

**IN RE: SUMMARY PETITION FOR DECLARATION OF PRESUMPTION OF DEATH OF HUSBAND EDGAR MORALES FERNANDEZ, JUVY ANN RAGADIO, PETITIONER-APPELLANT, VS. EDGAR MORALES FERNANDEZ, RESPONDENT,**

Ponente: DE GUIA-SALVADOR, R., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/996e37338983/>

---

**DE GUIA-SALVADOR, R., J.:**

Evidentiary sufficiency is at issue in this appeal from the Decision[1] rendered by the Regional Trial Court, Branch 71, Iba, Zambales (court a quo), in SP. PROC. No. RTC-1684-I, the dispositive portion of which reads:

"WHEREFORE, premises considered, the instant petition for declaration of presumptive death of Edgar Morales Fernandez is hereby dismissed for lack of merit.

SO ORDERED."[2]

**The Facts**

On January 21, 1994, Edgar Morales Fernandez (Edgar) and Juvy Ann Ragadio (Juvy Ann) were married before the Municipal Mayor of Castillejos, Zambales.[3] After the celebration of their marriage, Edgar went back to work in Manila. Born out of their marriage is their daughter named Katherine Jelle.[4] On June 12, 1994, Edgar returned to Zambales to inform his wife Juvy Ann that he was involved in a homicide case, and thus needed to hide in Mindanao. He also told her that he would enlist with the Civilian Armed Force Geographical Unit (CAFGU).[5] From then on and for the next eighteen (18) years, Edgar had not communicated his wife. Neither has she received any news about him, thereby giving rise to a belief that he may already be dead.[6]

On October 4, 2012, Juvy Ann filed before the court a quo, a Petition for Declaration of Presumption of Death of Husband Edgar Morales Fernandez under Article 41 of the Family Code.[7] The case was docketed as SP PROC. No. RTC-1684-I.

**The RTC Decision**

On July 29, 2013, the court a quo rendered its appealed Decision, dismissing for lack of merit the Petition for Declaration of Presumptive Death, ratiocinating in this wise:

"xxx xxx xxx

In the instant case, there is no evidence whatsoever, presented by the petitioner that certain overt acts or strides were done by her to ascertain whether or not her husband is already dead. Her testimony that respondent had not communicated to her for almost 18 years is insufficient to deduce a well-founded belief that the absent spouse is already dead. There was even no evidence presented to show proper and honest to goodness inquiries and efforts to ascertain her husband's whereabouts, particularly in Mindanao, his alleged destination after he left petitioner.

With the lack of two of the basic requisites enumerated above, the petitioner clearly was not able to discharge the burden of proof for the Court to grant this petition.

xxx xxx xxx"[8]

#### The Issue

Aggrieved by the Decision rendered by the court a quo, Juvy Ann is now before Us, seeking the reversal of the appealed decision, raising the following lone issue:

"WHETHER OR NOT THERE IS A WELL FOUNDED BELIEF THAT THE MISSING SPOUSE IS ALREADY DEAD."[9]

Juvy Ann maintains that Edgar's act of going to Mindanao and joining the CAFGU, coupled with his absence for more than 18 years, constitute a well-founded belief that her absent spouse is already dead.[10]

The oppositor-appellee Republic of the Philippines did not file its Appellee's Brief.[11]

#### The Court's Ruling

We dismiss the appeal for of lack of jurisdiction, as well as for lack of merit.

There is no dispute regarding the fact that the petition from which the instant suit stemmed was filed by Juvy Ann for the purpose of contracting a second marriage. The petition is, consequently, anchored on Article 41 of the Family Code of the Philippines which, in full, provides as follows:

"Article 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 of death under the circumstances set forth in the provision 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 absentee."

Being a summary judicial proceeding in the Family Law, the proceedings a quo was, consequently, governed by Title XI of the Family Code which, under Article 247 thereof, provides that "(t)he judgment of the court shall be immediately final and executory." The propriety of the appeal at bench is, consequently, cast in dubious light when viewed in the light of the foregoing considerations. Significantly, in Republic of the Philippines vs. Cantor,[12] the Supreme Court ruled that the right to appeal is not granted because of the express mandate of Article 247 of the Family Code, to wit:

"In Summary Judicial Proceedings under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of Section 247, Family Code, are 'immediately final and executory'. It was erroneous, therefore, on the part of the RTC to give due course to the Republic's appeal and order the transmittal of the entire records of the case to the Court of Appeals.

An appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory. As we have said in *Veloria vs. Comelec*, 'the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege.' Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are 'immediately final and executory', the right to appeal was not granted to any of the parties therein. The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001."

