



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

**MICHELLE LANA BROWN-
ARANETA, for herself and
representing her minor daughters,
ARABELLA MARGARITA B.
ARANETA and AVANGELINA
MYKAELA B. ARANETA,**
Petitioners,

G.R. No. 190814

Present:

VELASCO, JR., *J.*, Chairperson,
LEONARDO-DE CASTRO,*
ABAD,
MENDOZA,
LEONEN, *JJ.*

- versus -

Promulgated:

JUAN IGNACIO ARANETA,
Respondent.

October 9, 2013

X-----X

DECISION

VELASCO, JR., *J.*:

The Case

Assailed and sought to be set aside in this Petition for Review on Certiorari under Rule 45 are the May 11, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. SP No. 105442 and its Resolution² of December 28, 2009 denying petitioner's motion for reconsideration of said decision.

The assailed decision ordered the dismissal of Civil Case No. 08-023 of the Regional Trial Court (RTC), Branch 207 in Muntinlupa City and nullified all the issuances it made in that case, a petition for protection order under Republic Act No. (RA) 9262, otherwise known as the *Anti-Violence Against Women and Their Children Act of 2004*, commenced by petitioner Michelle Lana Brown-Araneta (Michelle) against respondent Juan Ignacio Araneta (Juan Ignacio) before that court.

The Facts

On April 14, 2000, Juan Ignacio and Michelle were married in Las Vegas, Nevada, USA. The union produced two (2) children, namely: Arabella Margarita (Ara) and Avangelina Mykaela (Ava), born on February

* Additional member per Raffle dated September 24, 2013.

¹ *Rollo*, pp 55-66. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Jose C. Reyes, Jr. and Martin S. Villarama, Jr. (now a member of this Court).

² *Id.* at 107-109.

22, 2003 and April 15, 2005, respectively. After a little over seven years of disharmonious relationship, husband and wife separated. Since the couple's estrangement and de facto separation, Ara and Ava have remained in Michelle's custody.

In November 2007 before the RTC of Makati City, Juan Ignacio filed, pursuant to A.M. No. 03-04-04-SC³ or *The Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors* (Rule on Custody of Minors), a **Petition for the Custody of the Minors Arabella Margarita Araneta and Avangelina Mykaela Araneta** (Petition for Custody), with prayer for visitation rights against Michelle and her mother, Glenda B. Santos (Santos). Docketed as SP PROC. Case No. M-6543, this petition was eventually raffled to Branch 60 of the Makati City RTC (Makati RTC), presided over by Judge Marissa Macaraig-Guillen (Judge Macaraig-Guillen).

Juan Ignacio invoked, as main basis for his petition, his right as father of Ava and Ara to have custody of and to exercise parental authority over them, albeit both were below seven (7) years of age. In this regard, he claimed that, apart from refusing to communicate with him, both Michelle and Santos have completely barred him from seeing or getting in touch with his daughters despite repeated requests. He thus prayed the court to:

1. Immediately issue a Provisional Order granting [him] visitation rights with respect to the minors [Ava and Ara] x x x during the pendency of these proceedings;
2. Immediately issue an *ex parte* Hold Departure Order preventing the departure of [both] minors x x x from the country; and
3. After appropriate proceedings, render judgment granting [him] joint custody, or alternatively, granting him permanent visitation rights, over [both] his legitimate children x x x.⁴

To facilitate service of summons, Juan Ignacio, via a Motion and Urgent Manifestation of November 27, 2007, would inform the Makati RTC that Michelle and Santos may have transferred to No. 408 Anonas Street, Ayala Alabang Village, Muntinlupa City (Anonas residence), an address different from what he provided in his basic petition, referring to the Molave Drive residence in the same village. In her Officer's Return dated December 10, 2007,⁵ process server Linda Fallorin stated the following: (1) she initially attempted to serve the summons upon Michelle and Santos on December 7, 2007 at the Anonas residence, only to be told by one Roberto Anonas, who refused to receive the summons, that both were out at that time; and (2) on December 10, 2007, she was finally able to serve the summons upon Michelle and Santos by substituted service through the driver of Santos' husband.

³ Took effect on May 15, 2003.

⁴ CA *rollo*, p. 55.

⁵ Id. at 66.

In her Answer,⁶ Santos disclaimed knowledge of Michelle's present address, or her whereabouts, adding in this regard that the adverted Molave Drive residence was being rented out. As to be expected, Santos traversed Juan Ignacio's insinuation that she has conspired with Michelle to keep Ara and Ava out of his reach, or worse, hide them from him. And in an obvious bid to deny Juan Ignacio of visitation rights, Santos raised the question of the court's jurisdiction over Michelle and then rattled off negative habits and character traits of Juan Ignacio as husband and father.

On December 18, 2007, Juan Ignacio moved for the issuance of provisional visitorial order. After a hearing on this motion, the Makati RTC issued on December 21, 2007 an Order⁷ allowing Juan Ignacio to visit her daughters on Christmas Day and New Year's Day. The visiting grant came after the court, taking stock of the Officer's Return, declared that it has acquired jurisdiction over the person of Michelle, but despite being given the opportunity to file a responsive pleading, she has failed to do so.

Christmas and New Year's Day 2008 came and went, but Juan Ignacio was unable to see his little girls in those days for reasons of little materiality to this narration.

