

LEAH PALMA, PETITIONER, VS. HON. DANILO P. GALVEZ, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF ILOILO CITY, BRANCH 24; AND PSYCHE ELENA AGUDO, RESPONDENTS.

G.R. No. 165273. March 10, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in this petition for certiorari under Rule 65 of the Rules of Court are the Orders dated May 7, 2004[1] and July 21, 2004[2] of the Regional Trial Court (RTC) of Iloilo City, Branch 24, granting the motion to dismiss filed by private respondent Psyche Elena Agudo and denying reconsideration thereof, respectively.

On July 28, 2003, petitioner Leah Palma filed with the RTC an action for damages against the Philippine Heart Center (PHC), Dr. Danilo Giron and Dr. Bernadette O. Cruz, alleging that the defendants committed professional fault, negligence and omission for having removed her right ovary against her will, and losing the same and the tissues extracted from her during the surgery; and that although the specimens were subsequently found, petitioner was doubtful and uncertain that the same was hers as the label therein pertained that of somebody else. Defendants filed their respective Answers. Petitioner subsequently filed a Motion for Leave to Admit Amended Complaint, praying for the inclusion of additional defendants who were all nurses at the PHC, namely, Karla Reyes, Myra Mangaser and herein private respondent Agudo. Thus, summons were subsequently issued to them.

On February 17, 2004, the RTC's process server submitted his return of summons stating that the alias summons, together with a copy of the amended complaint and its annexes, were served upon private respondent thru her husband Alfredo Agudo, who received and signed the same as private respondent was out of the country.[3]

On March 1, 2004, counsel of private respondent filed a Notice of Appearance and a Motion for Extension of Time to File Answer[4] stating that he was just engaged by private respondent's husband as she was out of the country and the Answer was already due.

On March 15, 2004, private respondent's counsel filed a Motion for Another Extension of Time to File Answer,[5] and stating that while the draft answer was already finished, the same would be sent to private respondent for her clarification/verification before the Philippine Consulate in Ireland; thus, the counsel prayed for another 20 days to file the Answer.

On March 30, 2004, private respondent filed a Motion to Dismiss[6] on the ground that the RTC had not acquired jurisdiction over her as she was not properly served with summons, since she was temporarily out of the country; that service of summons on her should conform to Section 16, Rule 14 of the Rules of Court. Petitioner filed her Opposition[7] to the motion to dismiss, arguing that a substituted service of summons on private respondent's husband was valid and binding on her; that service of summons under Section 16, Rule 14 was not exclusive and may be effected by other modes of service, i.e., by personal or substituted service. Private respondent filed a

Comment[8] on petitioner's Opposition, and petitioner filed a Reply[9] thereto.

On May 7, 2004, the RTC issued its assailed Order granting private respondent's motion to dismiss. It found that while the summons was served at private respondent's house and received by respondent's husband, such service did not qualify as a valid service of summons on her as she was out of the country at the time the summons was served, thus, she was not personally served a summons; and even granting that she knew that a complaint was filed against her, nevertheless, the court did not acquire jurisdiction over her person as she was not validly served with summons; that substituted service could not be resorted to since it was established that private respondent was out of the country, thus, Section 16, Rule 14 provides for the service of summons on her by publication.

Petitioner filed a motion for reconsideration, which the RTC denied in its Order dated July 21, 2004.

Petitioner is now before us alleging that the public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction when he ruled that:

I. Substituted service of summons upon private respondent, a defendant residing in the Philippines but temporarily outside the country is invalid;

II. Section 16, Rule 14, of the 1997 Rules of Civil Procedure limits the mode of service of summons upon a defendant residing in the Philippines, but temporarily outside the country, exclusively to extraterritorial service of summons under section 15 of the same rule;

III. In not ruling that by filing two (2) motions for extension of time to file Answer, private respondent had voluntarily submitted herself to the jurisdiction of respondent court, pursuant to Section 20, Rule 14 of the 1997 Rules of Civil Procedure, hence, equivalent to having been served with summons;

IV. The cases cited in his challenged Order of May 7, 2004 constitute stare decisis despite his own admission that the factual landscape in those decided cases are entirely different from those in this case.[10]

Petitioner claims that the RTC committed a grave abuse of discretion in ruling that Section 16, Rule 14, limits the service of summons upon the defendant-resident who is temporarily out of the country exclusively by means of extraterritorial service, i.e., by personal service or by publication, pursuant to Section 15 of the same Rule. Petitioner further argues that in filing two motions for extension of time to file answer, private respondent voluntarily submitted to the jurisdiction of the court.

