EN BANC

G.R. No. 239215 ***(Randy Michael Knutson, acting on behalf of minor Rhuby Sibal Knutson,*** *petitioner* ***vs. Hon. Elisa R. Sarmiento-Flores, in her capacity as Acting Presiding Judge of the Regional Trial Court Branch 69 of Taguig City, and Rosalina Sibal Knutson,*** *respondents).*

Promulgated: July 12, 2022

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SEPARATE DISSENTING OPINION

GESMUNDO, *C.J.*:

I join Associate Justice Alfredo Benjamin S. Caguioa in voting to remand the case to the trial court to hear and decide the petition under the Rule on Custody of Minors and Writ of *Habeas Corpus*[1] *(Custody Rule)*.

The essential facts are as follows: the father, Randy Michael Knutson *(Randy)*, filed, on behalf of his minor daughter, Rhuby Sibal Knutson *(Rhuby)*, against the latter's mother, Rosalina Sibal Knutson *(Rosalina)*, a petition under Republic Act *(R.A.)* No. 9262[2] or the Violence Against Women and Their Children Act of 2004 for the issuance of Temporary and Permanent Protection Orders before the Regional Trial Court of Taguig City, Branch 69 *(RTC)*. The RTC dismissed the petition, explaining that the protection order under R.A. No. 9262 cannot be issued **against a mother who allegedly abused her own child**. Aggrieved, Randy filed a **petition for *certiorari*** directly before the Court.

The majority grants the petition and directs the RTC to resolve the merits of the petition before it. On the procedural aspect, it holds that the following exceptions to the hierarchy of courts doctrine justify the direct recourse to this Court: (1) case of first impression where no jurisprudence yet exists that will guide the lower courts; and (2) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest or justice. On the substantive aspect, it held that (*a*) the father of the offended party is allowed to apply for protection and custody orders under R.A. No. 9262; and (*b*) **R.A. No. 9262**

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[1] A.M. No. 03-04-04-SC, effective May 15, 2003.

[2] ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004, March 8, 2004.

covers a situation where the mother committed violent acts against her own child.

I respectfully disagree.

Certiorari is an improper remedy because of the availability of appeal; the petition can be treated as an appeal if filed within the reglementary period

It is opined that the RTC's Order dismissing the petition in this case constitutes a final order that completely disposed of the case,[3] as it leaves nothing more to be done by the RTC despite the absence of trial or other proceedings.[4] Hence, the proper remedy to assail such Order is an appeal, and not *certiorari*. Case law explains that appeal and *certiorari* are mutually exclusive,[5] because the availability of appeal is antithetical to the availability of the other.[6] Furthermore, when a pure question of law is involved, an appeal may be taken directly from the RTC to the Court *via* a Rule 45 petition. In the present case, while petitioner was correct in going directly to the Court, he erroneously used a petition for *certiorari* as his procedural vehicle.

In some instances, the Court has relaxed this procedural rule and treated a petition for *certiorari* as an appeal, provided that the petition is filed within the reglementary period to file an appeal.[7] Here, there was no indication in the majority whether the *certiorari* petition was filed before this Court within the reglementary period under Rule 45 of the Rules of Court *(Rule 45)*. Jurisprudence provides that a petition for *certiorari* cannot be a substitute for a lapsed or lost appeal.[8] It is acknowledged, however, that this case presents a novel issue, one of *first impression where no jurisprudence yet exists to guide the lower courts*. Hence, if it is shown that the petition was filed within the reglementary period for an appeal, then the Court may proceed to treat this petition as an appeal under Rule 45.

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[3] Section 1, Rule 41 of the Rules of Court states that: "An appeal may be taken from a judgment or **final order that completely disposes of the case**, or of a particular matter therein when declared by these Rules to be appealable. x x x"

[4] See *Carniyan v. Home Guaranty Corporation*, G.R. No. 228516, August 14, 2019, 914 SCRA 92, 103.

[5] *Butuan Development Corporation v. Court of Appeals*, 808 Phil. 443, 451 (2017).

[6] Under Section 1, Rule 65 of the Rules of Court, one of the requirements for a petition for *certiorari* is that **"there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law."**

[7] *Punongbayan-Visitacion v. People*, 823 Phil. 212, 222 (2018).

[8] *Spouses Dycoco v. Court of Appeals*, 715 Phil. 550, 561 (2013), citing *Balayan v. Acorda*, 523 Phil. 305, 309 (2006).