On January 2, 2008, Michelle filed in SP PROC. Case No. M-6543 a **Motion to Admit Answer** and an **Answer (with Affirmative Defenses and With Very Urgent Ex-Parte Motion for Issuance of Protection Order)**.⁸

In her Motion to Admit Answer, Michelle acknowledged learning from her mother about the delivery of the summons and a copy of the petition for custody to their Anonas Residence. She, however, disregarded said summons thinking, so she claimed, that it was improperly served upon her person. It was, she added, only upon learning of the issuance of the provisional order of visitation rights that she gathered enough courage to come out to present her side.⁹

In her Answer, on the other hand, Michelle owned up sole responsibility for the decision not to allow her husband to see their daughters. In support of her plea for the dismissal of his petition for custody, the denial of visitation rights *pendente lite*, and in the meanwhile the *ex parte* issuance in her favor of a temporary protection order (TPO),¹⁰ she recounted in lurid details incidents characterizing the painful life she and her children allegedly had to endure from her husband whom she tagged as a drug user, sexual pervert, emotionally unstable and temperamental, among

⁶ Id. at 67. Dated December 19, 2007.

⁷ *Rollo*, p. 298

⁸ Id. at 333.

⁹ Id. at 334.

¹⁰ Specifically, Michelle, *inter alia*, asked that, pursuant to Sec. 17 of the Rule on Custody of Minors, Juan Ignacio be ordered to cease and desist from harassing, intimidating, threatening or stalking her, Ava and Ara, their *yayas* or any persons looking after said children and to stay away from them within a radius of one thousand (1,000) meters, and to refrain from communicating with them directly or indirectly by any known means of communication. *CA rollo*, p. 99.

other names. In her words, Juan Ignacio's "wild, decadent, irresponsible lifestyle makes him unfit to exercise parental authority and even enjoy visitation rights."¹¹

During the January 4, 2008 hearing on Michelle's prayer for a TPO, Judge Macaraig-Guillen expressed her bent to maintain her jurisdiction over SP PROC. Case No. M-6543 and her disinclination to issue the desired TPO. In her Order of even date, she directed that the ensuing observations she earlier made be entered into the records:

1. She is not inclined to issue a [TPO] in favor of respondent at this time because she initially questioned the jurisdiction of this Court over her person and only resorted to this Urgent Ex-Parte Motion for a Protective Order after she realized that the Court had every intention of maintaining jurisdiction over this case x x x. It was emphasized that the Court does not issue Protective Orders over a person who has not bothered to appear in Court x x x. Until the respondent herself shows up in order to recognize the jurisdiction of this Court over her and in order to substantiate the allegations in her Urgent Motion, there is no basis for this Court to address the matters contained in the said Urgent Ex-Parte Motion.

2. Secondly, x x x even assuming for the sake of argument that the petitioner is, as respondent described him to be, temperamental, violent, a habitual drug user and a womanizer, these qualities cannot, per se, prevent him from exercising visitation rights over his children because these are rights due to him inherently, he being their biological father.¹²

During the same hearing, the Makati RTC granted Juan Ignacio visitation rights on one (1) Saturday and Sunday in January 2008 considering that he was unable to see his children on the days granted under the December 21, 2007 Order.

Subsequently, by its Order of January 21, 2008, as would later be effectively reiterated by another Order¹³ of March 7, 2008, the Makati RTC resolved to deny admission of Michelle's answer to the petition for custody and declared her in default, pertinently disposing thusly:

WHEREFORE, in view of the foregoing, respondent Araneta's Motion to Admit Answer of January 2, 2008 is herein DENIED for lack of merit.

Because of respondent Araneta's failure to file her responsive pleading within the reglementary period, x x x respondent Araneta is herein declared in DEFAULT in this proceedings.

As a consequence of this ruling, x x x the petitioner is allowed to present evidence ex-parte to substantiate the allegation in his Petition x x x.¹⁴

¹¹ Id. at 84.

¹² *Rollo*, p. 398.

¹³ *CA rollo*, pp. 172-177.

¹⁴ *Rollo*, pp. 115-116.

On January 21, 2008 also, Michelle interposed a Motion to Withdraw Urgent Ex-Parte Motion for Protective Order, there pointing out that no right of Juan Ignacio, if any, will be affected if the said urgent motion is withdrawn or expunged from her answer. And obviously to sway the Makati RTC's mind of the resulting insignificance of such withdrawal, if approved, Michelle cited the ensuing observation thus made by the court during the hearing on January 4, 2008:

COURT:

Well, I agree, she should really appear but whether or not she should really appear here and substantiate her allegations for the issuance of a protective order as far as I am concerned is irrelevant insofar as the enforcement of petitioner's visitation rights are concerned, this case is for custody, this is not a case for the issuance of protective orders that is only a counter manifestation that she is seeking.¹⁵

It is upon the foregoing set of events and proceedings that Michelle, on March 25, 2008, instituted, pursuant to RA 9262, a Petition For Temporary and Permanent Protection Order¹⁶ (Petition for Protection Order) before the RTC in Muntinlupa City, docketed as **Civil Case No. 08-023**. Thereat, Michelle claimed, among other things, that in the course of their marriage, Juan Ignacio made her and their children engage in sexual acts inimical to their emotional, physical and psychological development and well-being; that he engaged in perverted sexual acts with friends, victimizing her and the children; that he has consistently failed and refused to support their family; and that he has a violent temper and was consistently harassing and threatening her to get sole custody of the children. Michelle volunteered the information that, per her therapist, she is suffering from Battered Woman's Syndrome.¹⁷

In the verification portion of her petition for protection order, Michelle stated that "[t]here is x x x a pending petition for the custody of our children in the [RTC] Br. 60, Makati City, x x x Civil Case No. M-6543."¹⁸

The following events and proceedings then transpired:

1. On March 31, 2008, the Muntinlupa RTC **granted** Michelle's prayer for a **TPO** which, at its most basic, ordered Juan Ignacio (1) to stay away at a specified distance from Michelle and the children, inclusive of their present residence and other places they frequent; and (2) to desist from calling or otherwise communicating with Michelle.

