

CHERITH A. BUCAL, PETITIONER, VS. MANNY P. BUCAL, RESPONDENT.

G.R. No. 206957. June 17, 2015

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for review on certiorari[1] are the Decision[2] dated October 16, 2012 and the Resolution[3] dated April 15, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 117731, which affirmed the Orders dated June 22, 2010[4] and November 23, 2010[5] of the Regional Trial Court of Trece Martires City, Branch 23 (RTC) in Protection Order No. PPO-002-10 granting visitation rights to respondent Manny P. Bucal (Manny).

The Facts

Petitioner Cherith A. Bucal (Cherith) and Manny were married on July 29, 2005[6] and have a daughter named Francheska A. Bucal (Francheska), who was born on November 22, 2005.[7]

On May 7, 2010, Cherith filed a Petition for the Issuance of a Protection Order[8](RTC Petition) based on Republic Act No. (RA) 9262,[9] otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004.” She alleged that Manny had never shown her the love and care of a husband, nor supported her and Francheska financially. Furthermore, due to Manny’s alcoholism, he was always mad and would even shout hurtful words at her. Manny’s demeanor even affected her health detrimentally, leading her to suffer dizziness and difficulty in breathing on one occasion.[10] Thus, Cherith prayed that the RTC issue in her favor a Temporary Protection Order (TPO): (a) prohibiting Manny from harassing, annoying, telephoning, contacting, or otherwise communicating with her, directly or indirectly; (b) ordering a law enforcement officer and court personnel to accompany her to the residence of Manny to supervise the removal of her personal belongings in order to ensure her personal safety; (c) directing Manny and/or any of his family members to stay away from her and any of her designated family or household member at a distance specified by the court, and to stay away from the residence, school, place of employment, or any specified place frequented by her and any of her designated family or household member; (d) enjoining Manny from threatening to commit or committing further acts of violence against her and any of her family and household member; (e) granting her custody and charge of Francheska, until further orders from the court; (f) ordering Manny to absolutely desist and refrain from imposing any restraint on her personal liberty and from taking from her custody or charge of Francheska; and (g) directing Manny to provide support to her and Francheska. Cherith also prayed that after hearing, the TPO be converted into a Permanent Protection Order (PPO).[11]

The RTC Proceedings

After due proceedings, the RTC, in an Order[12] dated May 14, 2010, issued a TPO granting the above-mentioned reliefs, effective for a period of thirty (30) days. However, Manny was given visitation rights every Saturday from 8:00 a.m. to 5:00 p.m., with instruction that Francheska be brought to his residence by

Cherith's relatives.[13]

Anticipating the expiration of the TPO, Cherith filed an Ex-Parte Motion for Extension and/or Renewal of the Temporary Restraining Order[14](Motion) on June 10, 2010, which further sought a clarification of the visitation rights granted to Manny.[15]

In an Order[16] dated June 22, 2010, the RTC granted Cherith's Motion and issued a PPO. It also ordered Manny to provide support to Francheska in the amount of P5,000.00. The RTC also clarified that the visitation rights would only be from 8:00 a.m. to 5:00 p.m. every Saturday and that "the petitioner's guardian" will bring the child, Francheska, to Manny's home and accompany her until 5:00 p.m.[17]

On July 30, 2010, Cherith filed an Ex-Parte Motion to Amend Order,[18]seeking the reversal of the grant of visitation rights.[19] She alleged that upon perusal of her RTC Petition in the records of the court, she noticed an unauthorized intercalation praying for visitation rights for Manny.[20] Moreover, citing the further strained relations between her and Manny, Cherith argued that continuing Francheska's weekly visits to her father defeated the purpose of the protection order granted to them as the obligation made her and the child vulnerable to the abuse from which they sought protection.[21]

On August 12, 2010, Manny filed an Omnibus Motion[22] praying that:(a) the attached Answer[23] be admitted; (b) the PPO issued on June 22, 2010 be set aside; and (c) the case be set for trial. Manny also sought Cherith's citation for contempt due to her failure to abide by the visitation rights granted to him.[24] In his Answer, Manny belied Cherith's accusations of abuse by alleging delusion and paranoia on her part and claiming himself to be a responsible and dedicated family man.[25] Cherith opposed[26] Manny's Omnibus Motion, alleging that after she filed her petition,Manny personally appeared before the court but did not file any pleading, nor oppose the prayer in her RTC Petition.[27]

