

DOLORES MONTEFALCON & LAURENCE MONTEFALCON, PETITIONERS, VS. RONNIE S. VASQUEZ, RESPONDENT.

G.R. No. 165016. June 17, 2008

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the September 29, 2003 Decision[1] and the July 19, 2004 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 71944, which had reversed the May 28, 2001 Decision[3] of the Regional Trial Court (RTC), Branch 19, of Naga City in Civil Case No. RTC '99-4460.

The facts culled from the records are as follows.

In 1999, petitioner Dolores P. Montefalcon filed a Complaint[4] for acknowledgment and support against respondent Ronnie S. Vasquez before the RTC of Naga City. Alleging that her son Laurence is the illegitimate child of Vasquez, she prayed that Vasquez be obliged to give support to co-petitioner Laurence Montefalcon, whose certificate of live birth he signed as father.[5] According to petitioners, Vasquez only gave a total of P19,000 as support for Laurence since Laurence was born in 1993. Vasquez allegedly also refused to give him regular school allowance despite repeated demands. Petitioner Dolores added that she and Vasquez are not legally married, and that Vasquez has his own family.

A sheriff tried to serve the summons and complaint on Vasquez in Aro-aldao, Nabua, Camarines Sur. Vasquez's grandfather received them as Vasquez was in Manila. Vasquez's mother returned the documents to the clerk of court, who informed the court of the non-service of summons.[6]

Petitioners then filed a motion to declare Vasquez in default. The court denied it for lack of proper service of summons.[7]

In 2000, the court issued an alias summons on Vasquez at "10 Int. President Garcia St., Zone 6, Signal Village, Taguig, Metro Manila" upon petitioners' motion. Albeit a Taguig deputy sheriff served it by substituted service on Vasquez's caretaker Raquel Bejer, the sheriff's return incorrectly stated "Lazaro" as Vasquez's surname.[8]

Another alias summons[9] was issued, also received by Bejer. The second sheriff's return states:

THIS IS TO CERTIFY THAT on the 19[th] day of July 2000 the undersigned sheriff caused the service of summons issued by the court in the above-entitled case together with the copy of the complaint and annexes attached thereon upon defendant RONNIE S. VASQUEZ, by substituted service, thru his caretaker, RAQUEL BEJER, a person of sufficient discretion, who acknowledged the receipt thereof at No. 10 Int. President Garcia St. Zone 6, Signal Village, Taguig, Metro Manila, as evidenced by her signature appearing at the lower portion of the original copy of summons.

WHEREFORE, said summons is hereby returned to the court of origin DULY SERVED for its records and information.

Taguig for Naga City, July 19, 2000

(SGD.)

ERNESTO G. RAYMUNDO, JR.,
Deputy Sheriff
MTC BR 74
Taguig, Metro Manila[10]

On petitioners' motion, the trial court declared Vasquez in default for failure to file an answer despite the substituted service of summons. Vasquez was furnished with court orders and notices of the proceedings at his last known address, but these were returned as he had allegedly moved to another place and left no new address.[11]

In 2001, the court granted petitioners' prayers, explaining that they had no ill-motive and that Dolores gave a truthful testimony. The court added that Vasquez admitted the truth of the allegations by his silence. It further explained that Laurence's certificate of live birth, being a public document, is irrefutably a prima facie evidence of illegitimate filiation. The trial court decreed:

WHEREFORE, by preponderant evidence, judgment is hereby rendered in favor of the plaintiffs Dolores Montefalcon and her minor child Laurence Montefalcon and against defendant Ronnie S. Vasquez who is hereby ordered to:

- Acknowledge plaintiff Laurence Montefalcon as his illegitimate child with Dolores Montefalcon;
- Give support to the said minor in the amount of FIVE THOUSAND (P5,000.00) PESOS monthly commencing on June 1, 1993, the past support for eight (8) years in the amount of FOUR HUNDRED EIGHTY THOUSAND (P480,000.00) PESOS less the amount of NINETEEN THOUSAND (P19,000.00) PESOS previously given, shall be paid promptly and the monthly support of FIVE THOUSAND (P5,000.00) PESOS shall be paid not later than the end of each month beginning on July 31, 2001 and every end of the month thereafter as prayed for in the complaint; and
- Pay the sum of TEN THOUSAND (P10,000.00) PESOS and THREE THOUSAND (P3,000.00) PESOS as attorney's and appearance fees, respectively, and litigation expenses of ONE THOUSAND (P1,000.00) PESOS.