¹⁵ CA rollo, p. 129. TSN, January 4, 2008, p. 23;

¹⁶ Id. at 193-204.

¹⁷ RA 9262, Sec. 3(c). "Battered Woman's Syndrome" refers to a scientifically defined pattern of psychological and behavioural symptoms found in women living in battering relationships as a result of cumulative abuse.

¹⁸ CA rollo, p. 205.

(2) On April 14, 2008, Juan Ignacio filed in Civil Case No. M-6543 a “*Motion to Dismiss [Petition] with Prayer to Lift [TPO]*”¹⁹ anchored on several grounds, foremost of which are the following: (a) *litis pendentia*, Juan Ignacio noting in this regard that the Makati RTC is competent to grant in its SP PROC. Case No. M-6543 the very same reliefs Michelle seeks in Civil Case No. M-6543, pursuant to Sections 17 and 18 of the Rule on Custody of Minors;²⁰ (b) in view of item (a) above, the Makati RTC, having first assumed jurisdiction over identical subject matters, issues and parties, does so to the exclusion of the Muntinlupa RTC; and (c) Michelle’s act of filing her petition for protection order before the Muntinlupa RTC constitutes, under the premises, forum shopping, a practice proscribed owing to the possibility of different courts arriving at conflicting decisions. Juan Ignacio would in fact stress that the TPO thus issued by the Muntinlupa RTC directing him to stay at least a kilometer away from his children already conflicted with the Makati RTC-issued provisional orders granting him visitation rights over them.

(3) By Order of May 12, 2008, the Muntinlupa RTC, conceding the exclusionary effect of the assumption at the first instance by the Makati RTC of jurisdiction on the issue of custody on Ava and Ara and the likelihood of the issuance by either court of clashing decisions, partially granted Juan Ignacio’s motion to dismiss and accordingly modified the TPO issued on March 31, 2008. As thus modified, the protection order, or to be precise, the reliefs provided in favor of Michelle in said TPO shall exclude from its coverage the orders issued by the Makati RTC in the exercise of its jurisdiction on the pending custody case.

¹⁹ Id. at 206.

²⁰ SECTION 17. *Protection Order.* – The court may issue a Protection Order requiring any person:

- (a) To stay away from the home, school, business, or place of employment of the minor, other parent or other party, or from any other specific place designated by the court;
- (b) To cease and desist from harassing, intimidating, or threatening such minor or the other parent or any person to whom custody of the minor is awarded;
- (c) To refrain from acts or commission or omission that create an unreasonable risk to the health, safety, or welfare of the minor;
- (d) To permit a parent, or a party entitled to visitation by a court order or a separation agreement, to visit the minor at stated periods;
- (e) To permit a designated party to enter the residence during a specified period of time in order to take personal belongings not contested in a proceeding pending with the Family Court; and
- (f) To comply with such other orders as are necessary for the protection of the minor.

SECTION 18. *Judgment.* – After trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor.

If it appears that both parties are unfit to have the care and custody of the minor, the court may designate either the paternal or maternal grandparent of the minor, or his oldest brother or sister, or any reputable person to take charge of such minor, or commit him to any suitable home for children.

In its judgment, the court may order either or both parents to give an amount necessary for the support, maintenance and education of the minor, irrespective of who may be its custodian. In determining the amount of support, the court may consider the following factors: (1) the financial resources of the custodial and non-custodial parent and those of the minor; (2) the physical and emotional health, special needs, and aptitude of the minor; (3) the standard of living the minor has been accustomed to; and (4) the non-monetary contributions that the parents would make toward the care and well-being of the minor.

The court may also issue any order that is just and reasonable permitting the parent who is deprived of the care and custody of the minor to visit or have temporary custody.

In another Order of June 30, 2008, the Muntinlupa RTC denied Juan Ignacio's Motion for Reconsideration of the earlier May 12, 2008 Order on the ground that such a motion is a prohibited pleading.²¹

(4) Meanwhile, Michelle, in connection with certain orders of the Makati RTC in the custody case, denying her motion to admit answer and its jurisdictional issue pronouncements, went to the CA on certiorari via a petition docketed as **CA-G.R. SP No. 103392**.

On August 28, 2008, in **CA-G.R. SP No. 103392**, the CA rendered a judgment finding partly for Michelle, as petitioner, it being the appellate court's determination that the substituted service of summons upon her in the custody suit was defective and irregular. Accordingly, the period within which Michelle was to file an answer, so the CA declared, did not start to run and, hence, the denial by the Makati RTC of her motion to admit answer in the custody case and corollarily, its holding that she is in default, by virtue of its Orders dated January 21, 2008 and March 7, 2008, were unwarranted and ought to be nullified. Neither of the parties appealed the foregoing Decision. The CA Decision, thus, became final. The *fallo* of the said CA Decision reads:

WHEREFORE, the foregoing considered, the instant petition is hereby **PARTLY GRANTED**. Accordingly, the assailed Orders of 21 January 2008 and 7 March 2008 are **REVERSED** and **SET ASIDE** while the Orders of 29 February 2008 and 31 March 2008, in so far as the denial of petitioner's Motion for Inhibition is concerned, are **AFFIRMED**. No costs.

SO ORDERED.²²

Partly, the CA wrote:

x x x [T]he pivotal issue x x x is whether the [Makati RTC] had acquired jurisdiction over the person of the petitioner, and if so, whether the disposition of the respondent [Makati RTC] judge in declaring her in default has factual and legal basis. Admittedly, the summons and the copy of the petition were not personally served upon the petitioner as explicitly required under Section 5 of A.M. No. 03-04-04-SC x x x.

