

SECOND DIVISION

[G.R. No. 181489, April 19, 2017]

**STEVEN R. PAVLOW, PETITIONER, VS. CHERRY L. MENDENILLA,
RESPONDENT.**

DECISION

LEONEN, J.:

The mother of a victim of acts of violence against women and their children is expressly given personality by Section 9(b)^[1] of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 (the Anti-VAWC Law), to file a civil action petitioning for the issuance of a protection order for her child. In filing such a petition, she avails of a remedy that is distinct from the criminal action under Section 5 of the same law.^[2] The mere filing of such a criminal complaint, without the subsequent filing of an information in court, does not occasion *litis pendentia* or *res judicata* that precludes the filing of a petition for the issuance of a protection order.

The Rules of Court suppletorily apply in proceedings relating to the Anti-VAWC Law. Among the provisions of the 1997 Rules of Civil Procedure that continue to govern proceedings under the Anti-VAWC Law are those on substituted service of summons. This was validly resorted to in this case, thereby enabling the Regional Trial Court to acquire jurisdiction over petitioner's person.

This resolves a Petition for Review on Certiorari^[3] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed October 17, 2007 Decision^[4] and January 25, 2008 Resolution^[5] of the Court of Appeals in CA-G.R. SP No. 94540 be reversed and set aside.

The assailed Court of Appeals Decision dismissed petitioner Steven R. Pavlow's (Pavlow) Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure. The Decision found no grave abuse of discretion on the part of Judge Natividad A. Giron-Dizon (Judge Giron-Dizon) of the Regional Trial Court of Quezon City, Branch 106 in her denial^[6] of petitioner's Omnibus Motion.^[7] Petitioner's Motion included a prayer to dismiss the Petition for Issuance of a Temporary Protection Order or Permanent Protection Order^[8] under the Anti-VAWC Law. This Petition for the issuance of a protection order was filed by respondent Cherry L. Mendenilla (Mendenilla), the mother of petitioner's wife, Maria Sheila Mendenilla Pavlow (Maria Sheila).

In denying petitioner's Omnibus Motion, Judge Giron-Dizon ruled that Mendenilla had personality to file a petition for the issuance of a protection order to benefit her daughter. It was equally ruled that Mendenilla did not engage in forum shopping^[9] despite the prosecutor's prior dismissal^[10] of a criminal complaint^[11] filed by Maria

Sheila against petitioner for slight physical injuries and maltreatment in relation to the Anti-VAWC Law. Finally, it was established that jurisdiction over petitioner's person was properly acquired through substituted service.^[12]

On March 11, 2005, petitioner Pavlow, an American citizen and President of Quality Long Term Care of Nevada, Inc., married Maria Sheila, a Filipino, in civil rites in Quezon City. Thereafter, they cohabited as husband and wife.^[13]

Barely three (3) months into their marriage, on May 31, 2005, Maria Sheila filed a Complaint-Affidavit against Pavlow for slight physical injuries.^[14] On June 3, 2005, Maria Sheila filed an Amended Complaint-Affidavit^[15] to include maltreatment in relation to the Anti-VAWC Law as a ground.

Specifically, Maria Sheila alleged that she and Pavlow had fights on February 26, 2005 and on March 10, 2005 over a certain Diane, an employee of the Manila Peninsula Hotel.^[16] As Maria Sheila was told by Monette Tolentino (Tolentino) and Louise Cruz, two (2) of petitioner's employees in Quality Long Term Care of Nevada, Inc., Diane liked Pavlow and was sending him text messages and e-mails.^[17] Maria Sheila added that on March 15, 2005, she and Pavlow quarrelled over their loss of privacy and the intrusion into their affairs of the same employees.^[18] She further claimed that, on March 16, 2005, Pavlow hit her in the stomach and shouted at her for recounting her marital experiences to her mother, respondent Mendenilla, with Pavlow telling her that despite their recent marriage there was nothing to celebrate.^[19] She also recalled that, on April 16, 2005, she and Pavlow again clashed over the phone as regards the messages of one (1) of Steven's female employees, during which, Pavlow slapped her and hit her upper back.^[20] Maria Sheila also disclosed that Pavlow had been compelling her every night to take two (2) small white tablets, which made her feel dizzy. She contended that she could not disobey petitioner for fear of being hit and maltreated.^[21]

On August 25, 2005, Makati Assistant City Prosecutor Romel S. Odronia (Assistant City Prosecutor Odronia) issued a resolution dismissing Maria Sheila's criminal complaint, holding that Maria Sheila failed to substantiate her allegations.^[22]

Following this, on August 26, 2015, Mendenilla filed with the Quezon City Regional Trial Court a Petition^[23] for Maria Sheila's benefit, praying for the issuance of a Temporary Protection Order or Permanent Protection Order under the Anti-VAWC Law. This Petition was docketed as Civil Case No. Q-05-56169.

In her petition, Mendenilla recalled the same ordeal recounted by Maria Sheila in her own criminal complaint. Mendenilla added that she had been aware of her daughter's ordeal and that on July 21, 2005, Maria Sheila was admitted to St. Agnes General Hospital for injuries borne by Pavlow's alleged acts of violence.^[24]

On August 31, 2005, Judge Giron-Dizon issued a Temporary Protection Order^[25] in favor of Maria Sheila. Issued along with this Order was a Summons^[26] addressed to Pavlow.