SO ORDERED.[12]

In the same year, Vasquez surfaced. He filed a notice of appeal to which petitioners opposed. Appeal was granted by the court.[13] Before the appellate court, he argued that the trial court erred in trying and deciding the case as it "never" acquired jurisdiction over his person, as well as in awarding P5,000-per-month support, which was allegedly "excessive and exorbitant." The appellate court noted that the service of summons on Vasquez was "defective" as there was no explanation of impossibility of personal service and an attempt to effect personal service, and decreed as follows:

WHEREFORE, based on the foregoing premises, the instant appeal is GRANTED. The appealed May 28, 2001 Decision of the Regional Trial Court of Naga City in Civil Case No. RTC `99-4460 is hereby NULLIFIED and SET ASIDE. Accordingly, let this case be REMANDED to the court a quo for further proceedings.

SO ORDERED.[14]

Petitioners argued in their motion for reconsideration[15] that any attempt at personal service of summons was needless as Vasquez already left for abroad. The appellate court, however, denied the motion. Hence, this petition.

Petitioners assign two appellate court errors:

I.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT IN THIS CASE WAS NOT VALIDLY SERVED WITH THE SUMMONS AND COMPLAINT IN CIVIL CASE NO. RTC '99-4460; AND THAT

II.

THE COURT OF APPEALS ERRED IN ANNUL[L]ING AND SETTING ASIDE THE TRIAL COURT'S DECISION (ANNEX "B") FOR LACK OF JURISDICTION.[16]

Petitioners justify the validity of substituted service as Vasquez had left as overseas seafarer when the sheriff served the summons on July 19, 2000 in Taguig. Noting that Vasquez's seaman's book indicated that he left the country on January 24, 2000 and came back on October 12, 2000, they criticize the appellate court for anchoring its rulings on mere technicality.

Vasquez counters that because he was abroad, service of summons should have been personal or by publication as substituted service is proper only if a defendant is in the country. Vasquez also added that the sheriff's return did not state that he exerted efforts to personally serve the summons.[17]

In their reply, petitioners insist that a substituted service is the normal method if one is temporarily away from the country as personal service abroad or by publication are not ordinary means of service.[18]

Simply put, the issues now for resolution are: (1) whether there is a valid substituted service of summons on Vasquez to clothe the trial court with jurisdiction over his person; and (2) whether he is obliged to give support to co-petitioner Laurence.

To acquire jurisdiction over the person of a defendant, service of summons must be personal,[19] or if this is not feasible within a reasonable time, then by substituted service.[20] It is of judicial notice that overseas Filipino seafarers are contractual employees. They go back to the country once their contracts expire, and wait for the signing of another contract with the same or new manning agency and principal if they wish. It is therefore common knowledge that a Filipino seaman often has a temporary residence in the urban areas like Metro Manila, where majority of the manning agencies hold offices, aside from his home address in the province where he originates. In this case, respondent Vasquez hails from Camarines Sur but he has lived in Taguig City when the complaint was filed. Notice may then be taken that he has established a residence in either place. Residence is a place where the person named in the summons is living at the time when the service was made, even though he was temporarily abroad at the time. As an overseas seafarer, Vasquez was a Filipino resident temporarily out of the country. Hence, service of summons on him is governed by Rule 14, Section 16 of the Rules of Court:

SEC. 16. Residents temporarily out of the Philippines. — When any action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service may, by leave of court, be also effected out of the Philippines, as under the preceding section. (Emphasis supplied.)

The preceding section referred to states:

SEC. 15. Extraterritorial service.— When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the

court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

Because Section 16 of Rule 14 uses the words "may" and "also," it is not mandatory. Other methods of service of summons allowed under the Rules may also be availed of by the serving officer on a defendant-seaman.

Ideally, Vasquez must be personally served summons. But was personal service of summons practicable? Conversely, was substituted service of summons justified?

Obviously, personal service of summons was not practicable since the defendant was temporarily out of the country. To proceed with personal service of summons on a defendant-seaman who went on overseas contract work — would not only be impractical and futile — it would also be absurd.

The impossibility of prompt personal service was shown by the fact that the Naga City-based sheriff purposely went to a barrio in Camarines Sur to serve the summons personally on Vasquez. When service of summons failed, said sheriff ascertained the whereabouts of Vasquez. Upon being informed that Vasquez was in Manila, the Naga court commissioned a Taguig City-based sheriff to serve the summons. Both the Naga and Taguig sheriffs inquired about Vasquez's whereabouts, signifying that they did not immediately resort to substituted service. There was no undue haste in effecting substituted service. The fact that the Naga court allowed a reasonable time to locate Vasquez to as far as Taguig shows that there was indeed no precipitate haste in serving the summons.