Indeed, the records would show that the summons and the petition were served upon the petitioner x x x by substituted service as they were received by x x x a certain Nilo Santos at said Anonas residence, an address belatedly supplied by private respondent himself. However, x x x petitioner had actually been informed of such substituted service sometime in the second week of December 2007 and that she had opted to simply disregard the same since she had thought that such service is invalid x x x.

Despite the fact that she had known of the existence of the petition a quo and the fact that the service of summons had been made upon her by

²¹ Under Sec. 22(k) of A.M. No. 04-10-11-SC or *The Rule on Violence Against Women and Their Children*, a motion for reconsideration is a prohibited pleading.

²² *Rollo*, p. 139. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Magdangal M. De Leon and Ramon R. Garcia.

substituted service, petitioner made a decision whether it be an informed one or not, not to move for its dismissal on the ground of lack of jurisdiction over her person x x x. It was only upon the issuance of the Provisional Order that she had opted to participate in the proceeding by filing her responsive pleading to the petition. Unfortunately though, the respondent [Makati RTC] judge denied her motion to admit and declared her in default on the basis of its disquisition that the failure of the petitioner to file her responsive pleading is not due to excusable negligence or other circumstances beyond her control.

Still and all, it cannot be denied that the trial court, previous to or at the time the petitioner had filed her responsive pleading, has yet to acquire jurisdiction over the person of the latter. **The Rule on Custody of Minors specifically requires that service of summons be made personally on the respondent** and yet the trial court served the same upon the person of the petitioner by substituted service without proof of exhaustion of means to personally serve the same or the impossibility thereof to warrant the extraordinary method of substituted service.

Surely, while the Rule on Custody of Minors provides that the Rules of Court shall apply suppletorily in custody proceedings, the express provision requiring personal service and the very nature of custody cases should have caused the respondent judge x x x to adhere to the evident intention of the rules, that is to have both parties in a custody case participate therein.

Regrettably, the respondent judge, relying on the Officer's Return x x x, precipitately declared x x x that the trial court had already acquired jurisdiction over the person of the petitioner. x x x

Sadly though, respondent judge, in grave abuse of discretion, assumed jurisdiction over the person of the petitioner and proceeded to act on the petition. Worse, x x x the respondent judge denied the motion to admit filed by the petitioner and declared the latter in default. **While the petitioner had already submitted herself to the jurisdiction of the trial court** by way of her voluntary act of filing a responsive pleading to the petition *a quo*, the period to file said responsive pleading, as already stated, in so far as the petitioner is concerned has yet to commence, and thus, the filing of her motion to admit answer cannot plausibly be considered as to have been filed beyond the reglementary period. In this light, the denial of said motion and the issuance of the default order are unwarranted and are reversible errors of jurisdiction x x x.²³ (Emphasis added.)

(5) From the adverse May 12, 2008 and June 30, 2008 Orders of the Muntinlupa RTC in Civil Case No. M-6543, Juan Ignacio also repaired to the CA on a petition for certiorari. Docketed as **CA-G.R. SP. No. 105442**, the petition prayed that the Muntinlupa RTC be enjoined from further taking cognizance of Michelle's protection order petition as the said case will infringe or intrude upon the Makati RTC's disposition of the custody case.²⁴

Michelle opposed and sought the dismissal of the certiorari petition on the ground that it is a prohibited pleading under Sec. 22(j) of RA 9262.

²³ Id. at 132-134, 136.

²⁴ CA *rollo*, p. 387.

Eventually, the CA issued, on May 11, 2009, the assailed Decision which, on one hand, found Michelle guilty of forum shopping, a sufficient cause for summary dismissal of a case, but viewed, on the other, Juan Ignacio's petition for certiorari as a prohibited pleading which, ordinarily, would then render it dismissible. In the veritable clash under the premises of the effects of forum shopping and the rule on prohibited pleading, the CA nonetheless ruled for Juan Ignacio, as petitioner, pertinently disposing as follows:

ACCORDINGLY, the petition is **GIVEN DUE COURSE**. Civil Case No. 08-023 is **ORDERED DISMISSED** and all issuances made by [RTC], Branch 207, Muntinlupa City, are declared void. The [RTC] Branch 60, Makati City is **DIRECTED** to proceed with the case with dispatch.²⁵

The CA extricated itself from the foregoing legal bind on the basis of the following ratiocination and the plausible suppositions interjected thereat:

In resolving the present petition, the Court had to consider two (2) things. First, pursuant to Section 22 (j) of A.M. No. 04-10-11-SC, a petition for certiorari against any interlocutory order issued by a family court is a **prohibited pleading**. Accordingly, if this Court were to strictly follow [said] Section 22 (j) x x x, then the present petition for certiorari must be dismissed. Second, the Private Respondent had first moved that the Makati RTC issue a TPO and that when her motion was denied, she filed a petition before the Muntinlupa RTC asking that the said court issue a TPO. In short, the Private Respondent **committed forum-shopping**. And when forum-shopping is committed, the case(s) must be dismissed with prejudice.

Thus, it falls upon this Court to balance the conflict.

This Court notes that the Muntinlupa RTC tried to balance out the conflicting jurisdictional issues with the Makati RTC by stating in its first assailed Order that **the reliefs provided in favor of [herein private respondent] in the [TPO] x x x are modified, to exclude from its coverage those Orders issued by the Makati Court in the exercise of its jurisdiction on the pending custody case**. Be that as it may, the Muntinlupa RTC itself recognized the jurisdiction of the Makati RTC and that the case before it would, in fact, impinge upon the jurisdiction of the latter court when it stated that the **disposition on the matter by this Court may result in the possibility of conflicting decisions/orders**. In short, **the Muntinlupa RTC itself acknowledges the fact that any future issuances, including its eventual decision on the petition before it, would affect the custody case pending before the Makati RTC and might even result to conflicting decisions**. Thus, in the interest of judicial stability, it is incumbent upon this Court to ensure that this eventuality will not come to pass.

x x x x

To test the argument that a petition for certiorari is an absolutely prohibited pleading, let us push the present case to its logical extreme.

