

**OFELIA P. TY, PETITIONER, VS. THE COURT OF APPEALS, AND
EDGARDO M. REYES, RESPONDENTS.***G.R. No. 127406. November 27, 2000*

Ponente: QUISUMBING, J.

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This appeal seeks the reversal of the decision dated July 24, 1996, of the Court of Appeals in C.A. - G.R. CV 37897, which affirmed the decision of the Regional Trial Court of Pasig, Branch 160, declaring the marriage contract between private respondent Edgardo M. Reyes and petitioner Ofelia P. Ty null and void ab initio. It also ordered private respondent to pay P15,000.00 as monthly support for their children Faye Eloise Reyes and Rachel Anne Reyes.

As shown in the records of the case, private respondent married Anna Maria Regina Villanueva in a civil ceremony on March 29, 1977, in Manila. Then they had a church wedding on August 27, 1977. However, on August 4, 1980, the Juvenile and Domestic Relations Court of Quezon City declared their marriage null and void ab initio for lack of a valid marriage license. The church wedding on August 27, 1977, was also declared null and void ab initio for lack of consent of the parties.

Even before the decree was issued nullifying his marriage to Anna Maria, private respondent wed Ofelia P. Ty, herein petitioner, on April 4, 1979, in ceremonies officiated by the judge of the City Court of Pasay. On April 4, 1982, they also had a church wedding in Makati, Metro Manila.

On January 3, 1991, private respondent filed a Civil Case 1853-J with the RTC of Pasig, Branch 160, praying that his marriage to petitioner be declared null and void. He alleged that they had no marriage license when they got married. He also averred that at the time he married petitioner, he was still married to Anna Maria. He stated that at the time he married petitioner the decree of nullity of his marriage to Anna Maria had not been issued. The decree of nullity of his marriage to Anna Maria was rendered only on August 4, 1980, while his civil marriage to petitioner took place on April 4, 1979.

Petitioner, in defending her marriage to private respondent, pointed out that his claim that their marriage was contracted without a valid license is untrue. She submitted their Marriage License No. 5739990 issued at Rosario, Cavite on April 3, 1979, as Exh. 11, 12 and 12-A. He did not question this document when it was submitted in evidence. Petitioner also submitted the decision of the Juvenile and Domestic Relations Court of Quezon City dated August 4, 1980, which declared null and void his civil marriage to Anna Maria Regina Villanueva celebrated on March 29, 1977, and his church marriage to said Anna Maria on August 27, 1977. These documents were submitted as evidence during trial and, according to petitioner, are therefore deemed sufficient proof of the facts therein. The fact that the civil marriage of private respondent and petitioner took place on April 4, 1979, before the judgment declaring his prior marriage as null and void is undisputed. It also appears indisputable that private respondent and petitioner had a church wedding ceremony on April 4, 1982.[1]

The Pasig RTC sustained private respondent's civil suit and declared his marriage to herein petitioner null and

void ab initio in its decision dated November 4, 1991. Both parties appealed to respondent Court of Appeals. On July 24, 1996, the appellate court affirmed the trial court's decision. It ruled that a judicial declaration of nullity of the first marriage (to Anna Maria) must first be secured before a subsequent marriage could be validly contracted. Said the appellate court:

We can accept, without difficulty, the doctrine cited by defendant's counsel that 'no judicial decree is necessary to establish the invalidity of void marriages.' It does not say, however, that a second marriage may proceed even without a judicial decree. While it is true that if a marriage is null and void, ab initio, there is in fact no subsisting marriage, we are unwilling to rule that the matter of whether a marriage is valid or not is for each married spouse to determine for himself - for this would be the consequence of allowing a spouse to proceed to a second marriage even before a competent court issues a judicial decree of nullity of his first marriage. The results would be disquieting, to say the least, and could not have been the intendment of even the now-repealed provisions of the Civil Code on marriage.

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WHEREFORE, upon the foregoing ratiocination, We modify the appealed Decision in this wise:

1. The marriage contracted by plaintiff-appellant [herein private respondent] Eduardo M. Reyes and defendant-appellant [herein petitioner] Ofelia P. Ty is declared null and void ab initio;
2. Plaintiff-appellant Eduardo M. Reyes is ordered to give monthly support in the amount of P15,000.00 to his children Faye Eloise Reyes and Rachel Anne Reyes from November 4, 1991; and
3. Cost against plaintiff-appellant Eduardo M. Reyes.

SO ORDERED.[2]

Petitioner's motion for reconsideration was denied. Hence, this instant petition asserting that the Court of Appeals erred:

I.

BOTH IN THE DECISION AND THE RESOLUTION, IN REQUIRING FOR THE VALIDITY OF PETITIONER'S MARRIAGE TO RESPONDENT, A JUDICIAL DECREE NOT REQUIRED BY LAW.

II

IN THE RESOLUTION, IN APPLYING THE RULING IN DOMINGO VS. COURT OF APPEALS.

III

IN BOTH THE DECISION AND RESOLUTION IN NOT CONSIDERING THE CIVIL EFFECTS OF THE RELIGIOUS RATIFICATION WHICH USED THE SAME MARRIAGE LICENSE.

IV

IN THE DECISION NOT GRANTING MORAL AND EXEMPLARY DAMAGES TO THE DEFENDANT-APPELLANT.

The principal issue in this case is whether the decree of nullity of the first marriage is required before a subsequent marriage can be entered into validly? To resolve this question, we shall go over applicable laws and pertinent cases to shed light on the assigned errors, particularly the first and the second which we shall discuss jointly.

In sustaining the trial court, the Court of Appeals declared the marriage of petitioner to private respondent null

and void for lack of a prior judicial decree of nullity of the marriage between private respondent and Villanueva. The appellate court rejected petitioner's claim that *People v. Mendoza*[3] and *People v. Aragon*[4] are applicable in this case. For these cases held that where a marriage is void from its performance, no judicial decree is necessary to establish its invalidity. But the appellate court said these cases, decided before the enactment of the Family Code (E.O. No. 209 as amended by E.O. No. 227), no longer control. A binding decree is now needed and must be read into the provisions of law previously obtaining.[5]

In refusing to consider petitioner's appeal favorably, the appellate court also said:

Terre v. Attorney Terre, Adm. Case No. 2349, 3 July 1992 is mandatory precedent for this case. Although decided by the High Court in 1992, the facts situate it within the regime of the now-repealed provisions of the Civil Code, as in the instant case.

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For purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void ab initio is essential. . . .[6]

At the outset, we must note that private respondent's first and second marriages contracted in 1977 and 1979, respectively, are governed by the provisions of the Civil Code. The present case differs significantly from the recent cases of *Bobis v. Bobis*[7] and *Mercado v. Tan*,[8] both involving a criminal case for bigamy where the bigamous marriage was contracted during the effectivity of the Family Code,[9] under which a judicial declaration of nullity of marriage is clearly required.

Pertinent to the present controversy, Article 83 of the Civil Code provides that:

Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved; or

(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and before any person believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.

As to whether a judicial declaration of nullity of a void marriage is necessary, the Civil Code contains no express provision to that effect. Jurisprudence on the matter, however, appears to be conflicting.

Originally, in *People v. Mendoza*,[10] and *People v. Aragon*,[11] this Court held that no judicial decree is necessary to establish the nullity of a void marriage. Both cases involved the same factual milieu. Accused contracted a second marriage during the subsistence of his first marriage. After the death of his first wife, accused contracted a third marriage during the subsistence of the second marriage. The second wife initiated a complaint for bigamy. The Court acquitted accused on the ground that the second marriage is void, having been contracted during the existence of the first marriage. There is no need for a judicial declaration that said second marriage is void. Since the second marriage is void, and the first one terminated by the death of his wife, there are no two subsisting valid marriages. Hence, there can be no bigamy. Justice Alex Reyes dissented in both cases, saying that it is not for the spouses but the court to judge whether a marriage is void or not.

In *Gomez v. Lipana*,[12] and *Consuegra v. Consuegra*,[13] however, we recognized the right of the second wife

who entered into the marriage in good faith, to share in their acquired estate and in proceeds of the retirement insurance of the husband. The Court observed that although the second marriage can be presumed to be void ab initio as it was celebrated while the first marriage was still subsisting, still there was a need for judicial declaration of such nullity (of the second marriage). And since the death of the husband supervened before such declaration, we upheld the right of the second wife to share in the estate they acquired, on grounds of justice and equity.[14]

But in *Odayat v. Amante* (1977),[15] the Court adverted to *Aragon* and *Mendoza* as precedents. We exonerated a clerk of court of the charge of immorality on the ground that his marriage to *Filomena Abella* in October of 1948 was void, since she was already previously married to one *Eliseo Portales* in February of the same year. The Court held that no judicial decree is necessary to establish the invalidity of void marriages. This ruling was affirmed in *Tolentino v. Paras*.^[16]

Yet again in *Wiegel v. Sempio-Diy* (1986),^[17] the Court held that there is a need for a judicial declaration of nullity of a void marriage. In *Wiegel*, *Lilia* married *Maxion* in 1972. In 1978, she married another man, *Wiegel*. *Wiegel* filed a petition with the Juvenile Domestic Relations Court to declare his marriage to *Lilia* as void on the ground of her previous valid marriage. The Court, expressly relying on *Consuegra*, concluded that:^[18]

There is likewise no need of introducing evidence about the existing prior marriage of her first husband at the time they married each other, for then such a marriage though void still needs according to this Court a judicial declaration (citing *Consuegra*) of such fact and for all legal intents and purposes she would still be regarded as a married woman at the time she contracted her marriage with respondent *Karl Heinz Wiegel*; accordingly, the marriage of petitioner and respondent would be regarded VOID under the law. (Emphasis supplied).

In *Yap v. Court of Appeals*,^[19] however, the Court found the second marriage void without need of judicial declaration, thus reverting to the *Odayat*, *Mendoza* and *Aragon* rulings.

At any rate, the confusion under the Civil Code was put to rest under the Family Code. Our rulings in *Gomez*, *Consuegra*, and *Wiegel* were eventually embodied in Article 40 of the Family Code.^[20] Article 40 of said Code expressly required a judicial declaration of nullity of marriage -

Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

In *Terre v. Terre* (1992)^[21] the Court, applying *Gomez*, *Consuegra* and *Wiegel*, categorically stated that a judicial declaration of nullity of a void marriage is necessary. Thus, we disbarred a lawyer for contracting a bigamous marriage during the subsistence of his first marriage. He claimed that his first marriage in 1977 was void since his first wife was already married in 1968. We held that Atty. *Terre* should have known that the prevailing case law is that "for purposes of determining whether a person is legally free to contract a second marriage, a judicial declaration that the first marriage was null and void ab initio is essential."

The Court applied this ruling in subsequent cases. In *Domingo v. Court of Appeals* (1993),^[22] the Court held:

Came the Family Code which settled once and for all the conflicting jurisprudence on the matter. A declaration of absolute nullity of marriage is now explicitly required either as a cause of action or a ground for defense. (Art. 39 of the Family Code). Where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law for said projected marriage to be free from legal infirmity is a final judgment declaring the previous marriage void. (Family Code, Art. 40; See also arts. 11, 13, 42, 44, 48, 50, 52, 54, 86, 99, 147, 148).^[23]

However, a recent case applied the old rule because of the peculiar circumstances of the case. In *Apiag v. Cantero*, (1997)^[24] the first wife charged a municipal trial judge of immorality for entering into a second

marriage. The judge claimed that his first marriage was void since he was merely forced into marrying his first wife whom he got pregnant. On the issue of nullity of the first marriage, we applied *Odayat, Mendoza and Aragon*. We held that since the second marriage took place and all the children thereunder were born before the promulgation of *Wiegel* and the effectivity of the Family Code, there is no need for a judicial declaration of nullity of the first marriage pursuant to prevailing jurisprudence at that time.

Similarly, in the present case, the second marriage of private respondent was entered into in 1979, before *Wiegel*. At that time, the prevailing rule was found in *Odayat, Mendoza and Aragon*. The first marriage of private respondent being void for lack of license and consent, there was no need for judicial declaration of its nullity before he could contract a second marriage. In this case, therefore, we conclude that private respondent's second marriage to petitioner is valid.

Moreover, we find that the provisions of the Family Code cannot be retroactively applied to the present case, for to do so would prejudice the vested rights of petitioner and of her children. As held in *Jison v. Court of Appeals*,^[25] the Family Code has retroactive effect unless there be impairment of vested rights. In the present case, that impairment of vested rights of petitioner and the children is patent. Additionally, we are not quite prepared to give assent to the appellate court's finding that despite private respondent's "deceit and perfidy" in contracting marriage with petitioner, he could benefit from her silence on the issue. Thus, coming now to the civil effects of the church ceremony wherein petitioner married private respondent using the marriage license used three years earlier in the civil ceremony, we find that petitioner now has raised this matter properly. Earlier petitioner claimed as untruthful private respondent's allegation that he wed petitioner but they lacked a marriage license. Indeed we find there was a marriage license, though it was the same license issued on April 3, 1979 and used in both the civil and the church rites. Obviously, the church ceremony was confirmatory of their civil marriage. As petitioner contends, the appellate court erred when it refused to recognize the validity and salutary effects of said canonical marriage on a technicality, i.e. that petitioner had failed to raise this matter as affirmative defense during trial. She argues that such failure does not prevent the appellate court from giving her defense due consideration and weight. She adds that the interest of the State in protecting the inviolability of marriage, as a legal and social institution, outweighs such technicality. In our view, petitioner and private respondent had complied with all the essential and formal requisites for a valid marriage, including the requirement of a valid license in the first of the two ceremonies. That this license was used legally in the celebration of the civil ceremony does not detract from the ceremonial use thereof in the church wedding of the same parties to the marriage, for we hold that the latter rites served not only to ratify but also to fortify the first. The appellate court might have its reasons for brushing aside this possible defense of the defendant below which undoubtedly could have tendered a valid issue, but which was not timely interposed by her before the trial court. But we are now persuaded we cannot play blind to the absurdity, if not inequity, of letting the wrongdoer profit from what the CA calls "his own deceit and perfidy."

On the matter of petitioner's counterclaim for damages and attorney's fees. Although the appellate court admitted that they found private respondent acted "duplicitously and craftily" in marrying petitioner, it did not award moral damages because the latter did not adduce evidence to support her claim.^[26]

Like the lower courts, we are also of the view that no damages should be awarded in the present case, but for another reason. Petitioner wants her marriage to private respondent held valid and subsisting. She is suing to maintain her status as legitimate wife. In the same breath, she asks for damages from her husband for filing a baseless complaint for annulment of their marriage which caused her mental anguish, anxiety, besmirched reputation, social humiliation and alienation from her parents. Should we grant her prayer, we would have a situation where the husband pays the wife damages from conjugal or common funds. To do so, would make the

application of the law absurd. Logic, if not common sense, militates against such incongruity. Moreover, our laws do not comprehend an action for damages between husband and wife merely because of breach of a marital obligation.[27] There are other remedies.[28]

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated July 24, 1996 and its Resolution dated November 7, 1996, are reversed partially, so that the marriage of petitioner Ofelia P. Ty and private respondent Edgardo M. Reyes is hereby DECLARED VALID AND SUBSISTING; and the award of the amount of P15,000.00 is RATIFIED and MAINTAINED as monthly support to their two children, Faye Eloise Reyes and Rachel Anne Reyes, for as long as they are of minor age or otherwise legally entitled thereto. Costs against private respondent.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] See also *Tison vs. CA*, 276 SCRA 582, 593 (1997); *Quebral vs. CA*, 252 SCRA 353, 365 (1996); *Son vs. Son*, 251 SCRA 556, 564 (1995); re proof of facts cited.

[2] *Rollo*, pp. 48-52.

[3] 45 Phil 739 (1954).

[4] 100 SCRA 1033 (1957).

[5] *Rollo*, p. 47.

[6] *Rollo*, p. 49.

[7] G.R. No. 138509, July 31, 2000.

[8] G.R. No. 137110, August 1, 2000. In his dissenting and concurring opinion, Justice Vitug opined that the necessity of a judicial declaration of nullity of a void marriage for the purpose of remarriage should be held to refer merely to cases where it can be said that a marriage, at least ostensibly, had taken place. No such judicial declaration of nullity, in his view, should still be deemed essential when the "marriage," for instance, is between persons of the same sex or when either or both parties had not at all given consent to the marriage. Indeed, it is likely that Article 40 of the Family Code has been meant and intended to refer only to marriages declared void under the provisions of Articles 35, 36, 37, 38 and 53 thereof.

[9] E.O. No. 209, which took effect on August 3, 1988.

[10] 45 Phil 739 (1954).

[11] 100 SCRA 1033 (1957).

[12] 33 SCRA 614 (1970).

[13] 37 SCRA 315 (1971).

[14] See also *Lao v. Dee*, 45 Phil 739 (1924) and *Pisalbon v. Bejec*, 74 Phil 88 (1943).

[15] 77 SCRA 338 (1977).

[16] 22 SCRA 525 (1983).

[17] 143 SCRA 499 (1986).

[18] Id. at 501.

[19] 145 SCRA 229 (1986).

[20] The Family Code took effect on August 3, 1988.

[21] 211 SCRA 7 (1992).

[22] 226 SCRA 572 (1993).

[23] Id. at 579.

[24] 268 SCRA 47 (1997)

[25] 286 SCRA 495, 530 (1998).

[26] Rollo, p. 51.

[27] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol.1, Manila: 1990, p. 223.

[28] Among them legal separation, or prosecution for adultery and concubinage.

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