In this case, we agree that the substituted service in Taguig was valid and justified because previous attempts were made by the sheriffs to serve the summons, but to no avail. Diligent efforts were evidently exerted in the conduct of the concerned sheriffs in the performance of their official duty. Also, the person who received the alias summons was of suitable age and discretion, then residing at Vasquez's dwelling. There is no quarrel that it was really Vasquez's residence, as evidenced by his employment contract, executed under the supervision and authority of the Philippine Overseas Employment Administration (POEA). Vasquez cannot deny that in his contract of employment and seafarer's information sheet, both bearing POEA's letterhead, his address in Metro Manila was what was correctly mentioned in the alias summons that Bejer received. She must have informed Vasquez one way or another of the suit upon his return in October 2000 after finishing his nine-month contract with Fathom Ship Management.

Thus, it is reasonable to conclude that he had enough time to have the default order set aside. The default judgment was rendered on May 28, 2001. He also had enough time to file a motion for reconsideration. But he did nothing. The interregnum between the first but failed attempt at personal service by the RTC of Naga City in Vasquez's place in Camarines Sur to the final substituted service in Metro Manila by a Taguig RTC sheriff was almost eight months, a reasonable time long enough to conclude that personal service had failed and was futile.

Montalban v. Maximo[21] offers a rational and logical solution of the issue. We held in said case that the normal method of service of summons on one temporarily absent is by substituted service because personal service abroad and service by publication are not ordinary means of summoning defendants. Summons in a suit in personam against a temporarily absent resident may be by substituted service as domiciliaries of a State are always amenable to suits in personam therein.[22]

"Residence" is the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. A plaintiff is merely required to know the defendant's residence, office or regular business place. He need not know where a resident defendant actually is at the very moment of filing suit. He is not even duty-bound to ensure that the person upon whom service was actually made delivers the summons to the defendant or informs him about it. The law presumes that for him. It is

immaterial that defendant does not receive actual notice.

As well said in Montalban:

. . . A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business associates information as to where he may be contacted in the event a question that affects him crops up. If he does not do what is expected of him, and a case comes up in court against him, he cannot in justice raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business.

Not that he cannot be reached within a reasonable time to enable him to contest a suit against him. There are now advanced facilities of communication. Long distance telephone calls and cablegrams make it easy for one he left behind to communicate with him.[23]

Aside from, at present, various forms of texting and short message services by the ubiquitous cellular phones.

More importantly, the letter of the law must yield to its spirit. The absence in the final sheriff's return of a statement about the impossibility of personal service does not conclusively prove that the service is invalid. Such failure should not unduly prejudice petitioners if what was undisclosed was in fact done. Proof of prior attempts at personal service may have been submitted by the plaintiff during the hearing of any incident assailing the validity of the substituted service[24] had Vasquez surfaced when the case was heard. In fact, he was declared in default. It was only when a judgment against him was rendered by the trial court that he questioned the validity of service of summons before the appellate court. Such failure to appear, and then later to question the court's jurisdiction over his person, should not be taken against herein petitioners.

Between Vasquez's self-serving assertion that he only came to know of the case when his mother told him about the trial court's decision and the sheriff's return on the substituted service which carries a presumption of regularity, the latter is undoubtedly deserving of more faith and credit. The sheriff's certificate of service of summons is prima facie evidence of the facts set out in it. Only clear and convincing evidence may overcome its presumption of regularity. Given the circumstances in the present case, we agree that the presumption of regularity in the performance of duty on the part of the sheriff stands.[25]

On the second issue, the trial court's order must also be sustained. Co-petitioner Laurence is legally entitled to support from the respondent, and the amount of P5,000 monthly set by the trial court is neither excessive nor unreasonable.

Article 175[26] of the Family Code of the Philippines mandates that illegitimate filiation may be established in the same way and on the same evidence as legitimate children. Under Article 172,[27] the filiation of legitimate children is established by any of the following: (1) through record of birth appearing in the civil register or a final order; or (2) by admission of filiation in a public document or private handwritten instrument and signed by the parent concerned; or in default of these two, by open and continuous possession of the status of a legitimate child or by any other means allowed by the Rules of Court and special laws.