²⁵ *Rollo*, p. 66.

What if a woman claiming to be a battered wife leaves one of her children with her parents and another with a sibling of hers? She then went to another place, transferred residency, and filed a petition for TPO. Her parents [and sibling], who reside in another locality, likewise files a petition for TPO in behalf of the grandchild [and nephew/niece entrusted] in their custody. x x x What if the family courts refuse consolidation? Is the man devoid of any remedy and would have to spend his time shuttling between three (3) localities since a petition for certiorari is a prohibited pleading?

What if the woman went to another locality purposely in order to find a friendly venue x x x? Again, if we are to strictly construe Section 22 (j) of A.M. No. 04-10-11-SC that man would just have to bear the consequences since he cannot seek the extraordinary writ of certiorari. Or, what if both of the spouses do not reside within the court's jurisdiction, but the judge refuses to grant a motion to dismiss due to his zeal? What remedy would a man have since he cannot resort to a petition for certiorari?

The rules are not sacrosanct. If they go in the way of the smooth and orderly administration of justice, then magistrates should apply their best judgment. If not, courts would be so hideously bound or captives to the stern and literal provisions of the law that they themselves would, wittingly or otherwise, become administrators of injustice.

On the one hand, **this Court hereby notes that Private Respondent herself recognizes the jurisdiction of the Makati RTC to issue a TPO. It was only after the Makati RTC denied her prayer for a TPO when she filed a petition before the Muntinlupa RTC asking for the issuance of a TPO.** It is thus highly disturbing that the Private Respondent sought another forum in order to try to obtain a favorable judgment. Thus, as aptly pointed out by the Petitioner, some sort of forum-shopping was committed.

On the other hand, if the Court were to dismiss the present petition on the ground that a petition for certiorari is a prohibited pleading, it would have to close its eyes to the fact that the Private Respondent wilfully committed forum-shopping. To dismiss the present petition would, in effect, "reward" her for this negative act. This, the Court cannot countenance.

x x x x

Accordingly, x x x Civil Case No. 08-023 must not be allowed to proceed any further. Imperatively, to ensure that the jurisdiction of the Makati RTC remains unshackled, all of the issuances of the Muntinlupa RTC should, by all means, be nullified.²⁶ (Emphasis added.)

The CA denied Michelle's motion for reconsideration per its equally assailed Resolution of December 28, 2009.

Aggrieved, Michelle, for herself and for her minor daughters, filed the instant recourse, her submissions revolving on the twin issues of forum shopping and the prohibition under Sec. 22 of the Rule on Violence Against

²⁶ Id. at 62-66.

Women and Children²⁷ against the filing of petitions for certiorari to defeat TPOs issued to promote the protection of victims of violence against women and their children.

Michelle presently argues that the assailed Decision of the CA is based on an erroneous appreciation of the facts of the case. To her, there was no forum shopping when she filed her Petition for Protection Order in the Muntinlupa RTC while the custody case was pending in the Makati RTC. Her stated reason: the absence in both cases of identity of parties and rights asserted, on top of which the reliefs sought and prayed for are different and not founded on the same set of facts.

To downplay the application of the *litis pendentia* principle, she argues that it was impossible for her to apply for and secure a protective order under RA 9262 in the custody case before the Makati RTC being, *first*, a respondent, not a petitioner in the Makati case; and *second*, the venue for an application for protection order is, under RA 9262, the place where the woman or the offended party resides, which in her case is Muntinlupa.²⁸

Michelle would invite attention to her having withdrawn her motion for protective order in the custody case before the Makati RTC before she filed her Petition for Protective Order with the Muntinlupa RTC. Additionally, she points to the CA's Decision of August 28, 2008 in CA-G.R. SP No. 103392 (2008 CA Decision), which held that the Makati RTC did not acquire jurisdiction over her so that all issuances of the Makati RTC were void. All these, Michelle claims, argue against the existence of *litis pendentia*.

The Issue

The issue to be resolved in this case is whether or not petitioner, in filing her Petition for Protection Order before the Muntinlupa RTC, violated the rule on forum shopping, given the pendency of the respondent's Petition for Custody before the Makati RTC and considering incidentally that she filed said petition for protection order **after** the Makati RTC had **denied** her application for protection order in the custody case.

The Court's Ruling

Before anything else, however, the Court wishes to point out disturbing developments in this proceeding which ought not to be swept under the rug on the simplistic pretext that they may not be determinative of the outcome of this case. But first, some basic premises on record.

²⁷ Section 22. Prohibited pleadings and motions. – The following pleadings, motions or petitions shall not be allowed:

x x x x

(j) Petition for certiorari, mandamus or prohibition against any interlocutory order issued by the court.

²⁸ *Rollo*, p. 19.

First, as correctly stated in this petition, Michelle withdrew her *Ex Parte* Motion for Issuance of Protective Order in the custody case prior to her filing of her Petition for Protection Order with the Muntinlupa RTC. It should be made clear, however, that she filed said motion to withdraw on January 21, 2008, or **after** the Makati RTC, in its Order dated January 4, 2008, had, for all intents and purposes, **denied** the said *ex parte* motion. To recapitulate, the Makati RTC judge made it of record that she was not inclined to issue a protective order in favor of a person, i.e., petitioner Michelle, who has not bothered to appear in court, even assuming, she adds, that the person against whom the protection order is directed, i.e., Juan Ignacio, is prone to violence, a drug user and a womanizer.