In her Comment, private respondent claims that petitioner's certiorari under Rule 65 is not the proper remedy but a petition for review under Rule 45, since the RTC ruling cannot be considered as having been issued with grave abuse of discretion; that the petition was not properly verified because while the verification was dated September 15, 2004, the petition was dated September 30, 2004. She insists that since she was out of the country at the time the service of summons was made, such service should be governed by Section 16, in relation to Section 15, Rule 14 of the Rules of Court; that there was no voluntary appearance on her part when her counsel filed two motions for extension of time to file answer, since she filed her motion to dismiss on the ground of lack of jurisdiction within the period provided under Section 1, Rule 16 of the Rules of Court.

In her Reply, petitioner claims that the draft of the petition and the verification and certification against forum shopping were sent to her for her signature earlier than the date of the finalized petition, since the petition could not be filed without her signed verification. Petitioner avers that when private respondent filed her two motions for extension of time to file answer, no special appearance was made to challenge the validity of the service of summons on her.

The parties subsequently filed their respective memoranda as required.

We shall first resolve the procedural issues raised by private respondent.

Private respondent's claim that the petition for certiorari under Rule 65 is a wrong remedy thus the petition should be dismissed, is not persuasive. A petition for certiorari is proper when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy, and adequate remedy at law.[11] There is "grave abuse of discretion" when public respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.

Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case; that no appeal may be taken from (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (f) an order of execution; (g) a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; or (h) an order dismissing an action without prejudice. In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action for certiorari under Rule 65.

In this case, the RTC Order granting the motion to dismiss filed by private respondent is a final order because it terminates the proceedings against her, but it falls within exception (g) of the Rule since the case involves several defendants, and the complaint for damages against these defendants is still pending.[12] Since there is no appeal, or any plain, speedy, and adequate remedy in law, the remedy of a special civil action for certiorari is proper as there is a need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal.[13]

Anent private respondent's allegation that the petition was not properly verified, we find the same to be devoid of merit. The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct, not merely speculative.[14] In this instance, petitioner attached a verification to her petition although dated earlier than the filing of her petition. Petitioner explains that since a draft of the petition and the verification were earlier sent to her in New York for her signature, the verification was earlier dated than the petition for certiorari filed with us. We accept such explanation. While Section 1, Rule 65 requires that the petition for certiorari be verified, this is not an absolute necessity where the material facts alleged are a matter of record and the questions raised are mainly of law.[15] In this case, the issue raised is purely of law.

Now on the merits, the issue for resolution is whether there was a valid service of summons on private respondent.

In civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former.[16] Private respondent was a Filipino resident who was temporarily out of the Philippines at the time of the service of summons; thus, service of summons on her is governed by Section 16, Rule 14 of the Rules of Court, which provides:

Sec. 16. Residents temporarily out of the Philippines. - When an 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 in the above provision is Section 15, which speaks of extraterritorial service,

thus:

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.

The RTC found that since private respondent was abroad at the time of the service of summons, she was a resident who was temporarily out of the country; thus, service of summons may be made only by publication.

We do not agree.

In *Montefalcon v. Vasquez*,^[17] we said that 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-resident who is temporarily out of the Philippines. Thus, if a resident defendant is temporarily out of the country, any of the following modes of service may be resorted to: (1) substituted service set forth in section 7 (formerly Section 8), Rule 14; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) in any other manner the court may deem sufficient.^[18]

In *Montalban v. Maximo*,^[19] we held that substituted service of summons under the present Section 7, Rule 14 of the Rules of Court in a suit in personam against residents of the Philippines temporarily absent therefrom is the normal method of service of summons that will confer jurisdiction on the court over such defendant. In the same case, we expounded on the rationale in providing for substituted service as the normal mode of service for residents temporarily out of the Philippines.

x x x 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 just 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.^[20]

Considering that private respondent was temporarily out of the country, the summons and complaint may be validly served on her through substituted service under Section 7, Rule 14 of the Rules of Court which reads:

SEC. 7. Substituted service. -- 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.