In a Sheriff's Report with Clarification dated September 8, 2005,^[27] Deputy Sheriff

Arturo M. Velasco (Deputy Sheriff Velasco) recounted that when service of summons with the Temporary Protection Order attached was attempted on September 7, 2005, Pavlow was out of the country.^[28] Thus, summons was served instead through his employee, Tolentino, who also resided at Pavlow's own residence in Unit 1503, Grand Tower Condominium, 150 L.P. Leviste St., Makati City.^[29]

On September 13, 2005, Pavlow filed Omnibus Motions^[30] praying for the dismissal of Mendenilla's petition, the reconsideration of the issuance of the Temporary Protection Order, and the suspension of the enforcement of the Temporary Protection Order. He raised as principal ground the Regional Trial Court's supposed lack of jurisdiction over his person as summons was purportedly not properly served on him.^[31]

In the Order dated December 6, 2005,^[32] Judge Giron-Dizon denied Pavlow's motion to dismiss, reasoning that substituted service of summons sufficed since the case filed by Mendenilla was an action in personam because Pavlow was out of the country during the service of summons.^[33]

Following Judge Giron-Dizon's denial of Pavlow's motion for reconsideration, Pavlow filed a Petition for Certiorari^[34] before the Court of Appeals. He charged Judge Giron-Dizon with grave abuse of discretion in refusing to dismiss Mendenilla's Petition despite the alleged improper service of summons on him.^[35] Petitioner further reasoned that Mendenilla lacked personality to file her Petition^[36] and that her filing of a petition only after Assistant City Prosecutor Odronia dismissed Maria Sheila's criminal complaint was considered forum shopping.^[37]

In its assailed October 17, 2007 Decision,^[38] the Court of Appeals dismissed Pavlow's Petition for Certiorari. Likewise, the Court of Appeals denied Pavlow's motion for reconsideration in its assailed January 25, 2008 Resolution.^[39]

Hence, the present Petition for Review on Certiorari^[40] was filed.

This petition concerns substantially the same issues as those before the Court of Appeals:

First, whether respondent Cherry L. Mendenilla had personality to file a petition for the issuance of a protection order under Section 8 of the Anti-VAWC Law^[41] for the benefit of her daughter, Maria Sheila Mendenilla Pavlow;

Second, whether respondent Mendenilla engaged in forum shopping by filing a petition for the issuance of a protection order after a criminal complaint under the Anti-VAWC Law was dismissed by the prosecutor; and

Finally, whether summons was properly served on petitioner Steven R. Pavlow and jurisdiction over his person was validly acquired.

We sustain the ruling of the Court of Appeals and deny the Petition.

The mother of a victim of acts of violence against women and their children is expressly given personality to file a petition for the issuance of a protection order by Section 9(b) of the Anti-VAWC Law. However, the right of a mother and of other persons mentioned in Section 9 to file such a petition is suspended when the victim has filed a petition for herself. Nevertheless, in this case, respondent Mendenilla filed her petition after her daughter's complaint-affidavit had already been dismissed.

More basic, the filing of Maria Sheila's complaint-affidavit did not even commence proceedings on her own petition for the issuance of a protection order. Preliminary investigation, or proceedings at the level of the prosecutor, does not form part of trial. It is not a judicial proceeding that leads to the issuance of a protection order. Thus, the pendency and subsequent dismissal of Maria Sheila's Complaint-Affidavit did not engender the risk of either *litis pendentia* or *res judicata*, which would serve the basis of a finding of forum shopping by her mother.

I.A

Republic Act No. 9262 specifies three (3) distinct remedies available to victims of acts of "violence against women and their children":^[42] first, a criminal complaint; second, a civil action for damages; and finally, a civil action for the issuance of a protection order.

A criminal complaint may be resorted to when the act of violence against women and their children is committed through any, some, or all of the nine (9) means which Section 5 of the Anti-VAWC Law^[43] specifies as constitutive of "[t]he *crime* of violence against women and their children." If found guilty, the perpetrator shall suffer the penalties stipulated under Section 6,^[44] i.e., imprisonment and payment of a fine. In addition, he or she shall be made to undergo psychological counselling or psychiatric treatment.

A civil action for damages may be resorted to pursuant to Section 36 of the Anti-VAWC Law:

Section 36. Damages. - Any victim of violence under this Act shall be entitled to actual, compensatory, moral and exemplary damages.

Rule V, Section 35 of the Implementing Rules and Regulations of the Anti-VAWC Law^[45] states that when a criminal action is also available and is resorted to, "[t]he civil action for damages is deemed instituted with the criminal action, unless an independent civil action for damages is filed."

A protection order is issued "for the purpose of preventing further acts of violence against a woman or her child . . . and granting other necessary relief;"^[46] thereby "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."^[47] If issued, it shall specify any, some, or all of the following reliefs:

(a) Prohibition of the respondent from threatening to commit or committing, personally or through another, any of the acts

mentioned in Section 5 of this Act;

- (b) Prohibition of the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, directly or indirectly;
- (c) Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and, if respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to the residence, remain there until respondent has gathered his things and escort respondent from the residence;
- (d) Directing the respondent to stay away from petitioner and any 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 the petitioner and any designated family or household member;
- (e) Directing lawful possession and use by petitioner of an automobile and other essential personal effects, regardless of ownership, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (f) Granting a temporary or permanent custody of a child/children to the petitioner;
- (g) Directing the respondent to provide support to the woman and/or her child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or her child without justifiable cause shall render the respondent or his employer liable for indirect contempt of court;
- (h) Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same to the court for appropriate disposition by the court, including revocation of license and disqualification to apply for any license to use or possess a firearm. If the offender is a law enforcement agent, the court shall order the offender to surrender his firearm and shall direct the appropriate authority to investigate on the offender and take appropriate action on the matter;