Pending resolution of Manny's Omnibus Motion, Manny filed a Manifestation and Opposition to Petition,[28]basically reiterating his averments in the Omnibus Motion. In response, Cherith filed her comment,[29] positing that the Manifestation and Opposition to Petition was a prohibited pleading for it sought, among others, the reconsideration of the PPO and the re-opening of trial.[30]In the same pleading, Cherith prayed that her previous Ex-Parte Motion to Amend Order, which sought the reversal of the grant of visitation rights, be granted.[31]

After due hearing, the RTC, in an Order[32] dated November 23, 2010 modified its June 22, 2010 Order, ordering Cherith to bring Francheska to McDonald's in Tanza at exactly 9:00 a.m. on Saturdays where she will be picked up by her father, Manny, and be returned in the same place the following day, Sunday, at 5:00 p.m.

Dissatisfied, Cherith filed a petition for certiorari[33] before the CA, arguing that it was beyond the RTC's authority to grant visitation rights to Manny because the trial court cannot grant a remedy that was not prayed for.[34]

The CA Ruling

In a Decision[35] dated October 16, 2012, the CA dismissed Cherith's petition for certiorari and affirmed the RTC Orders dated June 22, 2010 and November 23, 2010.[36]

At the outset, it pointed out that Cherith's failure to file a motion for reconsideration before the RTC, without any justification therefor, rendered her resort to certiorari premature.[37] On the merits,it held that the RTC did not commit grave abuse of discretion in granting visitation rights to Manny because the same was only based on Cherith's own prayer.[38]

Aggrieved, Cherith moved for reconsideration,[39] which was denied in a Resolution[40] dated April 15, 2013; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in dismissing Cherith's certiorari petition, thus, affirming the June 22, 2010 and November 23, 2010 RTC Orders granting visitation rights to Manny.

The Court's Ruling

The petition is meritorious.

On the matter of procedure, the Court finds that the CA erred in dismissing Cherith's certiorari petition on account of her failure to file a motion for reconsideration of the assailed RTC Orders.

The settled rule is that a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were ex-parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[41]

The second and third exceptions obtain in this case.

During the course of the RTC proceedings, Cherith filed three(3) pleadings, namely: (a) an Ex-Parte Motion for Extension and/or Renewal of the TPO;[42] (b) an Ex-Parte Motion to Amend Order;[43] and (c) a Comment to Respondent's Manifestation and Opposition to the Petition,[44] all seeking for the clarification of, or the withdrawal of the visitation rights granted to Manny. Each was resolved by the RTC reiterating the award of visitation rights to the latter.[45] As such, it cannot be denied that Cherith's opposition to the award of visitation rights had been squarely and definitively presented to the RTC which arrived at the same result. Thus, there was no need for the prior filing of a motion for reconsideration.

The urgency for resolution also rendered such filing unnecessary. It should be emphasized that Cherith had already been issued a PPO. As defined in Section 8 of RA 9262, "[a] protection order is an order issued x x x 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 serve 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. x xx." With a standing PPO issued for the purpose of protecting not only the woman, but also her child against acts of violence committed by the person against whom the order is issued – in this case, Manny – the resolution of the issue of whether or not Manny should be given visitation rights, despite any discernible basis therefor, is urgent, else Cherith and Francheska be unduly exposed to the very danger which they are seeking protection from. As the Court sees it, any further delay

would substantially prejudice their interests, thus, allowing a direct recourse to certiorari.

That being said, the Court now proceeds to the substantive aspect of this case.

It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case.[46]The rationale for the rule was explained in *Development Bank of the Philippines v. Teston*,[47] viz.:

Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.[48]

For the same reason, this protection against surprises granted to defendants should also be available to petitioners. Verily, both parties to a suit are entitled to due process against unforeseen and arbitrary judgments. The very essence of due process is “the sporting idea of fair play” which forbids the grant of relief on matters where a party to the suit was not given an opportunity to be heard.[49]

The records do not show that Manny prayed for visitation rights. While he was present during the hearing for the issuance of the TPO and PPO, he neither manifested nor filed any pleading which would indicate that he was seeking for such relief.

