

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MA. BETH R. ANTONIO AND HON. EDUARDO S. CASALS IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 1, BUTUAN CITY...

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 assailing the Decision dated August 5, 2011[2] issued by public respondent Hon. Eduardo S. Casals, Presiding Judge, Regional Trial Court, Branch 1, Butuan City, Agusan del Norte in Special Proc. Case No. 4133 entitled “In the Matter of the Petition for Declaration of Presumptive Death of Alex L. Antonio.”

The assailed Decision dated August 5, 2011 granted private respondent Ma. Beth Antonio's petition[3] for declaration of presumptive death of her absent spouse Alex L. Antonio and declared the latter presumptively dead.

The Facts

Private respondent Ma. Beth Antonio (hereinafter referred to as private respondent) and Alex L. Antonio (Alex for brevity) were married⁴ on May 3, 1990 before the Municipal Trial Court in Cities, Davao City. They were blessed with three children: Kenneth^[5], Melody^[6], and Alex Jr.^[7], surnamed Antonio. Sometime in 1999, Alex suddenly left the conjugal home at Purok 1, Manapa, Buenavista, Agusan del Norte, and has never been heard of since then. Private respondent neither received letters, emails, nor any other form of communication from him. Despite earnest efforts, she failed to ascertain Alex's whereabouts.

On January 5, 2011, or 12 years after Alex disappeared, private respondent filed a petition for declaration of presumptive death of Alex. Finding the petition sufficient in form and substance, and after private respondent complied with the jurisdictional requirements, the court a quo gave due course to the petition and set it for hearing.

During trial, private respondent testified that sometime in 1999, after a minor argument, Alex left the conjugal home and never came back. After a 2-week absence, private respondent went to look for her husband at his home address at Bajada, Davao City but his family did not know his whereabouts. She likewise asked his friends and relatives in Butuan City but such friends and relatives neither knew Alex's location. She searched for her husband for 3 years from 1999 to 2002, to no avail. While abroad, she also searched for Alex online in facebook and other social media sites but her online search also proved futile. She claimed that she was informed by her sister-in-law that Alex even failed to attend the wakes of two of their siblings who died.

On cross-examination, private respondent testified that she was not able to report her husband's disappearance to police authorities nor search for him through radio broadcast due to financial constraints. She further testified that Alex was thin and not that healthy when he disappeared in 1999.

Private respondent also presented as witness her eldest son Kenneth who mainly corroborated private respondent's

testimony.

After trial, the court a quo granted the petition and declared private respondent's husband presumptively dead in its Decision dated August 5, 2011, the dispositive portion of which reads:

WHEREFOR[E], considering all the foregoing circumstances, petitioner's absent spouse Alex L. Antonio is hereby declared presumptively dead for the purpose of petitioner's contracting a subsequent marriage, without prejudice to the effect of reappearance of her absentee spouse.

IT IS SO ORDERED.

In this petition, the Republic, through the OSG, now assails the decision of the court a quo raising this lone issue to wit:

[WHETHER OR NOT] PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED ALEX L. ANTONIO PRESUMPTIVELY DEAD DESPITE LACK OF PROOF OF A WELL-FOUNDED BELIEF ON THE PART OF PRIVATE RESPONDENT THAT HER SPOUSE IS ALREADY DEAD.[8]

Our Ruling

The petition lacks merit.

Article 41 of the Family Code states:

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 has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death 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. (Emphasis supplied.)

The Supreme Court has laid down the four (4) requisites for the declaration of presumptive death under the Family Code as follows, viz:

- That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;
- That the present spouse wishes to remarry;
- That the present spouse has a well-founded belief that the absentee is dead; and;
- That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.

Petitioner argues that, while the first, second, and fourth requisites were present in the instant case, private respondent failed to comply with the third requisite, that the present spouse must have a well-founded belief that the absentee is dead.

The law does not define what is meant by well-grounded belief but the High Court, in the case of Republic v. Court of Appeals and Alegro, held, viz:

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. 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. (emphasis supplied)

Petitioner contends that private respondent failed to establish a well-grounded belief that her absent spouse was already dead as required by Article 41 of the Family Code.