Under R.A. No. 9262, the mother of an abused child is not the offender

On the merits, the core issue presented in this case is whether a mother of an allegedly abused child can be considered as an offender under R.A. No. 9262.

I respectfully maintain a contrary view from the majority. A textual analysis of Section 3 of R.A. No. 9262 shows that when the offended party is a child, the mother is not the offender contemplated under the statute. The policy of liberal construction does not mean that the Court, in the guise of interpretation, can enlarge the scope of the statute or include under its terms, situations that were not provided or intended.[9] Indeed, the protection order under R.A. No. 9262 is intended to benefit the statutorily-defined offended party.

Sec. 3 of R.A. No. 9262 defines "*violence against women and their children*," as follows:

> (a) "*Violence against women and their children*" refers to any act or a series of acts committed **by any person against** a **woman** who is **his wife, former wife**, or against a woman with **whom the person has or had a sexual or dating relationship, or with whom he has a common child, or** against **her child** whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. (Emphases and underscoring supplied)

This provision characterizes the offender and the offended party, as follows:

1. **Offender**: "**any person**" who has a wife, former wife, or is dating, has or had a sexual or dating relationship, or has a common child with the woman involved.

2. **Offended party**: can either be —

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[9] *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement of Longevity Pay*, 760 Phil. 62, 97 (2015).

> (*a*) a woman who is the offender's wife, former wife, or a woman with whom the offender has or had a sexual or dating relationship, or with whom he has a common child; or
>
> (*b*) ***her* child**, whether legitimate or illegitimate, within or without the family abode.

As the provision is crafted, this definition contemplates that **a woman is necessarily involved**, either as (1) the main offended party or (2) one who has or had a relationship with ***both*** the offender and the child-offended party. It is submitted that by using the adjective "**her**" to describe the "child," the statute **refers to the entire characterization of the woman described earlier in the provision** (*i.e.*, one who has or had a relationship with the offender). Notably, under this definition, the child-offended party need not necessarily be related to the offender, but must be a "child" of the woman. R.A. No. 9262 defines "children," thus: "[a]s used in this Act, [children] includes the biological children of the *victim* and other children under *her* care." Again, the key factor is the relationship of the child with the woman, who is not the offender as shown by her characterization as a victim. This ties in with Sec. 4 of R.A. No. 9262 which states that the statute "shall be liberally construed to promote the protection and safety of victims of violence against women and their children."

Hence, when the child is the offended party, the statute contemplates that there are **at least three persons involved**: (1) the offender; (2) the child who is the offended party; and (3) a woman who has a relationship with both the offender and the child-offended party.

The present case, however, involves only two participants — the mother as the supposed offender and her child as the offended party. It is, thus, submitted that the circumstances in this case do not create the scenario in which R.A. No. 9262 is applicable.

The majority harps on the fact that the statute uses the gender-neutral word "person" to refer to the offender, and reads it as embracing "any person of either sex."[10] This is true. As explained in *Garcia v. Judge Drilon*,[11] the relationship under R.A. No. 9262 between the offender and the woman "encompasses even lesbian relationships." Indeed, when the offended party is a woman, the offender can be a person with whom she has

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[10] See *ponencia*, p. 9.
[11] 712 Phil. 44 (2013).

a same-sex relationship. However, when the violence is committed against the child, as discussed above, the law contemplates the involvement of a third person (*i.e.*, a woman) who has a relationship with the child as the latter's guardian or mother, as well as the offender, as the woman's intimate partner. Hence, an abusive relationship only between a mother and a child, as presented in the instant case, is not the scenario covered under R.A. No. 9262, as correctly held by the RTC.

This textual analysis of the provision is also consistent with the legislative department's intended application for the statute. Children are indisputably covered under R.A. No. 9262, but not in all circumstances. When the matter of removing "children" from the statute's coverage was again raised in the Bicameral Conference Committee, the legislators added the possessive adjective "**their**" to qualify the "**children**" referred to under the statute. The relevant discussions are quoted in the Dissenting Opinion of Justice Caguioa,[12] to wit:

> **Rep. Angara-Castillo. I reiterate my suggestion, we eliminate the word "children" because it's totally unnecessary and inappropriate.**
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> x x x x
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> Rep. Marcos. x x x
>
> I don't know if this confuses the issue or it clarifies it. What is the Senate version should read as follows, in order to take into consideration the concerns of Representative Sarenas that priority be given to children in these abusive families to wit: "An Act Defining Violence Against Women and **their** Children, Providing Protective Measures and Penalties therefor and for Other Purposes."
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> Rep. Antonino-Custodio. Ma'am question. Actually may incident kasi, tunay na incident nangyari sa amin na yung anak is, actually hindi n'ya anak, eh, anak nung asawa nya, pero, parang she was still binded by that relationship kasi kahit hindi n'ya anak 'yung bata, kahit papa'no lumaki na sa kanya, eh. So, dependent sa kanya – so, may hold pa rin yung asawa nya dun sa anak nung asawa nya. That's an actual case in our area.
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> Rep. Marcos. I think such a situation would be covered in fact by women and **their** children, inasmuch as the **child is dependent upon that mother**, either as ward or as an adopted child. So, okay lang 'yun.