Second, there is absolutely nothing in the 2008 CA Decision declaring that all issuances of the Makati RTC were void. In order to bolster her position that the rule against forum shopping was not breached in this case, Michelle matter-of-factly alleged in this recourse that since in the 2008 CA Decision it was ruled that the Makati RTC did not acquire jurisdiction over her person due to the irregularity in the service of summons, then “all the issuances or orders of [the Makati RTC in the custody case] were void;”²⁹ and “[t]herefore, there was no *litis pendentia* to begin with since the RTC of Makati City Branch 60 had no jurisdiction from the start.”³⁰

For perspective, the 2008 CA Decision did not rule that the Makati RTC did not acquire jurisdiction over Michelle. Quite the contrary. As a matter of record, the CA in that disposition found and thus declared Michelle to have voluntarily submitted herself to the jurisdiction of the Makati RTC when she filed her Answer in SP. PROC. Case No. 6543 on January 2, 2008. But to be precise about things, the CA in that 2008 Decision found, as having been tainted with of grave abuse of discretion, only that part of the Makati RTC’s disposition denying Michelle’s motion to admit answer for belated filing and the consequent default order. Along this line, the CA merely **nullified** the Makati RTC’s Orders dated January 21, 2008 and March 7, 2008 which declared Michelle in default and denied her motion for reconsideration, respectively. The ensuing excerpts of the 2008 CA Decision speak for themselves:

Sadly though, respondent judge, in grave abuse of discretion, assumed jurisdiction over the person of the petitioner and proceeded to act on the petition. Worse, without due regard to the plain intention of the rule in ensuring the adjudication of the controversy surrounding a custody case based on its merits, the respondent judge denied the motion to admit filed by the petitioner and declared the latter in default. **While the petitioner had already submitted herself to the jurisdiction of the trial court by way of her voluntary act of filing a responsive pleading to the petition *a quo*, the period to file said responsive pleading, as already stated, in so far as the petitioner is concerned has yet to commence, and thus, the filing of her motion to admit answer cannot plausibly be considered as to have been filed beyond the reglementary period. In**

²⁹ Id. at 10.

³⁰ Id. at 20.

this light, the denial of said motion and the issuance of the default order are unwarranted and are reversible errors of jurisdiction, therefore correctible by a writ of certiorari. (Emphasis supplied.)

X X X X

WHEREFORE, the foregoing considered, the instant petition is hereby **PARTLY GRANTED**. Accordingly, the assailed Orders of 21 January 2008 and 7 March 2008 are **REVERSED** and **SET ASIDE** while the Orders of 29 February 2008 and 31 March 2008, in so far as the denial of petitioner's Motion for Inhibition is concerned, are **AFFIRMED**. No costs.

SO ORDERED.³¹

Withal, the Court finds it downright offensive and utterly distasteful that petitioner raised the following as one of the issues in this appellate proceeding:

Whether or not the petitioners are guilty of forum-shopping when the Petition for Custody of private respondent Araneta was **dismissed** by the Court of Appeals on the ground that the RTC of Makati City Branch 60 did not acquire jurisdiction because the summons was not served personally upon herein Petitioner Michelle Lana Brown Araneta.³² (Emphasis supplied.)

Petitioner's above posture smacks of bad faith, taken doubtless to deceive and mislead the Court. Indeed, nothing in either the body or the *fallo* of the 2008 CA Decision would yield the conclusion that the petition for custody is being dismissed, as petitioner unabashedly would have the Court believe.

Was there forum shopping? Did petitioner forum shop?

A circumstance of forum shopping occurs when, as a result or in anticipation of an adverse decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or certiorari by raising identical causes of action, subject matter and issues. Stated a bit differently, forum shopping is the institution of two or more actions involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition.³³ An indicium of the presence of, or the test for determining whether a litigant violated the rule against, forum shopping is where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other case.³⁴

³¹ Id. at 136, 139.

³² Id. at 6.

³³ *Yap v. Chua*, G.R. No. 186730, June 30, 2012, 672 SCRA 419, 427-428.

³⁴ *Ligon v. Court of Appeals*, G.R. No. 127683, August 7, 1998, 294 SCRA 73, 99.

Litis pendentia,³⁵ as a ground for the dismissal of a civil suit, refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes vexatious and unnecessary.³⁶ For the bar of *litis pendentia* to be invoked, the concurring requisites must be present: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.³⁷

Thus, it has been held that there is forum shopping (1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or certiorari) in another; or (2) if, after he has filed a petition before the Supreme Court, a party files another before the CA since in such case said party deliberately splits appeals “in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open”; or (3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain it from the original court.³⁸

The evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case.³⁹

Considering the above doctrinal pronouncements on forum shopping, We find all the badges of this deplorable, docket-clogging practice present in this case.

As a result or in anticipation of an adverse ruling of the Makati RTC, petitioner sought the favorable opinion of the Muntinlupa RTC

As discussed above, the presiding judge of the Makati RTC, in the custody case, made of record that she was not inclined to issue a protection order in favor of Michelle because she did not bother to appear in Court and that the allegations against Juan Ignacio cannot, per se, prevent him from exercising visitation rights over his children. After this adverse ruling, Michelle sought the favorable opinion of the Muntinlupa RTC by filing an independent Petition for Protection Order.

³⁵ A Latin term literally meaning “a pending suit.”

³⁶ *Yap v. Chua*, supra note 33, at 428.

³⁷ *Hongkong and Shanghai Banking Corp., Ltd. v. Catalan*, G.R. Nos. 159590 & 159591, October 18, 2004, 440 SCRA 298, 512.