We disagree.

In the case at bench, records show that private respondent went to look for her husband, after a 2-week absence, at his home address at Bajada, Davao City but his family did not know his whereabouts.[9] She also went to her husband's relatives and friends in Butuan City but no one knew of Alex's location.[10] Despite searching for her missing husband for several years, private respondent's efforts proved futile. We hold that these established facts constitute a reasonably diligent search on the part of the private respondent as to give rise to a well-grounded belief that her missing spouse, who has been absent for twelve years, is dead.

To support its argument, petitioner invokes the rulings laid down by the High Court in Republic v. Nolasco,[11] United States v. Biasbas[12] and Republic v. Court of Appeals and Alegro.[13] It bears noting, however, that these cases invoked by the petitioner are not at all fours with the instant case.

In Republic v. Nolasco, the Supreme Court considered the investigation conducted by the respondent in ascertaining his absent wife's whereabouts as "too sketchy to form the basis of a reasonable or well-founded belief" noting that after learning of his non-Filipino wife's departure, instead of seeking the help of local authorities or of the British Embassy, the respondent "secured another seaman's contract and went to London to look for her there."

Meanwhile, in United States v. Biasbas, the defendant Macario Biasbas, who was charged with the crime of bigamy, set-up the defense of belief in good faith that his first wife had already died. The Supreme Court held that Biasbas had not exercised due diligence to ascertain the whereabouts of his first wife noting that 'while he made inquiries concerning the whereabouts of his wife, he fails to state of whom he made such inquiries.' The only basis of his suspicion was the fact that his wife had been absent.

In Republic v. Court of Appeals and Alegro, on the other hand, the respondent in that case failed to make inquiries from his parents-in-law regarding his missing wife's whereabouts. The respondent even admitted that when he returned to the house of his parents-in-law, his father-in-law told him that his missing spouse had just been there but left without notice.

In all these cases, the High Court held that there is no proof that diligent search was conducted by the present spouse in ascertaining the whereabouts of the missing spouse.

In stark contrast to the abovementioned cases, private respondent in the instant case testified that she not only sought the help of Alex's parents, family, friends, and relatives both at his home address at Bajada, Davao City and in Butuan City in ascertaining Alex's whereabouts but was also informed by her sister-in-law that Alex even failed to attend the wakes of two of their siblings who died. Clearly, that she searched and tried to secure information from Alex's family concerning his whereabouts cannot be denied and that her belief that Alex, who was already missing for twelve (12) years at the time of the petition, is dead cannot be said to be a mere suspicion.

Lastly, We give credence to Kenneth's testimony as regards the absence of his father for twelve years. A child's testimony against a parent is generally "entitled to great weight since Filipino children have a natural reverence and respect for their elders."¹⁴ It is safe to state that it is unthinkable for Kenneth to boldly testify against his father if his absence were not true knowing fully well that her mother, private respondent herein, may remarry in the event that her petition is granted.

In fine, We hold that the court a quo did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in granting private respondent's petition and in declaring Alex L. Antonio presumptively dead.

THE FOREGOING CONSIDERED, the instant PETITION is thus DISMISSED. The Decision dated August 5, 2011 issued by the public respondent in Special Proc. Case No. 4133 is hereby AFFIRMED in toto.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Chairperson and Badelles, JJ., concur.

[1] Rollo, p. 2.

[2] Rollo, p. 27.

[3] Rollo, p. 17.

[4] Rollo, p. 22.

[5] Rollo, p. 23.

[6] Rollo, p. 26.

[7] Rollo, p. 24.

[8] Rollo, p. 8.

[9] Rollo, p. 29.

[10] Ibid.

[11] G.R. No. 94053, 17 March 1993, 220 SCRA 20.

[12] 25 Phil. 71 (1913).

[13] 513 Phil. 391 (2005).

[14] People v. Rosario, 455 Phil. 876, 886 (2003).

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