Laurence's record of birth is an authentic, relevant and admissible piece of evidence to prove paternity and filiation. Vasquez did not deny that Laurence is his child with Dolores. He signed as father in Laurence's certificate of live birth, a public document. He supplied the data entered in it. Thus, it is a competent evidence of

filiation as he had a hand in its preparation. In fact, if the child had been recognized by any of the modes in the first paragraph of Article 172, there is no further need to file any action for acknowledgment because any of said modes is by itself a consummated act.[28]

As filiation is beyond question, support follows as matter of obligation. Petitioners were able to prove that Laurence needs Vasquez's support and that Vasquez is capable of giving such support. Dolores testified that she spent around P200,000 for Laurence; she spends P8,000 a month for his schooling and their subsistence. She told the lower court Vasquez was earning US\$535 monthly based on his January 10, 2000 contract of employment[29] with Fathom Ship Management and his seafarer information sheet.[30] That income, if converted at the prevailing rate, would be more than sufficient to cover the monthly support for Laurence.

Under Article 195 (4)[31] of the Family Code, a parent is obliged to support his illegitimate child. The amount is variable. There is no final judgment thereof as it shall be in proportion to the resources or means of the giver and the necessities of the recipient.[32] It may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.[33] Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.[34] Under the premises, the award of P5,000 monthly support to Laurence is reasonable, and not excessive nor exorbitant.

In sum, we rule that the Court of Appeals erred in invalidating the substituted service of summons and remanding the case. As there was valid substituted service of summons under the circumstances of this case, the lower court acquired jurisdiction over his person and correctly ordered him to pay past and present monthly support to his illegitimate child as well as attorney's fees and litigation expenses to petitioners.

WHEREFORE, the petition is GRANTED. The Decision dated September 29, 2003 and Resolution dated July 19, 2004 of the Court of Appeals in CA-G.R. CV No. 71944 are REVERSED and SET ASIDE. The Decision dated May 28, 2001 of the Regional Trial Court, Branch 19, Naga City in Civil Case No. RTC '99-4460 is hereby REINSTATED.

Costs against respondent.

SO ORDERED.

Tinga, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

* Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

** Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

[1] Rollo, pp. 14-19. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Mercedes Gozo-Dadole and Lucas P. Bersamin concurring.

[2] Id. at 34.

[3] Records, pp. 37-46. Penned by Pairing Judge Marino O. Bodiao, Sr.

[4] Id. at 1-3.

[5] Id. at 32.

[6] Id. at 6-7, 14.

[7] Id. at 15-16.

[8] Id. at 18-22.

[9] Id. at 24.

[10] Id. at 25.

[11] Id. at 26-29.

[12] Id. at 45-46.

[13] Id. at 51.

[14] CA rollo, p. 68.

[15] Id. at 69-73.

[16] Rollo, pp. 8-9.

[17] CA rollo, pp. 56-59.

[18] Rollo, pp. 74-76.

[19] RULES OF COURT, Rule 14, Sec. 6.

SEC. 6. Service in person on defendant. mdash Whenever practicable, the summons shall be served handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

[20] Id. at Sec. 7.

SEC.7. Substituted service.mdash If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

[21] No. L-22997, March 15, 1968, 22 SCRA 1070.

[22] Id. at 1075-1078. Montalban further explained that the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties.... The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. One such incident of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him. x x x The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.

[23] Id. at 1079-1081.

[24] Mapa v. Court of Appeals, G.R. Nos. 79374 & 82986, October 2, 1992, 214 SCRA 417, 428.

[25] Madrigal v. Court of Appeals, G.R. No. 129955, November 26, 1999, 319 SCRA 331, 337.

RULES OF COURT, Rule 131, Sec. 3 (m)

SEC. 3. Disputable presumptions.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed;

x x x x

[26] Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

[27] Article 172. The filiation of legitimate children is established by any of the following:

- (1) The record of birth appearing in the civil register or a final judgment; or
- (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

- (1) The open and continuous possession of the status of a legitimate child; or
- (2) Any other means allowed by the Rules of Court and special laws.

[28] E. Pineda, *The Family Code of the Philippines Annotated* 324 (1999 ed.), citing *Divinagracia v. Bellosillo*, No. L-47407, August 12, 1986, 143 SCRA 356 and *Gono-Javier v. Court of Appeals*, G.R. No. 111994, December 29, 1994, 239 SCRA 593.

[29] *Records*, p. 33.

[30] *Id.* at 34.

[31] Art. 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

x x x x

4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and

x x x x

[32] FAMILY CODE OF THE PHILIPPINES, Art. 201.

[33] *Id.* at Art. 202.

[34] *Id.* at Art. 194.

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