We have held that a dwelling, house or residence refers to 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.[21] It is, thus, the service of the summons intended for the defendant that must be left with the person of suitable age and discretion residing in the house of the defendant. Compliance with the rules regarding the service of summons is as important as the issue of due process as that of jurisdiction.[22]

Section 7 also designates the persons with whom copies of the process may be left. The rule presupposes that such a relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof.[23]

In this case, the Sheriff's Return stated that private respondent was out of the country; thus, the service of summons was made at her residence with her husband, Alfredo P. Agudo, acknowledging receipt thereof. Alfredo was presumably of suitable age and discretion, who was residing in that place and, therefore, was competent to receive the summons on private respondent's behalf.

Notably, private respondent makes no issue as to the fact that the place where the summons was served was her residence, though she was temporarily out of the country at that time, and that Alfredo is her husband. In fact, in the notice of appearance and motion for extension of time to file answer submitted by private respondent's counsel, he confirmed the Sheriff's Return by stating that private respondent was out of the country and that his service was engaged by respondent's husband. In his motion for another extension of time to file answer, private respondent's counsel stated that a draft of the answer had already been prepared, which would be submitted to private respondent, who was in Ireland for her clarification and/or verification before the Philippine Consulate there. These statements establish the fact that private respondent had knowledge of the case filed against her, and that her husband had told her about the case as Alfredo even engaged the services of her counsel.

In addition, we agree with petitioner that the RTC had indeed acquired jurisdiction over the person of private respondent when the latter's counsel entered his appearance on private respondent's behalf, without qualification and without questioning the propriety of the service of summons, and even filed two Motions for Extension of Time to File Answer. In effect, private respondent, through counsel, had already invoked the RTC's jurisdiction over her person by praying that the motions for extension of time to file answer be granted. We have held that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court.[24] When private respondent earlier invoked the jurisdiction of the RTC to secure affirmative relief in her motions for additional time to file answer, she voluntarily submitted to the jurisdiction of the RTC and is thereby estopped from asserting otherwise.[25]

Considering the foregoing, we find that the RTC committed a grave abuse of discretion amounting to excess of jurisdiction in issuing its assailed Orders.

WHEREFORE, the petition is GRANTED. The Orders dated May 7, 2004 and July 21, 2004 of the Regional Trial Court of Iloilo City, Branch 24, are hereby SET ASIDE. Private respondent is DIRECTED to file her Answer within the reglementary period from receipt of this decision.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Mendoza, JJ., concur.

- [1] Penned by Judge Danilo P. Galvez; rollo, pp. 27-28.
- [2] Id. at 30.
- [3] Rollo, p. 144.
- [4] Id. at 146-147.
- [5] Id. at 148-149.
- [6] Id. at 150-154.
- [7] Id. at 155-158.
- [8] Id. at 159-163.
- [9] Id. at 164-168.
- [10] Id. at 8-9.
- [11] Rules of Court, Rule 65, Sec. 1.
- [12] See Jan-Dec Construction Corporation v. Court of Appeals, G.R. No. 146818, February 6, 2006, 481 SCRA 556, 565-566.
- [13] See People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment, G.R. No. 179652, May 8, 2009, 587 SCRA 724, 760.
- [14] Sari Sari Group of Companies, Inc. v. Piglas Kamao (Sari Sari Chapter), G.R. No. 164624, August 11, 2008, 561 SCRA 569, 579, citing Torres v. Specialized Packaging Development Corporation, 433 SCRA 455, 463 (2004).
- [15] Herrera, Vol. 1, p. 718 (2007), citing 42 Am. Jur., Sec. 42, p. 177.
- [16] Oaminal v. Castillo, 459 Phil. 542 (2003).
- [17] G.R. No. 165016, June 17, 2008, 554 SCRA 513, 522.
- [18] See Asiavest Limited v. Court of Appeals, G.R. No. 128803, September 25, 1998, 296 SCRA 539, 553 (1998).
- [19] No. L-22997, March 15, 1968, 22 SCRA 1070.
- [20] Id. at 1079-1080.
- [21] Keister v. Navarro, No. L-29067, May 31, 1977, 77 SCRA 209, 215.
- [22] Id.
- [23] Id. at 216.
- [24] HongKong and Shanghai Banking Corporation Limited v. Catalan, 483 Phil. 525 (2004); Orosa v. Court of Appeals, 330 Phil. 67 (1996).
- [25] Id.

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