writ of injunction. He alleged therein that the trial court acted with grave abuse of discretion in issuing the order since it disregarded his right to procedural due process. Moreover the said order restrained him from seeing his children. He, therefore, sought the reinstatement of the July 21, 1994 order wherein he was given visitation rights of at least one week in a month.

On the other hand, in the order dated July 21, 1994, petitioner specifically questioned the award of custody of the children to his wife and prayed for more time to spend with his children.

Thus, it is clear from the foregoing that the issues raised in the two petitions, that is, first questioning the order dated July 21, 1994 and second, the order dated October 4, 1995 are distinct and different from one another.

In *First Philippine International Bank v. Court of Appeals*,[12] this Court had the occasion to lay down the test to determine whether there is a violation of the rule on forum-shopping:

“Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest. x x x.

x x x x x x x x

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues. x x x.”

In sum, two different orders were questioned, two distinct causes of action and issues were raised, and two objectives were sought; thus, forum-shopping cannot be said to exist in the case at bar.

As to the issue of the propriety of the writ of injunction, this Court finds the necessity of ruling on the same to expedite the case in the interest of justice and to prevent further delay.

In the case of *Heirs of Crisanta Y Gabriel-Almoradie v. Court of Appeals*,^[13] this Court ruled:

“It is a rule of procedure for the Supreme Court to strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation. No useful purpose will be served if a case or the determination of an issue in a case is remanded to the trial court only to have its decision raised again to the Court of Appeals and from there to the Supreme Court (citing *Board of Commissioners vs Judge Joselito de la Rosa and Judge Capulong*, G.R. No. 95122-23).

We have laid down the rule that the remand of the case or of an issue to the lower court for further reception of evidence is not necessary where the Court is in position to resolve the dispute based on the records before it and particularly where the ends of justice would not be subserved by the remand thereof. (*Escudero vs Dulay*, 158 SCRA 69) Moreover, the Supreme Court is clothed with ample authority to review matters, even those not raised on appeal if it finds that their consideration is necessary in arriving at a just disposition of the case.”

In this case, to remand the case to the Court of Appeals would, in all probability, only cause further delay since the decision would again be appealed to this Court. Thus, for the expeditious administration of justice, this Court shall resolve the propriety of the issuance of the writ of injunction by the trial court.

Preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.^[14] The rules provide that no preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined.^[15]

In this case, petitioner assailed the issuance of the writ of preliminary injunction by the trial court on the ground that he was denied procedural due process when he was not allowed to present evidence to oppose the motion filed by his wife.

The trial court granted the writ of injunction after a hearing was conducted thereon. Based on the records, the temporary restraining order was issued on August 16, 1995, after the motion for reconsideration was filed by private respondent. During the hearing on the motion, Lucia presented as witnesses her sons Justin and Stefan Carlos Golangco, Dr. Pedro Solis and Dra. Llamanzares.

Justin, testified on the incident of July 5, 1995, wherein his father allegedly hit him causing his head to bump against the wall resulting in injuries to his upper eyelid, temporal area of the head and neck.^[16] This was corroborated by Dr. Pedro Solis, Medico-Legal consultant of the Makati Medical Center Hospital.

Petitioner, on the other hand, presented three witnesses, namely, Sylvia Cancio Lim, Martha Oroza Uy and Patria Judith Gonzales. Lim and Uy testified that Rene was a loving and caring father to his sons.

After the presentation of evidence, the trial court granted the writ of preliminary injunction, stating that petitioner failed to present any controverting evidence to warrant the denial of the motion.^[17]

In the case of *Bataclan v. Court of Appeals*,^[18] this Court held:

“A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. In the issuance thereof, the courts are given sufficient discretion to determine the necessity for the grant of the

relief prayed for as it affects the respective rights of the parties, with the caveat that extreme caution be observed in the exercise of such discretion. Quintessentially, it is with an equal degree of care and caution that courts ought to proceed in the denial of the writ. It should not just summarily issue an order of denial without an adequate hearing and judicious evaluation of the merits of the application. A perfunctory and improvident action in this regard would be denial of procedural due process and could result in irreparable prejudice to a party.” (Underscoring supplied; citations omitted)

In the case at bar, the trial court gave both parties the opportunity to present their respective evidence and witnesses. An adequate hearing was conducted and, based on the evidence, the trial court deemed it proper to grant the writ of preliminary injunction.

The assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involves findings of facts ordinarily left to the trial court for its conclusive determination.

It is a fundamental and settled rule that conclusions and findings of fact by the trial court are entitled to great weight and should not be disturbed on appeal, unless strong and cogent reasons dictate otherwise. This is because the trial court is in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[19]

This Court, therefore, finds no justifiable reason or exception[20] sufficient to cause the reversal of the trial court’s declaration in granting the writ of preliminary injunction against petitioner.

WHEREFORE, the instant petition is hereby PARTIALLY GRANTED. The decision of the Court of Appeals in C.A.-G.R. No. 38866 dated January 10, 1996, is SET ASIDE. The order dated October 4, 1995, issued by the court a quo is hereby AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Penned by Associate Justice Antonio M. Martinez, Canizares-Nye and Callejo, JJ., concurring.

[2] Rollo, p. 78.

[3] Court of Appeals Records, p. 37.

[4] Rollo, p. 12.

[5] Court of Appeals, Rollo, p. 171.

[6] Ibid., p. 176.

[7] Id., p. 36.

[8] Rollo, pp. 20-21.

[9] *First Philippine International Bank v. CA*, 252 SCRA 259 (1996), citing *Villanueva v. Adre*, 178 SCRA 876 (1989); *Crisostomo v. SEC*, 179 SCRA 146 (1989); *Earth Minerals Exploration v. Macaraig*, 194 SCRA 1 (1991).

[10] G.R. No. 120381. On July 17, 1995, the Court resolved to dismiss this petition for failure of petitioner (same as in this action) to show that grave abuse of discretion had been committed by the appellate court. Entry of judgment was made on November 16, 1995, after petitioner’s motion for reconsideration was denied with finality in the Court’s resolution dated September 27, 1995.

[11] Rollo, p. 21.

[12] Supra.

[13] 229 SCRA 15 (1994).

[14] Revised Rules of Court, Rule 58, Section 1.

[15] Ibid., Section 5.

[16] Court of Appeals Records, p. 171.

[17] Court of Appeals Rollo, p. 36.

[18] 175 SCRA 764 (1989).

[19] Donato v. CA, 217 SCRA 196 (1993).

[20] The exceptions to the rule are as follows: “1) when the inference made is manifestly mistaken, absurd or impossible; 2) when there is grave abuse of discretion; 3) when the finding is grounded entirely on speculations, surmises, or conjectures; 4) when the judgment of the Court of Appeals is based on misapprehension of facts; 5) when the findings are conflicting; 6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; 7) when the findings of the Court of Appeals are contrary to those of the trial court; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and 10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.” Reyes vs Court of Appeals, 258 SCRA 651 (1996), citing Floro v. Llenado, 244 SCRA 713 (1995), in turn, citing Remalante v. Tibe, 158 SCRA 138 (1988).

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