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[12] See Dissenting Opinion, pp. 16-17, citing Congressional Records, Minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 192-202.

> Rep. Antonino-Custodio. Kasi baka – I mean, usually and even in some cases they are not adopted - - they are not adopted children eh.
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> Rep. Marcos. No, even if they have not been officially adopted, it's tantamount to a ward relationship or dependency relationship. So, palagay ko covered na 'yon kasi they are children. Kasi nga, I think there should be a distinction that **this is not a law for all children** everywhere **under all circumstances**, but **rather children who are confronted with this abusive relationship within the family abode**.
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> Rep. Antonino-Custodio. As long as, ma'am I guess **the intention in the Bicameral Conference Committee is really on record**, I think we will have no problem because when the court will refer definitely to the minutes of the Bicameral Conference Committee, then they will see that our intention is so. Just for the record.
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> The Chairperson (Sen. Ejercito-Estrada). Okay, we adopt the…
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> Rep. Marcos. Therefore, to reiterate, taking into consideration both [Representative Sarenas and Custodio's] concerns, the Bicam transcript should therefore reflect the **intent** of this body **to broadly interpret the term children** not only to include **the biological children of the abused women or violated mothers**, but **also all children under their care**.
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> The Chairperson (Sen. Ejercito-Estrada). Okay, para matapos na talaga. [x x x] Okay, accepted, use your title, gano'n na rin, dinagdagan lang ng "their children". (Emphases and underscoring supplied)

The exchanges in the Bicameral Conference Committee emphasized the emotional connection or dependency between the child-offended party and the woman. The scenario depicted is one of an "*abusive relationship within the family abode.*" Relevantly, the legislator referred to the **woman as "abused" or "violated"** even when seemingly addressing a scenario of violence against the child. This is understandable considering that from a mother's perspective, the pain caused to the child may likewise be felt by the mother or the mother figure. Hence, the violence against the child may feel as if it is inflicted on the mother figure herself. In the present case, this is not the portrayed relationship between the mother, Rosalina, and the child, Rhuby.

Notably, during the Senate deliberations, the sponsor of R.A. No. 9262's source bill acknowledged the inadequacy of R.A. No. 7610 because for one, protection orders are not available in said law. Senator Sotto narrated that "I have seen 14, 15-year-old children being abused by their fathers, even by their mothers. And it breaks my heart to find out about these things. Because of the inadequate existing law on abuse of children, this

particular measure will update that. It will enhance and hopefully prevent the abuse of children and not only women."[13] As above-discussed, this inclusion of children was later revisited and qualified in the Bicameral Conference Committee. Representative Angara-Castillo noted that the benefits to be given to children can be made "by way of amendment of [R.A. No.] 7610" explaining that "*if you scatter all these provisions [benefiting] the children, napakagulo eh.* So if we want to give them additional rights, then you just amend [R.A. No.] 7610." Representative Sarenas also clarified that "we certainly are talking about not just any child but **a child of a woman victim of violence**." In contrast, she referred to the co-parent of the woman as "the perpetrator." She then explained that "all children are covered under [R.A. No.] 7610. But the children we want covered under this law" are those who have an emotional connection or dependency with the woman.[14] It was at this point that Senator Imee Marcos recommended the use of "their" to qualify the "children" covered under the statute. From these latter discussions, the legislative intent became clear that when the offended party is a child, **the setting contemplated under the law is that there are three participants – the child, the woman, and the offender**. As such, the

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[13] *Garcia v. Judge Drilon*, supra note 11, citing the Senate deliberations.

