

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HONORABLE ALEJANDRO S. BAHONSUA, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF RTC-BRANCH 46, LARENA, SQUIJOR AND FEDELINA ALAD-AD OYO...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision[1] of the Regional Trial Court (RTC), Branch 46, Larena, Siquijor dated July 10, 2013 in Special Proceeding 897, which granted petitioner's petition to declare her husband Jose Oyog presumptively dead.

The Antecedents

Private respondent Fedelina Alad-ad Oyog (Fedelina) married Jose D. Oyog (Jose) on May 20, 1995 at St. Augustine of Hippo Parish, Poblacion, San Juan, Siquijor. [2] They have an only son Jade A. Oyog who was born on April 8, 1996.[3]

According to Fedelina, Jose surreptitiously left their conjugal dwelling for an unknown place on March 18, 1999. He brought along his personal belongings and boarded a pumpboat bound for Dumaguete City at the Tambisan wharf in Tambisan, San Juan Siquijor. From that time, she no longer heard from her husband and she did not know the reason why he left.

In 2008, Fedelina filed with the RTC a petition to declare Jose presumptively dead. Her petition, however, was denied because according to the court, she failed to exercise the required diligence to locate the whereabouts of her husband in order to establish that she had a well-founded belief that he was already dead.[4]

Subsequently, Fedelina exerted more efforts to locate Jose. She had his disappearance recorded at the San Juan Police Station in San Juan, Siquijor.[5] She also caused notices to be published: once in the Siquijor Mirror[6] which is a newspaper circulated in the province of Siquijor; and thrice in the Zamboanga Today,[7] a newspaper circulated in Western Mindanao where her husband came from, as he was born in Lamitan, Basilan and grew up in Zamboanga. The notices, which bore Jose's picture, informed the public that Jose was the husband of Fedelina and he had been missing since March 1999. The notices requested anyone who can tell Jose's whereabouts to report to the nearest police station or coordinate with the publishing newspaper.

In 2011, Fedelina filed for the second time, a Petition[8] to declare her husband Jose as presumptively dead. She alleged in her Petition that due to the length of time that Jose had been absent, without any word on his whereabouts, she honestly believed that her husband was already dead. Fedelina averred that she filed the Petition in good faith so that she could lawfully contract another marriage with someone who would help her in rearing her son and giving him a better future. Fedelina claimed that she had found someone whom she loved, and who, in turn, expressed the desire to settle with her; but they could not marry since she was still married to Jose.

Fedelina and her son testified in support of the petition. They were extensively cross-examined by the oppositor,

the Republic of the Philippines (the Republic), which was represented by the provincial prosecutor. The Republic, however, did not present any countervailing evidence.

After the proceedings, the trial court granted Fedelina's petition and declared Jose presumptively dead. The dispositive portion of the Decision reads:

WHEREFORE, from the foregoing premises, JUDGMENT is hereby rendered granting the Petition.

Accordingly, absent spouse JOSE D. OYOG is hereby declared presumptively dead pursuant to the provisions of Art. 41 of the Family Code, hence, his marriage with the petitioner is considered dissolved by operation of law. This is without prejudice, however, to the effect of his re-appearance should it turn out that he is still alive.

Finally, considering the proceedings of this petition is summary in nature as per Art. 253 of the Family Code, pursuant to the provision of Art. 247 of the same Code, this Decision is immediately final and executory.

Let this Decision be recorded in the Office of the Municipal Civil Registrar of San Juan, Siquijor, the place where the marriage took place; and a copy be furnished to the Office of the Municipal Civil Registrar of Larena, Siquijor, the place where this Court sits.

SO ORDERED.[9]

The Republic filed this petition to assail the decision of the trial court. The recourse was made in view of Article 247,[10] in relation to Article 253[11] of the Family Code, and the ruling in the case of Republic vs. Granada decreeing that the losing party in a summary proceeding for the declaration of presumptive death under Article 41 of the Family Code may file a petition for certiorari with the Court of Appeals on the ground that the trial court committed grave abuse of discretion amounting to lack of jurisdiction in rendering judgment thereon.

The Republic assigned the following grounds in his petition, to wit:

PUBLIC RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE DECISION DECLARING JOSE D. OYOG AS PRESUMPTIVELY DEAD.

PRIVATE RESPONDENT FAILED TO SUFFICIENTLY ESTABLISH A "WELL-FOUNDED BELIEF" OF THE ABSENTEE'S DEATH.

This Court's Ruling

The petition is without merit.

The Republic contended that the trial court acted with grave abuse of discretion since Fedelina failed to show that she had a well-founded belief that her husband was already dead. According to the Republic, Jose's years of absence was insufficient ground to grant the petition. The documentary and testimonial evidence presented failed to substantiate Fedelina's claim that she had exhaustively searched for her missing husband. Fedelina did not mention the names of Jose's relatives from whom she made inquiries. Although she mentioned about Jose's uncle, Gaudencio Oyog, it appeared that Fedelina's search was restrictive as the said uncle of Jose also lives in Siquijor and there was no evidence that she also inquired from Jose's relatives in Lamitan, Basilan. Fedelina did not even mention about inquiring as to what happened to the pump boat on which Jose got aboard on March 18, 1999. She could have, at least, communicated with persons who may have knowledge of the pump boat's itinerary. The mere recording of Jose's departure in the police blotter could not be construed as diligent search as there was no proof of proper investigation in good faith or further coordination with persons in authority.