As the right to appeal is not a natural right, but merely a statutory privilege,[13] an appellate court acquires no

jurisdiction to review a judgment which, by express provision of law, is immediately final and executory.[14] Therefore, the filing of an appeal from a decision rendered by the lower court in a petition for declaration of presumptive death under the Article 41 is indeed a "serious procedural lapse" and the Court of Appeals has no jurisdiction to review the judgment rendered therein.[15] The court a quo likewise erred by giving due course to the appeal and ordering the transmittal of the records of the case to Us[16] since the judgment of the court a quo has attained finality, and hence, its dispositions and conclusions have therefore become immutable and unalterable.

Given that a party aggrieved by similar decisions may file a petition for certiorari before Us on the ground of abuse of discretion amounting to lack or excess of jurisdiction,[17] records show that no such petition was filed before the lapse of the sixty (60-)day period to do so, despite receipt of the appealed decision by Juvy Ann's counsel on August 15, 2013.[18]

Even prescinding from the foregoing disquisitions, it bears emphasis that Juvy Ann failed to establish the essential requisite for the declaration of presumptive death that there be a "well-founded belief" that the absentee is dead.

In *Republic of the Philippines vs. Cantor*[19], the Supreme Court also stressed that the law did not define what is meant by "well-founded belief" and that the determination thereof remains to be on a case-to-case basis. To be able to comply with such requisite, the present spouse must prove that his/her belief was the result of diligent and reasonable efforts and inquiries to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It requires exertion of active effort (not a mere passive one).[20]

In determining the criteria for determining the existence of a well-grounded belief under Article 41 of the Family Code, the Supreme Court laid down the following criteria:

"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 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 [the] present spouse." [21]

As correctly noted by the court a quo, no evidence was presented to show proper and honest-to-goodness inquiries and efforts to ascertain the whereabouts of Juvy Ann's husband, particularly in Mindanao, his purported destination after he left her. We also find no allegation, much less proof, that Juvy Ann actively looked for her missing husband by reporting his absence to the police or by seeking the aid of authorities to look for him. Neither did she present as witnesses her husband's relatives, their neighbors and friends who can prove her efforts to locate him. Nor did she proffer any other corroborative evidence to support her claim that she conducted a diligent search for him.

Meanwhile, the bare allegation that Juvy Ann has had no communication with her husband for more than 18 years since he told her that he was involved in a homicide case and needed to hide by going to Mindanao to enlist as a CAFGU member, falls short of the strict standard to form a well-founded belief that he is already dead. As held in *Republic of the Philippines vs. Cantor*, [22] the mere absence of the spouse (even for such period required by law), lack of any news that such absentee is still alive, failure to communicate or general assumption of absence under the Civil Code would not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is still alive or is

already dead.[23]

On a final note, in view of the summary nature of proceedings under Article 41 of the Family Code for the declaration of presumptive death of one's spouse, the "diligent and reasonable search" standard set by the Supreme Court in locating the whereabouts of a missing spouse must be strictly complied with for there have been times when Art. 41 of the Family Code had been resorted to by the parties wishing to remarry knowing fully well that their alleged missing spouses are alive and well.[24] Moreover, the application of such strict standard becomes even more imperative, considering the State's constitutional and statutory policy to protect and strengthen the institution of marriage, which serves as the family's foundation, and the family as a basic autonomous social institution.

WHEREFORE, premises considered, the instant appeal is DISMISSED for lack of jurisdiction, as well as for lack of merit. The final and executory Decision of the court a quo in SP. PROC. No. RTC-1684-I STANDS.

**SO ORDERED.**

Rosario, and Dimagiba, JJ., concur.

---

[1] Records, pp. 58-63.

[2] Id., p. 63.

[3] Id., p. 2; 6.

[4] Id., p. 2, 5.

[5] Id., p. 2.

[6] Id.

[7] Id., pp. 2-3.

[8] Id., p. 63.

[9] Rollo, p. 20.

[10] Id., pp. 20-21.

[11] As per Agendum dated October 23, 2014.

[12] G.R. No. 184621, December 10, 2013, citing Republic of the Philippines vs. Bermudez-Lorino, G.R. No. 160258, January 19, 2005.

[13] Republic of the Philippines vs. Bermudez-Lorino, id.

[14] Id.

[15] Republic of the Philippines vs. Tango, G.R. No. 161062, July 31, 2009.

[16] Id.

[17] Id.

[18] Supra note 1, p. 65.

[19] Supra

[20] Id.

[21] Republic of the Philippines vs. Cantor, supra, citing Republic of the Philippines vs. Court of Appeals (Tenth Div) 513 Phil. 391, 397-398

[22] Supra

[23] Republic of the Philippines vs. Court of Appeals (Tenth Div), Supra

[24] Republic of the Philippines vs. Cantor, supra

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.