HEIRS OF THE DECEASED JOSELITO C. BAUTISTA, ESPERANZA BAUTISTA, ET AL., PLAINTIFFS-APPELLEES, VS. MARIA LUISA S. ROMILLO, RESPONDENT-APPELLANT.

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GALAPATE-LAGUILLES, J:

In this appeal,[1] respondent-appellant Maria Luisa S. Romillo assails the January 24, 2011 Judgment[2] and the May 3, 2011 Resolution[3] of the Regional Trial Court in Civil Case No. 832-FC declaring that the marriage between her and Joselito Bautista is void for being bigamous.

The facts are as follows:

On March 22, 1968, Joselito C. Bautista and Esperanza C. Carlos were married in a civil ceremony before the then Presiding Judge of the City Court of Baguio City.[4] Out of this union, the couple begot five children: Christian Anthony Carlos, Joderek, Maria Cristina, Jozak, and Joselito Jr.5

On May 20, 1985,[6] Esperanza filed for divorce against Joselito before the Second Judicial District Court of the State of Nevada, USA. Less than two months after or on July 17, 1985, Esperanza obtained a divorce decree[7] against Joselito from the said court.

Joselito thereafter got married to Maria Luisa S. Romillo in Hong Kong on June 10, 1989.[8] More than three years later, on December 14, 1992, Esperanza likewise got married to another person named Robert S. Polloreno.[9]

On March 30, 1993, Joselito filed a petition[10] to declare void his marriage to Esperanza. He cited infidelity, irresponsibility, immaturity, and psychological incapacity on the part of Esperanza as reasons for the filing of the petition. When Joselito died on September 6, 1995, his petition was dismissed[11] without being resolved on the merits.

Esperanza then filed a petition for declaration of nullity of her marriage to Robert before the Regional Trial Court of Quezon City. She alleged that Robert abandoned her and their child, and that the marriage between them is defective for lack of a marriage license.[12] In a Decision[13] dated September 27, 1999, the RTC declared the marriage between Esperanza and Robert void under Article 35 of the Family Code. The trial court further ruled that the said marriage is bigamous because when Esperanza got married to Robert, her marriage to Joselito was still subsisting. The absolute divorce granted to Esperanza in the State of Nevada, USA is not recognized in the Philippines;[14] thus, the marriage between her and Joselito was not dissolved.

On November 23, 2007, Esperanza, together with her children with Joselito (collectively, Joselito's heirs), filed a Complaint[15] for declaration of nullity of marriage between Joselito and Maria Luisa before the RTC of Baguio City, Branch 59. The case was docketed as Civil Case No. 832-FC. In their Complaint, Joselito's heirs claimed that at the time Joselito and Maria Luisa tied the knot, the former's union with Esperanza was still subsisting. They prayed that the marriage between Joselito and Maria Luisa be declared void for being bigamous under Article 35 (4) of the Family Code.

In her Answer,[16] Maria Luisa accused Joselito's heirs of deliberately concealing the fact that Esperanza obtained a decree of absolute divorce in the State of Nevada, USA. The divorce decree effectively dissolved the union between Joselito and Esperanza.

After trial, the RTC, in its January 24, 2011 Judgment,[17] granted the petition to declare the marriage between Joselito and Maria Luisa void:

> A. M. Mo. -02-11-10-SC covers Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable marriages and is prospective in application.
>
> At the time plaintiff Esperanza applied for divorce on 20 May 1985 and granted on 17 July 1985, she is a Filipino citizen and pursuant to the nationality principle in Article 15 of the Civil Code of the Philippines, she was bound by Philippine laws.
>
> x x x
>
> Philippine laws, then and even until now, do not allow and recognize divorce between Filipino spouses. Thus, plaintiff Esperanza could not have validly obtained a divorce from her husband Joselito. The divorce granted her in Nevada, U.S.A did not severe [sic] her marriage ties with Joselito. Such being the case, the marriage of plaintiff Esperanza and Joselito subsisted until the death of the latter on 6 September 1996. Consequently, the marriage contracted by him with defendant Maria Luisa Romillo on 10 June 1989 was void being a bigamous marriage.
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> x x x
>
> While A. M. Mo. -02-11-10-SC declares that a petition for declaration of absolute nullity of a marriage may be filed solely by the husband or the wife, it does not mean that the compulsory heirs or intestate heirs are without recourse under the law. They can still protect their successional rights, for, as stated in the Rationale of the Rules on Annulment of Voidable marriages, compulsory or intestate heirs can still question the validity of the marriage, not in a proceeding for a declaration of nullity but upon the death of a spouse in a proceeding for the settlement of the estate of the deceased spouse filed in regular courts. x x x.
>
> SO ORDERED.