The Republic's contentions are not meritorious.

Article 41 of the Family Code of the Philippines reads:

Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

The Article requires that the present spouse who institutes the petition for purposes of remarriage must have a well-founded belief that the absent spouse is already dead. The law does not define what is meant by a well-grounded belief, but in the case of *Republic v. Court of Appeals*,^[12] it was held that the belief of the present spouse must be the result of proper and honest to goodness inquiries and efforts to ascertain the whereabouts of the absent spouse and whether the absent spouse is still alive or is already dead. It was further decreed in the same case that whether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by present spouse.

In granting Fedelina's petition and declaring Jose as presumptively dead, the trial court gave the following justifications, thus:

After carefully evaluating the uncontroverted evidence of the petitioner, this time[,] the Court is convinced that indeed there is a sufficient ground for the petitioner to believe that her husband Jose D. Oyog is already dead. Note that the whereabouts of Jose has been unknown to the petitioner for a long period of fifteen (15) years already since he left their conjugal home in Poblacion, San Juan, Siquijor on March 18, 1999. xxx.

The Court is of the view that the efforts exerted by the petitioner in trying to locate her husband, particularly in having his disappearance recorded in the Blotter of the Police Station of San Juan, published with his picture once with the *The Siquijor Mirror*, a newspaper circulated in the province of Siquijor where Jose last lived and thrice with *Zambanga Today*, a newspaper circulated in Western Mindanao, his place of origin, and from inquiring of his whereabouts from his relative, were enough to comply with the stringent requirements laid down in the cases of *Republic v. Nolasco* and *Republic v. Court of Appeals* xxx. If ever Jose is still alive[,] there must be disinterested people who know him and his whereabouts and have read the notices of his disappearance, and with good intentions should have informed the authorities, the newspapers or the petitioner about it. But up to this time this decision is rendered, nobody has come forward. The Court also is [o]f the view that petitioner filed the petition in good faith.

It has been a universally recognized right for every human being to pursue happiness and security, thus petitioner deserves the right to enjoy the same. Hence it would be tantamount to killing her if she is denied of her basic right to have a happy family, though temporary, now that she has found the man she has been waiting for xxx.^[13]

With the foregoing premises for its decision, no grave abuse of discretion could be ascribed to the trial court. Indeed, Fedelina's acts of having Jose's disappearance recorded in the police blotter and published in newspapers with relevant readership, convince Us that her belief that Jose was already dead arose from her honest to goodness inquiries and efforts to ascertain, not just Jose's whereabouts, but also whether her husband was still alive or already dead.

It must be pointed out that previously in 2008, or about 9 years after her husband left, Fedelina already filed a similar petition to declare Jose presumptively dead. Unfortunately then, she failed to show that she had met the legal yardstick in establishing that her belief regarding her husband's death was well-founded. Hence, to comply, Fedelina did what she deemed would suffice to spawn a well-founded belief that her husband was already dead. Fortunately, when she filed her petition for the second time, the trial court was persuaded with her efforts.

The Republic practically highlighted what Fedelina failed to do. Yet, although she may have overlooked the things pointed out by the Republic, We cannot just be oblivious of the fact that Fedelina filed her petition in good faith. We need to emphasize this considering that what is sought to be avoided in the reckless grants of petitions for declaring an absent spouse as presumptively dead is the collusion between the parties in seeking the petition as a recourse when they find it impossible to dissolve the marital bonds through existing legal means. As held in *Republic v. Nolasco*,^[14] the spouses should not be allowed, by the simple expedient of agreeing that one of them leave the conjugal abode and never to return again, to circumvent the policy of the laws on marriage.

The evil sought to be avoided does not loom here. On the contrary, what We find in this case is the sincere and genuine effort of the present spouse to comply with the law. Hence, considering that the trial court had adequately justified its favorable action on Fedelina's petition in accordance with what the law requires and intends, We sustain the grant of the petition. We cannot subscribe to the Republic's stance that the trial court committed grave abuse of discretion, for it is settled that there is grave abuse of discretion only when the act is done contrary to the Constitution, the law or jurisprudence, or when executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.^[15] None of these circumstances obtain in this case.

WHEREFORE, the Petition is DENIED. The Decision of the Regional Trial Court, Branch 46, Larena, Siquijor dated July 10, 2013 in Special Proceeding 897 is hereby AFFIRMED.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 18-22.

[2] Certificate of Marriage, rollo, p. 26.

[3] Birth Certificate, rollo, p. 27.

[4] Decision of the RTC, Branch 46 in SP. Proc. No. 816, rollo, p. 29. Although the decision contains only the first page, its summary, however, is contained in the decision assailed by the Republic.

[5] Rollo, p. 28.

[6] Rollo, p. 30.

[7] Rollo, pp. 31-33.

[8] Rollo, pp. 23-25.

[9] Rollo, p. 22.

[10] Art. 247. The judgment of the court shall be immediately final and executory.

[11] Art. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 127, insofar as they are applicable

[12] G.R. No. 159614. December 9, 2005.

[13] Rollo, pp. 21-22.

[14] G.R. No. 94053. March 17, 1993.

[15] See Freedom from Debt Coalition v. Energy Regulatory Board, G.R. No. 161113. June 15, 2004.

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