³⁸ *Executive Secretary v. Gordon*, G.R. No. 134171, November 18, 1998, 298 SCRA 736, 740-741.

³⁹ *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 746.

The cases have identical parties

Clearly, the Petition for Custody and the Petition for Protection Order have the same parties who represent the same interests. The fact that Ava and Ara, who are parties in the Petition for Protection Order, are not impleaded in the Petition for Custody is of no moment because they are precisely the very subjects of the Petition for Custody and their respective rights are represented by their mother, Michelle. In a long line of cases on forum shopping, the Court has held that absolute identity of the parties is not required, it being enough that there is substantial identity of the parties⁴⁰ or at least such parties represent the same interests in both actions. It does not matter, as here, that in the Petition for Custody, Juan Ignacio is the petitioner and Michelle is the respondent while in the Petition for Protection Order, their roles are reversed. That a party is the petitioner in one case and at the same time, the respondent in the other case does not, without more, remove the said cases from the ambit of the rules on forum shopping. So did the Court hold, for example in *First Philippine International Bank v. Court of Appeals*, that forum shopping exists even in cases like this where petitioners or plaintiffs in one case were impleaded as respondents or defendants in another.⁴¹ Moreover, this Court has constantly held that the fact that the positions of the parties are reversed, i.e., the plaintiffs in the first case are the defendants in the second case or vice versa, does not negate the identity of parties for purposes of determining whether the case is dismissible on the ground of *litis pendentia*.⁴²

The rights asserted and reliefs prayed for are based on the same facts

Further, the rights asserted and reliefs prayed for in Civil Case No. 08-023 are practically based on the same facts and are so intertwined with that in SP. PROC. Case No. 6543, such that any judgment rendered in the pending cases, regardless of which party is successful, will amount to *res judicata*.

In the custody case, Juan Ignacio mainly asserted his right, as father, to visit his children and enjoy joint custody over them. He prayed for a judgment granting him joint custody, or alternatively, permanent visitation rights over Ava and Ara.

In disposing of the custody case, the Makati RTC is expected, following the rationale behind the issuance of the Rule on Custody of Minors, to consider, among others, the best interest of the children,⁴³ any threat or danger of physical, mental, sexual or emotional violence which endangers their safety and best interest, their health, safety and welfare,⁴⁴

⁴⁰ *Luis Ao-As v. Court of Appeals*, G.R. No. 128464, June 20, 2006, 491 SCRA 339, 354.

⁴¹ See *First Philippine International Bank v. CA*, 322 Phil 280, 313 (1996).

⁴² *Agilent Technologies Singapore (PTE) Ltd. v. Integrated Silicon Technology Philippines*, G.R. No. 154618, April 14, 2004, 427 SCRA 593, 602.

⁴³ THE RULE ON CUSTODY OF MINORS, Sec. 14.

⁴⁴ *Id.*, Sec. 14(c).

any history of child or spousal abuse by the person seeking custody,⁴⁵ habitual use of alcohol, dangerous drugs or regulated substances,⁴⁶ marital misconduct,⁴⁷ and the most suitable physical, emotional, spiritual, psychological and educational environment for the holistic development and growth of the minor.⁴⁸

Michelle's answer and motion for issuance of protection order in the custody case contained allegations of psychological, sexual, emotional and economic abuse she and her children suffered at the hands of Juan Ignacio to defeat his asserted right to have joint custody over Ava and Ara and as argument that the grant of visitation rights in his favor will not be in the best interest of the children. These allegations of abuse were in substance the very same ones she made in her Petition for Protection Order.

Juan Ignacio's rights and reliefs prayed for are dependent on and, to be sure, would be predicated on the question of whether or not granting him the desired custody or at least visitations rights over the children are in their best interest. In deciding this issue, the Makati RTC will definitely have to reckon with and make a finding on Michelle's allegations of psychological, sexual, emotional and economic abuse.

Similarly, the Muntinlupa RTC must necessarily consider and make a determination based on the very same facts and allegations on whether or not Michelle shall be entitled to the relief she prayed for in her own petition, in particular, a permanent protection order against Juan Ignacio.

Elements of *litis pendentia* are present and any judgment in the pending cases would amount to *res judicata*

Any judgment rendered in the pending cases, regardless of which party is successful, would amount to *res judicata*. Consider: If the Makati RTC were to grant Juan Ignacio's petition for custody, this would necessarily mean that it would be in the best interest of the children if he were allowed to visit and spend time with them and that granting Juan Ignacio visitation rights would not pose any danger or threat to the children.

On the other hand, a grant by the Muntinlupa RTC of Michelle's prayer for a permanent protection order would presuppose at the minimum that it would be to the children's best interest if Juan Ignacio is directed to keep away from them, necessary implying that he is unfit even to visit Ara and Ava. Conversely, if Juan Ignacio's Petition for Custody were denied, then it would mean that the Makati RTC gave weight and credence to Michelle's allegations of abuse and found them to be in the best interest of the children to bar Juan Ignacio from visiting them. Thus, the Muntinlupa

⁴⁵ Id., Sec. 14(d).

⁴⁶ Id., Sec. 14(f).

⁴⁷ Id., Sec. 14(g).

⁴⁸ Id., Sec. 14(h).

RTC should have no ground to deny Michelle's Petition for Protection Order pending before it.

