

## THIRD DIVISION

[ G.R. No. 193225, February 09, 2015 ]

**BBB,\* PETITIONER, VS. AAA,\* RESPONDENT.**

### R E S O L U T I O N

**REYES, J.:**

Petitioner BBB is now before this Court with a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Civil Procedure to assail the Decision<sup>[2]</sup> dated November 6, 2009 and Resolution<sup>[3]</sup> dated August 3, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 89581, which affirmed with modification the issuance against him on August 14, 2007 of a Permanent Protection Order (PPO)<sup>[4]</sup> by the Regional Trial Court (RTC) of Pasig City, Branch 162, in favor of his wife, herein respondent AAA.

#### **Antecedent Facts**

The CA aptly summarized as follows the facts of the case until the RTC's issuance of the PPO against BBB:

Both [BBB] and [AAA] allege that they first met in 1991 but started to date seriously only in 1996. [AAA] was then a medical student and was raising her first child borne from a previous relationship, a boy named [CCC], with the help of her parents.

During the relationship with [BBB], [AAA] bore two more children namely, [DDD] (born on December 11, 1997) and [EEE] (born on October 19, 2000).

To legalize their relationship, [BBB] and [AAA] married in civil rights on October 10, 2002 and thereafter, the birth certificates of the children, including [CCC's], was amended to change their civil status to legitimated by virtue of the said marriage.

The relationship, both admit, was far from ideal and has had its share of happy moments and heated arguments. The two however have contradicting statements as to the cause of their present situation.

[BBB] alleges that [AAA's] irrational jealousy has caused their frequent arguments. According to [BBB], [AAA] has been suspicious of [BBB] and his relationship with his female co-workers, which [BBB] alleges, contrary to [AAA's] suspicion, are purely professional. According to [BBB], because of their repeated fights, he was forced to leave the family home to prevent the brewing animosity between him and his wife. Soon after

[BBB] left, [AAA] herself decided to leave the family home and brought the children with her, which made it difficult for [BBB] to see their kids regularly. This has also caused the family expense to double, making it even more difficult for [BBB] to fulfill his financial obligations.

[AAA], on the other hand, alleges that their heated arguments were often due to [BBB's] incessant womanizing. When confronted about it, [BBB], instead of denying the same, would even curse [AAA].

The breaking point for [AAA] came when, [BBB's] alleged mistress, a woman by the name of [FFF], insulted and humiliated [AAA] in public, in the presence of [BBB] himself, who, according to [AAA], did nothing to stop the same. Extremely hurt, [AAA] decided to leave the conjugal home with the children and lived temporarily at a friend's house. She however went back to the conjugal home with [DDD] and [EEE] after some time, leaving her son [CCC] at her friend's house.

What made matters worse, according to [AAA], was the apparent biases of [BBB] in favor of [DDD] and [EEE]. That despite his promise to treat [CCC] as his own, [BBB] would still treat the latter differently from the two kids, putting [CCC] at a disadvantage. [AAA], cites as example the instances when, [BBB] would buy food and toys for [DDD] and [EEE] only, buying nothing for [CCC].

While living separately from [BBB], [AAA] discovered that [BBB] was not paying the rentals due on the condominium unit they were occupying, forcing [AAA] to move out. [AAA] was likewise compelled to find work to support the family, after [BBB] has started to be remiss in his financial obligations to the family. According to [AAA], the amounts given by [BBB] were not sufficient to cover the family expenses, forcing her to request for loans from friends.

[AAA] likewise feels threatened after discovering [that BBB] was stalking her and/or their children. [AAA] alleges that she found out that [BBB] has sought the help of one [GGG], a friend of [BBB] who lives within the same compound where [AAA] lives, to go through the guard's logbook to monitor their every move, i.e., who visits them, what time [AAA] leaves and returns back home, etc.

Citing the foregoing as constituting economic and psychological abuse, [AAA] filed an application for the issuance of a Temporary Protection Order with a request to make the same permanent after due hearing, before the Regional Trial Court of Pasig City.

Finding good ground in [AAA's] application, the court *a quo* issued a Temporary Protection Order (TPO). The TPO was thereafter, made permanent by virtue of a Decision of the RTC dated August [14, 2007], the dispositive portion of which orders:

"x x x x

- a. Prohibiting [BBB], directly and indirectly, from stalking, harassing, annoying, or otherwise verbally abusing [AAA], directly or indirectly, to refrain from insulting her, cursing her and shouting invectives at her;
- b. Prohibiting [BBB] from committing or threatening to commit any act that may cause mental and emotional anguish to [AAA], i.e. publicly displaying her extramarital relations with his mistress [FFF] and anyone else for that matter;
- c. Prohibiting [BBB] from exposing the minor children to immoral and illicit environment, specifically prohibiting him to allow her (sic) mistress [FFF] and anyone else to be with them in instances where he would be allowed by this Court to see their children;
- d. Allowing [BBB] ALONE to see and visit his children once a month (for a total of 12 visits per year) at the latter's residence for a maximum period of 2 years [sic] each visit, subject to further orders from this Court. For this purpose, [BBB's every visit] shall be accompanied by the Court Sheriff, who shall coordinate with [AAA] as to the availability of time and date of children for such visit, at the expense of [BBB]. For every visit, the Court Sheriff is directed to submit his report within 5 days from the date [BBB] visited the children;
- e. Directing [BBB] to allow [AAA] to continue to have lawful use and possession of the motor vehicle more particularly described as follows:

One (1) Hyundai Starex Van  
1997 Model  
Plate Number: WJP 902  
Chassis Number:  
Serial Number KMJWH7HPXU158443
- f. Granting [AAA] permanent sole custody over their common children until further orders from this Court;
- g. Ordering [BBB] to provide support in the amount of Php 62,918.97 per month (not Php 81,650.00 being prayed by [AAA]) to [AAA] as monthly support, inclusive of educational expenses, groceries, medicines, medical bills, and insurance premiums, starting from the month of January 2007 to be given within the first five (5) days of the month through the Court Sheriff, who shall coordinate with [AAA] in receiving such support;
- h. Requiring [BBB] to stay away from the offended party and any designated family or household member at a distance of 100 meters;
- i. Requiring [BBB] to stay away from the residence, school, place of employment or any specified place frequented regularly by the

*offended party and children and any designated family or household member;*

*j. Ordering [BBB] to post bond of Php 300,000.00 to keep peace pursuant to Section 23 of RA 9262 with the undertaking that [BBB] will not commit the violence sought to be prevented and that in case such violence is committed[,] he will pay the amount determined by the Court in its judgment;*

*k. Ordering [BBB] to pay the sum of Php 100,000.00 (not Php 200,000.00 being prayed by [AAA]) representing both reasonable attorney's fees and cost of litigation, including cost of suit.*

x x x x."<sup>[5]</sup>

### **Ruling of the CA**

BBB filed before the CA an appeal<sup>[6]</sup> to challenge the RTC Decision dated August 14, 2007. BBB alleged that the RTC's (a) issuance of the PPO against him, (b) award to AAA of the sole custody over their children, (c) directives for him to pay attorney's fees and costs of litigation and to post an excessive amount of bond, and (d) declaration that he had an abusive character lack factual bases.

On November 6, 2009, the CA rendered the assailed decision affirming the factual findings and dispositions of the RTC, but ordering the remand of the case for the latter to determine in the proper proceedings who shall be awarded custody of the children. Like the RTC, the CA found that under the provisions of Republic Act (R.A.) No. 9262,<sup>[7]</sup> BBB had subjected AAA and their children to psychological, emotional and economic abuses. BBB displayed acts of marital infidelity which exposed AAA to public ridicule causing her emotional and psychological distress. While BBB alleged that FFF was only a professional colleague, he continued to have public appearances with her which did not help to dispel AAA's accusation that the two had an extra-marital relation. Further, BBB verbally abused AAA either in person or through text messages. The CA likewise did not favorably consider BBB's claim that he cannot provide financial support to AAA and the children in the amount required by the RTC as his income merely depended on contractual hosting and events management assignments. The CA emphasized that AAA was in the position to know the sources of BBB's income. Citing Section 28<sup>[8]</sup> of R.A. No. 9262 and Article 213<sup>[9]</sup> of the Family Code, the CA, however, ordered the RTC to determine who shall be entitled to exercise custody over the children, who at that time were already older than seven years of age.

The CA denied BBB's Motion for Partial Reconsideration<sup>[10]</sup> by way of the Resolution<sup>[11]</sup> dated August 3, 2010 which is likewise assailed in the instant petition.

### **Issues**

Undaunted, BBB now comes before this Court raising the following issues:

## I

WHETHER OR NOT THE [CA] COMMITTED ERROR IN AFFIRMING THE RTC'S DECISION TO MAKE THE [TEMPORARY RESTRAINING ORDER (TPO)] PERMANENT.

## II

WHETHER OR NOT THE [CA] COMMITTED ERROR IN AFFIRMING THE RTC'S AWARD OF ATTORNEY'S FEES AND COST OF LITIGATION IN FAVOR OF [AAA].

## III

WHETHER OR NOT THE [CA] COMMITTED ERROR IN AFFIRMING THE RTC'S ORDER REQUIRING [BBB] TO POST AN EXCESSIVE AMOUNT OF BOND TO KEEP THE PEACE.<sup>[12]</sup>

## IV

WHETHER OR NOT THE CA AND THE RTC CORRECTLY ADMITTED INTO EVIDENCE THE UNAUTHENTICATED TEXT MESSAGES ADDUCED BY AAA.<sup>[13]</sup>

## V

WHETHER OR NOT THE AWARD OF SUPPORT SHOULD BE DELETED AS THE SPOUSES' COMMON BIOLOGICAL CHILDREN, DDD AND EEE, ARE ALREADY UNDER BBB'S ACTUAL CARE AND CUSTODY SINCE AUGUST 2010 WHEN AAA LEFT TO WORK AS A NURSE IN THE UNITED STATES.<sup>[14]</sup>

In support of the instant petition, BBB merely reiterates his factual claims in the proceedings below relative to his financial position and AAA's supposedly baseless accusations and demands from him. In addition, he posits that the text messages offered by AAA as evidence were unauthenticated; hence, doubt exists as to their admissibility. Further, he points out that due to the current whereabouts and circumstances of the parties, the PPO issued against him is rendered moot. He now has actual care and custody of DDD and EEE, while CCC, who is not his biological son, resides in a college dormitory. BBB and AAA barely get in touch with each other except when the latter initiates the same.

In her Comment<sup>[15]</sup> to the petition, AAA counters that BBB erroneously raises factual issues which are subjects beyond the contemplation of a petition filed under Rule 45 of the Rules of Civil Procedure. Further, BBB continuously violates the PPO, which under the provisions of R.A. No. 9262, is supposed to be immediately executory upon its issuance by the RTC. AAA claims that BBB still verbally abuses her. BBB has not posted the P300,000.00 bond required from him. He likewise has not paid the attorney's fees and costs of litigation awarded to AAA. He does not provide support for CCC, who, in the eyes of the law, is also among his legitimated children. AAA further alleges that in 2010, she left DDD and EEE under the care of