Unsatisfied, Maria Luisa filed a Motion for Reconsideration[18] of the decision. The motion was denied;[19] hence, this appeal. Here, Maria Luisa contends that the RTC erred in failing to rule that Joselito's heirs are devoid of the requisite legal standing to assail the validity of her marriage with Joselito. She argues that pursuant to A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages), only the husband or the wife of the marriage sought to be nullified or annulled may be parties to any action for nullity or annulment.[20] She further argues that Esperanza has not proven that she was still a Filipino citizen at the time she applied for divorce; thus, the nationality principle under Article 15 of the Civil Code is not applicable.[21]

The appeal is unmeritorious.

Section 2(a) of A.M. No. 02-11-10-SC or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages provides that a petition for declaration of absolute nullity of a void marriage may be filed solely by the husband or the wife. In the case of Juliano-Llave v. Republic,[22] however, the Supreme Court held that the rule does not apply if the reason behind the petition is bigamy. Further, The Rationale of the Rules on Annulment of Voidable Marriages and Declaration of Absolute Nullity of Void Marriages, Legal Separation and Provisional Orders[23] interprets Section 2(a) in the following manner, viz.:

> (1) Only an aggrieved or injured spouse may file petitions for annulment of voidable marriages and declaration

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> of absolute nullity of void marriages. Such petitions cannot be filed by the compulsory or intestate heirs of the spouses or by the State. [24]

The Rationale makes it clear that Section 2 (a) of A.M. No. 02-11-10-SC refers to the "aggrieved or injured spouse."[25] If Maria Luisa's interpretation is employed, i. e., only she (considering that Joselito is already dead) may file a petition for declaration of absolute nullity of her own marriage, then, Esperanza is unjustly precluded from filing an action. Surely, this is not what the Rule contemplates. The subsequent spouse may only be expected to take action if he or she had only discovered during the connubial period that the marriage was bigamous, and especially if the conjugal bliss had already vanished. Should parties in a subsequent marriage benefit from the bigamous marriage, it would not be expected that they would file an action to declare the marriage void and thus, in such circumstance, the "injured spouse" who should be given a legal remedy is the one in a subsisting previous marriage.[26]

We agree, however, that the inclusion of the children of Esperanza and Joselito in the petition is not sanctioned by the rule. The Rationale is explicit that the compulsory or intestate heirs of the spouses are precluded from filing the petition for annulment of voidable marriages and declaration of absolute nullity of void marriages. Clearly, the children were misjoined in the petition below. Consequently, the children should be dropped from the appeal pursuant to Rule 3, Section 11 of the Rules of Court which states that "neither misjoinder or non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just."

We now come to the meat of the case which revolves mainly around the question of the validity of the marriage between Joselito and Maria Luisa. According to Article 26, paragraph 2 of the Family Code of the Philippines —

> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

In Republic v. Orbecido,[27] Article 26, paragraph 2 was interpreted by the Supreme Court allowing a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry. Contrary to Maria Luisa's claim, however, the doctrine laid down in Orbecido is not applicable in this case because at the time Esperanza obtained her divorce, she was a Filipino citizen. In fact, records are bereft of any evidence to show that at present, she is no longer a citizen of this country. There is no competent evidence concerning the supposed naturalization of Esperanza in the USA. It is a settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence.[28] Maria Luisa failed to overcome the burden of proof incumbent upon her and to present sufficient evidence necessary to establish her claim that Esperanza was not a Filipino citizen when the divorce decree was granted. Thus, pursuant to the nationality principle under Article 15 of the Civil Code, Esperanza was still bound by Philippine laws on family rights and duties, status, condition, and legal capacity, even when she was already living abroad. Philippine laws, specifically Articles 15[29] and 17[30] of the Civil Code, do not allow and recognize divorce between Filipino spouses.[31] Thus, Esperanza could not have validly obtained a divorce from Joselito. The divorce decree that Esperanza obtained in the State of Nevada did not sever her marriage ties with Joselito. The latter then was not capacitated to enter into another marriage at the time he got married to Maria Luisa. Accordingly, the marriage between Joselito and Maria Luisa is bigamous and void from the beginning.[32]

That the marriage between Joselito and Maria Luisa is bigamous is further fortified by our finding that Joselito only filed the petition for declaration of nullity of his marriage with Esperanza on March 30, 1993 or almost four years after he married Maria Luisa on June 10, 1989. It is fundamental that a judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a

subsequent marriage without first obtaining such judicial declaration is guilty of bigamy.[33] Here, Joselito failed to obtain such declaration before contracting another marriage. His first marriage was still subsisting at the time of the subsequent marriage; hence, the latter is necessarily bigamous.

As regards Maria Luisa's claim for damages and attorney's fees, the same must be denied. For moral damages to be recovered, it must be shown that an injury was suffered by the claimant and that such injury sprang from any of the cases stated in Articles 2219[34] and 2220.[35] Moral damages is emphatically not intended to enrich a party at the expense of another. It is awarded only to enable the injured party to obtain means, diversion, or amusements that will serve to alleviate the moral sufferings he/she underwent, by reason of another's culpable action and must, perforce, be proportionate to the suffering inflicted.[36]

In the instant case, Maria Luisa has not convincingly shown that she suffered "mental anguish" for certain acts of Esperanza which fell under any of the cases enumerated in Articles 2219 and 2220 of the Civil Code. Accordingly, for lack of factual and legal basis, the award of moral damages must be set aside.

In the same vein, to warrant the award of exemplary damages, "[t]he wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner."[37] Here, there is no evidence to show that the Esperanza's acts are unwarranted, or that she acted in bad faith. Thus, exemplary damages cannot likewise be awarded.

For the same reason, Maria Luisa's claim for attorney's must be denied. Article 2208 of the Civil Code allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought. Attorney's fees is not recoverable where there is no sufficient showing of bad faith, as in this case.

FOR THESE REASONS, the appeal is DENIED. The January 24, 2011 Judgment of the Regional Trial Court of Baguio City, Branch 59 is AFFIRMED. The children[38] of Esperanza C. Bautista with Joselito C. Bautista are hereby ordered dropped as plaintiffs-appellees in this appeal.

SO ORDERED.

Punzalan Castillo, M.P., Chairperson and Lazaro-Javier, A.C., J.J., concur.

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[1] Rollo, pp. 42-64.

[2] Records, pp. 723-737.

[3] Id. at 815-818.

[4] Id. at 378, Marriage Contract; Id. at 396, Judicial Affidavit of Esperanza C. Bautista.

[5] Id. at 396.

[6] Decree of Divorce issued by the Second Judicial District Court of the State of Nevada.

[7] Ibid, dated July 17, 1985.

[8] Records, p. 384, Certificate of Marriage between Joselito C. Bautista and Maria Luisa S. Romillo.

[9] Id. at 615, Marriage Contract between Robert S. Polloreno and Esperanza C. Bautista.

[10] Id. at 386-388, Petition for Declaration of Nullity of Marriage docketed as Civil Case No. 93-F-0391.

[11] Id. at 391, Order of the Regional Trial Court dated October 24, 1995.

[12] Id. at 394, Findings of Fact of the Regional Trial Court, Branch 106, Quezon City.

[13] Id. at 394-395.

[14] Ibid.

[15] Id. at 2-6, Declaration of Nullity of a Bigamous Marriage Under Article 35 (4) of the Family Code of the Philippines, as amended.

[16] Id. at 77-107, Motion to Strike Out Plaintiffs' Complaint with Answer Ad Cautelam (with Compulsory Counterclaim Ad Cautelam) and Counter-Petition for Declaration of Nullity of Marriage.

[17] Supra Note 2.

[18] Id. at 738-754.

[19] Id. at 815-818, Resolution dated May 3, 2011.

[20] Id. at 52.

[21] Id. at 56.

[22] G.R. No. 169766. March 30, 2011.

[23] Section 2; Section 3, paragraph a.

[24] Juliano-Llave v. Republic, G.R. No. 169766. March 30, 2011.

[25] Ibid.

[26] Ibid.

[27] G.R. No. 154380. October 5, 2005.

[28] Cortes v. Court of Appeals, G.R. No. 121772, 13 January 2003.

[29] Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

[30] ART. 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

xxx xxx xxx

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

[31] Republic v. Iyoy, G.R. No. 152577. September 21, 2005.

[32] Pursuant to Article 35 of the Family Code.

[33] Morigo v. People of the Philippines, G.R. No. 145226. February 6, 2004.

[34] Article 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

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(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape, or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in article 309;
(10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

x x x.

[35] Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[36] Grand Union Supermarket, Inc. v. Espino, 94 SCRA 966 [1979]; R & B Surety & Insurance Co. Inc. v. Intermediate Appellate Court, 129 SCRA 736, 745 [1984]; Prudenciado v. Alliance Transport System, Inc. 148 SCRA 440, 449 [1987]; Radio Communications of the Phils. Inc. v. Rodriguez, 182 SCRA 899, 907 [1990].

[37] Cervantes v. Court of Appeals, 304 SCRA 25, 33 [1999].

[38] Christian Anthony Carlos, Joderek, Maria Cristina, Jozak, and Joselito Jr., all surnamed Bautista.

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