Neither was it shown that Cherith sought the award of visitation rights for her estranged husband. In fact, Cherith’s RTC Petition specifically prayed that the RTC prohibit Manny from harassing, annoying, telephoning, contacting or otherwise communicating with her, directly or indirectly (which would tend to occur if Francheska would be turned-over to Manny during weekends), order Manny to absolutely desist and refrain from imposing any restraint on her personal liberty and from taking from her custody or charge of Francheska, and direct Manny and/or any of his family members to stay away from her and any of her designated family or household members under the limitations set by the court. Further, as above-intimated, Cherith has repeatedly contested the award of visitation rights during the course of the proceedings before the RTC, but to no avail. While there appears an intercalation of a prayer for visitation rights in Cherith’s RTC Petition, it is evident that she never authorized such intercalation because: (1) she had consistently contested the grant of visitation rights in favor of Manny, and (2) it was merely penned in the handwriting of an unidentified person, which, thus, renders the same dubious. Meanwhile, Manny or any of the courts a quo did not proffer any credible explanation to the contrary.

Hence, for all these reasons, the Court concludes that the grant of visitation rights by the RTC in favor of Manny, as contained in the PPO, and reiterated in its assailed Orders, being both unexplained and not prayed for, is an act of grave abuse of discretion amounting to lack or excess of jurisdiction which deserves correction through the prerogative writ of certiorari. With this pronouncement, there is no need to delve into the other ancillary issues raised herein.

WHEREFORE, the petition is GRANTED. The Decision dated October 16, 2012 and the Resolution dated April 15, 2013 of the Court of Appeals in CA-G.R. SP No. 117731 are hereby REVERSED and SET ASIDE.

The portions of the Orders dated June 22, 2010 and November 23, 2010 of the Regional Trial Court of Trece Martires City, Branch 23 granting visitation rights to respondent Manny P. Bucal are hereby declared VOID.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perez, JJ., concur.

[1] Rollo, pp. 9-36.

[2] Id. at 37-44. Penned by Associate Justice Danton Q. Bueser with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

[3] Id. at 45.

[4] Id. at 66. Penned by Executive Judge Aurelio G. Icasiano, Jr.

[5] Id. at 139.

[6] Id. at 13.

[7] Id. at 13 and 37.

[8] Id. at 47-50.

[9] “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES” (approved on March 8, 2004).

[10] See rollo, p. 48.

[11] Id. at 48-49.

[12] Id. at 62-63.

[13] Id.

[14] Id. at 64-65.

[15] Id. at 65.

[16] Id. at 66.

[17] Id.

[18] Id. at 67-71.

[19] Id. at 70-71.

[20] See id. at 68.

[21] See id. at 70.

[22] Id. at 84-87.

[23] Id. at 88-91.

[24] See id. at 85-86.

[25] See id. at 90.

[26] See Opposition to the Respondent’s Omnibus Motion dated August 18, 2010; id. at 106-110.

[27] See *id.* at 106.

[28] Dated September 13, 2010. *Id.* at 126-131.

[29] Dated October 11, 2010. *Id.* at 133-138.

[30] See *id.* at 134.

[31] See *id.* at 138.

[32] *Id.* at 139.

[33] Not attached to the rollo.

[34] See rollo, pp. 25 and 39-40.

[35] *Id.* at 37-44.

[36] See *id.* at 42-43.

[37] See *id.* at 40-42.

[38] *Id.* at 42.

[39] Not attached to the rollo.

[40] Rollo, p. 45.

[41] *Republic v. Bayao*, G.R. No. 179492, June 5, 2013, 697 SCRA 313, 323, citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010); emphases supplied.

[42] Rollo, pp. 64-65.

[43] *Id.* at 67-71.

[44] *Id.* at 133-138.

[45] See RTC Orders dated June 22, 2010 and November 23, 2010; *id.* at 66 and 139, respectively.

[46] *Diona v. Balangue*, G.R. No. 173559, January 17, 2013, 688 SCRA 22, 35.

[47] 569 Phil. 137 (2008).

[48] *Id.* at 144.

[49] See *Diona v. Balangue*, *supra* note 46, at 36-37.

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