[14] See Dissenting Opinion, pp. 14-17, citing Congressional Records, minutes of the Bicameral Conference Committee dated January 26, 2004, pp. 192-202, to wit:

> Rep. Angara-Castillo. ... x x x
> I don't think we should include **children** in the bill except **as incidental beneficiaries of the reliefs to be granted to the woman victim.** Because Republic Act 7610 is already so comprehensive as to cover the rights of the child.
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> [x x x] And my position is that, if **we need to give more rights**, then we **should amend 7610 because that is the act applicable to children.** I do not think this is really wise or prudent to include them in this particular bill because their inclusion is already guaranteed there by way of the relief that will benefit them as they are granted to their mother but it's not necessary for them to be made part of the title or really the bill itself. Except, as I said, **as incidental beneficiaries of the reliefs to be granted to the offended mother.**
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> The Chairperson (Sen. Ejercito-Estrada). There was a discussion on the Senate, the Minority Leader said that they don't mind if the males are excluded from this bill, but not the children. So I think I agree with them and so we include the children.
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> **Rep. Angara-Castillo.** Just for the record, Madam Chair, I am not saying that we should exclude children from consideration of benefits that may accrue to them. What I am just saying is that, **the benefits they would like to give can be done by way of amendment of 7610 so we really have a clear law that affects only the children.**
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> **Kasi, if you scatter all these provisions benefitting the children, napakagulo eh. So if we want to give them additional rights, then you just amend Republic Act 7610.**
>
> [x x x x]
>
> Rep. Sarenas. Madam Chair, I should have brought this up earlier but we certainly are talking about **not just any child but a child of a woman victim of violence**. And, therefore, to make that clear, Madam Chair, I suggest we include in our proposal somewhere where we describe who the victims can be following words: x x x That's a long one Madam Chair, but it does speak of the reality of the kind of children, not just biological children of a woman victim of violence but all other young children below 18 or who are incapable of taking care of themselves but her children because they are children from previous marriage, her adopted children or a child she has in **common with the perpetrator**. (Emphases and underscoring supplied)

mother-offender cannot be held liable under R.A. No. 9262. Nevertheless, she can be held responsible under R.A. No. 7610.[15]

Effective legal remedies for children

The majority cautions that "[t]he RTC's restrictive interpretation requiring that the mother and her child to be victims of violence before they may be entitled to the remedies of protection and custody orders will frustrate the policy of the law. It adds that the RTC's supposed reassurance that "children who suffered abuse from the hands of their own mothers may invoke other laws except R.A. No. 9262 is discriminatory" and is "an outright denial of effective legal measures to address the seriousness and urgency of the situation" involving violence against women and children.[16]

To my mind, no denial of effective legal measures will result from the textually accurate interpretation of "offender" under R.A. No. 9262, and the Court would only be exercising its solemn duty to apply the statute as intended. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[17] The remedy, as suggested in the Dissenting Opinion of Justice Caguioa, is to amend R.A. No. 7610 to include the protection order for abused children in cases not covered under R.A. No. 9262, as in the present case.

Besides, although a protection order is not a remedy presently available under R.A. No. 7610, it does not preclude the Court from making such protection order available to victims of child abuse under a duly-promulgated rule. The 1987 Constitution empowers the Court to "promulgate rules concerning the protection and enforcement of constitutional rights," which includes the right to life, liberty, and security of abused children. Pursuant to this power, the Court, in the Rule on the Writ of Amparo, listed protection order as an *interim* relief that a person may avail. It is submitted that the Court can make available the same *interim* relief in

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[15] Section 2 of R.A. No. 7610 provides, thus: "Section 2. *Declaration of State Policy and Principles.* – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are **committed by the said parent**, guardian, teacher or person having care and custody of the same." (Emphasis and underscoring supplied)

[16] See *ponencia*, pp. 14-15.

[17] *Republic v. Manalo*, 831 Phil. 33, 57 (2018).

child abuse cases under R.A. No. 7610, in order for it to be a relief available against the mother who abuses her own child, as in this case.

For these reasons, I join Justice Caguioa in stating that based on the letter and spirit of the law, the present case does not fall within the purview of R.A. No. 9262. Nevertheless, the RTC may still grant reliefs to the child under the Custody Rule, which enables courts to provide provisional and permanent relief to protect the child. Notably, Sec. 13 of the Custody Rule authorizes the court to issue a provisional order awarding custody of the minor to either parent. Sec. 17 thereof also authorized the issuance of a protection order to require any person to comply with orders of the court to ensure the protection of the minor.[18] Hence, I also vote to partially grant the petition insofar as to remand the case to the trial court for the determination of this case.

ALEXANDER G. GESMUNDO
Chief Justice

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MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

[18] Section 17 of the Custody Rule provides, thus:
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 any 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 of 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.