The evil sought to be avoided by the rule against forum shopping is present in this case

The grave mischief sought to be avoided by the rule against forum shopping, i.e., the rendition by two competent tribunals of two separate and contradictory decisions, is well-nigh palpable in this case. If the Muntinlupa RTC were to rule that Michelle was entitled to a Protection Order, this would necessarily conflict with any order or decision from the Makati RTC granting Juan Ignacio visitation rights over Ava and Ara. As aptly pointed out by Juan Ignacio in his Comment such a conflict had already occurred, as the TPO issued by the Muntinlupa RTC actually conflicted with the Orders issued by the Makati RTC granting Juan Ignacio temporary visitation rights over his children. There now exists an Order from the Muntinlupa RTC which, among others, directed Juan Ignacio to stay at least one (1) kilometer away from Ava and Ara, even as the Makati RTC recognized, in two (2) separate Orders, that he had the right, albeit temporarily to see his children.⁴⁹

In fact, Michelle was very much aware of the possible conflicts between the orders of Makati RTC and Muntinlupa RTC. In her Opposition (to Urgent Motion for Immediate Enforcement of Visitation Orders dated December 21, 2007 and January 4, 2008), she recognized that the granting of visitation rights in favor of Juan Ignacio would conflict the TPO and, therefore, the Makati Court would be rendering a conflicting decision with that of the Muntinlupa RTC, viz:

x x x There is therefore, no conflict of jurisdiction in this case but since the petitioner filed a Petition for Certiorari in the Court of Appeals, which includes the issue of custody, **we submit that the matter of custody *pendente lite* including visitation, should not and can not be resolved by this Honorable Court without conflicting with the Temporary Protection Order of a co-equal court, the RTC of Muntinlupa City.** x x x

x x x x

If the petitioner is granted visitation rights, the Honorable Court, with due respect would be allowing him to violate the TPO against him; **the Honorable Court would then be rendering a conflicting decision.**⁵⁰ (Emphasis supplied.)

No less than the Muntinlupa RTC itself recognized the resulting aberration of its orders conflicting with that/those of the Makati RTC. As it were, the former, in its Order of May 12, 2008, resolving Juan Ignacio's Motion to Dismiss with Prayer to Lift Temporary Protection Order, categorically stated that there may be orders in the protection order case that

⁴⁹ *Rollo*, p. 207.

⁵⁰ *Id.* at 322.

would possibly conflict with the orders issued by the Makati RTC in the custody case. So it was that to address these possible conflicts, the Muntinlupa RTC partially granted Juan Ignacio's Motion to Dismiss by modifying the reliefs provided under the TPO by excluding from its coverage those orders issued by the Makati RTC in the exercise of its jurisdiction over the custody case. Pursuant to the foregoing Order of the Muntinlupa RTC, the December 21, 2007 and January 4, 2008 Orders of the Makati RTC, granting Juan Ignacio visitation rights on Christmas Day and New Year's Day and one (1) Saturday and Sunday in January 2008, are not covered by the reliefs under the TPO. Hence, despite the TPO directing Juan Ignacio to stay at least one (1) kilometer away from Ava and Ara, Juan Ignacio would still have the right to see his children by virtue of the orders issued by the Makati RTC granting him temporary visitation rights. The said Muntinlupa RTC Order reads:

Based on the pleadings filed, this (Muntinlupa) Court holds that since the Makati Court first acquired jurisdiction over the issue of custody, the latter continues to exercise it, **so that any disposition on the matter by this Court may result in the possibility of conflicting decisions/orders.**

Wherefore, this Court partially grants respondent's Motion to Dismiss insofar as those matters covered by A.M. No. 03-04-04-SC, Rule on Custody of Minors and Writ of Habeas corpus in Relation to Custody of Minors are concerned, which are within the jurisdiction of the Makati Court, but continues to take cognizance on matters not included therein (A.M. No. 03-04-04-SC) but within the protective mantle of R.A. No. 9262.

Consequently, the reliefs provided in favor of the petitioner in the Temporary Protection Order dated March 31, 2008 are modified, to exclude from its coverage those Orders issued by the Makati Court in the exercise of its jurisdiction on the pending custody case.

The motions to lift the temporary protection order (except on those matter stated above) and to cite petitioner in contempt of court are denied for lack of merit.⁵¹ (Emphasis supplied.)

Verily, the Muntinlupa RTC was aware that its issuances and its eventual final disposition on the Petition for Protection Order would affect the custody case before the Makati RTC, if not totally clash with the latter court's decision. We agree with the CA's ensuing observation:

This Court notes that the Muntinlupa RTC tried to balance out the conflicting jurisdictional issues with the Makati RTC by stating in its first assailed Order that *the reliefs provided in favor of [herein private respondent] in the [TPO] dated March 31, 2008 are modified, to exclude from its coverage those Orders issued by the Makati Court in the exercise of its jurisdiction on the pending custody case.* Be that as it may, the Muntinlupa RTC itself recognized the jurisdiction of the Makati RTC and that the case before it would, in fact, impinge upon the jurisdiction of the latter court when it stated that the *disposition on the*

⁵¹ CA rollo, p. 39.


matter by this Court may result in the possibility of conflicting decisions/orders. In short, **the Muntinlupa RTC itself acknowledges the fact that any future issuances, including its eventual decision on the petition before it, would affect the custody case pending before the Makati RTC and might even result to conflicting decisions.** Thus, in the interest of judicial stability, it is incumbent upon this Court to ensure that this eventuality will not come to pass.⁵²

Civil Case No. 08-023 should, thus, be dismissed with prejudice for being a clear case of forum shopping.

WHEREFORE, premises considered, the appealed May 11, 2009 Decision and the December 28, 2009 Resolution of the Court of Appeals in CA-G.R. SP. No. 105442, particularly insofar as these ordered the dismissal of subject Civil Case No. 08-023 and the nullification of the orders made in that case, are hereby **AFFIRMED**.

No costs.


SO ORDERED.




PRESBITERO J. VELASCO, JR.
Associate Justice

⁵² *Rollo*, pp. 62-63.

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ROBERTO A. ABAD
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice