GRACE J. GARCIA, A.K.A. GRACE J. GARCIA-RECIO, PETITIONER,VS. REDERICK A. RECIO, RESPONDENT.

G.R. No. 138322. October 02, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. However, the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, seeking to nullify the January 7, 1999 Decision[1] and the March 24, 1999 Order[2] of the Regional Trial Court of Cabanatuan City, Branch 28, in Civil Case No. 3026-AF. The assailed Decision disposed as follows:

"WHEREFORE, this Court declares the marriage between Grace J. Garcia and Rederick A. Recio solemnized on January 12, 1994 at Cabanatuan City as dissolved and both parties can now remarry under existing and applicable laws to any and/or both parties."[3]

The assailed Order denied reconsideration of the above-quoted Decision.

The Facts

Rederick A. Recio, a Filipino, was married to Editha Samson, an Australian citizen, in Malabon, Rizal, on March 1, 1987.[4] They lived together as husband and wife in Australia. On May 18, 1989,[5] a decree of divorce, purportedly dissolving the marriage, was issued by an Australian family court.

On June 26, 1992, respondent became an Australian citizen, as shown by a "Certificate of Australian Citizenship" issued by the Australian government.[6] Petitioner -- a Filipina -- and respondent were married on January 12, 1994 in Our Lady of Perpetual Help Church in Cabanatuan City.[7] In their application for a marriage license, respondent was declared as "single" and "Filipino."[8]

Starting October 22, 1995, petitioner and respondent lived separately without prior judicial dissolution of their marriage. While the two were still in Australia, their conjugal assets were divided on May 16, 1996, in accordance with their Statutory Declarations secured in Australia.[9]

On March 3, 1998, petitioner filed a Complaint for Declaration of Nullity of Marriage[10] in the court a quo, on the ground of bigamy -- respondent allegedly had a prior subsisting marriage at the time he married her on January 12, 1994. She claimed that she learned of respondent's marriage to Editha Samson only in November, 1997.

In his Answer, respondent averred that, as far back as 1993, he had revealed to petitioner his prior marriage and its subsequent dissolution.[11] He contended that his first marriage to an Australian citizen had been validly dissolved by a divorce decree obtained in Australia in 1989;[12] thus, he was legally capacitated to marry petitioner in 1994.

On July 7, 1998 -- or about five years after the couple's wedding and while the suit for the declaration of nullity was pending -- respondent was able to secure a divorce decree from a family court in Sydney, Australia because the "marriage ha[d] irretrievably broken down."[13]

Respondent prayed in his Answer that the Complaint be dismissed on the ground that it stated no cause of action.[14] The Office of the Solicitor General agreed with respondent.[15] The court marked and admitted the documentary evidence of both parties.[16] After they submitted their respective memoranda, the case was submitted for resolution.[17]

Thereafter, the trial court rendered the assailed Decision and Order.

Ruling of the Trial Court

The trial court declared the marriage dissolved on the ground that the divorce issued in Australia was valid and recognized in the Philippines. It deemed the marriage ended, but not on the basis of any defect in an essential element of the marriage; that is, respondent's alleged lack of legal capacity to remarry. Rather, it based its Decision on the divorce decree obtained by respondent. The Australian divorce had ended the marriage; thus, there was no more marital union to nullify or annul.

Hence, this Petition.[18]

Issues

Petitioner submits the following issues for our consideration:

> "1
>
> The trial court gravely erred in finding that the divorce decree obtained in Australia by the respondent ipso facto terminated his first marriage to Editha Samson thereby capacitating him to contract a second marriage with the petitioner.
>
> "2
>
> The failure of the respondent, who is now a naturalized Australian, to present a certificate of legal capacity to marry constitutes absence of a substantial requisite voiding the petitioner's marriage to the respondent
>
> "3
>
> The trial court seriously erred in the application of Art. 26 of the Family Code in this case.
>
> "4
>
> The trial court patently and grievously erred in disregarding Arts. 11, 13, 21, 35, 40, 52 and 53 of the Family Code as the applicable provisions in this case.
>
> "5
>
> The trial court gravely erred in pronouncing that the divorce decree obtained by the respondent in Australia ipso facto capacitated the parties to remarry, without first securing a recognition of the judgment granting the divorce decree before our courts."[19]

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The Petition raises five issues, but for purposes of this Decision, we shall concentrate on two pivotal ones: (1) whether the divorce between respondent and Editha Samson was proven, and (2) whether respondent was proven to be legally capacitated to marry petitioner. Because of our ruling on these two, there is no more necessity to take up the rest.

The Court's Ruling

The Petition is partly meritorious.

First Issue:

Proving the Divorce Between
Respondent and Editha Samson

Petitioner assails the trial court's recognition of the divorce between respondent and Editha Samson. Citing Adong v. Cheong Seng Gee,[20] petitioner argues that the divorce decree, like any other foreign judgment, may be given recognition in this jurisdiction only upon proof of the existence of (1) the foreign law allowing absolute divorce and (2) the alleged divorce decree itself. She adds that respondent miserably failed to establish these elements.

Petitioner adds that, based on the first paragraph of Article 26 of the Family Code, marriages solemnized abroad are governed by the law of the place where they were celebrated (the lex loci celebrationis). In effect, the Code requires the presentation of the foreign law to show the conformity of the marriage in question to the legal requirements of the place where the marriage was performed.

At the outset, we lay the following basic legal principles as the take-off points for our discussion. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it.[21] A marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad, because of Articles 15[22] and 17[23] of the Civil Code.[24] In mixed marriages involving a Filipino and a foreigner, Article 26[25] of the Family Code allows the former to contract a subsequent marriage in case the divorce is "validly obtained abroad by the alien spouse capacitating him or her to remarry."[26] A divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.[27]

A comparison between marriage and divorce, as far as pleading and proof are concerned, can be made. Van Dorn v. Romillo Jr. decrees that "aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law."[28] Therefore, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.[29] Presentation solely of the divorce decree is insufficient.

Divorce as a Question of Fact

Petitioner insists that before a divorce decree can be admitted in evidence, it must first comply with the registration requirements under Articles 11, 13 and 52 of the Family Code. These articles read as follows:

> "ART. 11. Where a marriage license is required, each of the contracting parties shall file separately a sworn application for such license with the proper local civil registrar which shall specify the following:
>
> x x x x x x x x x
>
> "(5) If previously married, how, when and where the previous marriage was dissolved or annulled;
>
> x x x x x x x x x"
>
> "ART. 13. In case either of the contracting parties has been previously married, the applicant shall be required

to

> "ART. 13. In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse or the judicial decree of the absolute divorce, or the judicial decree of annulment or declaration of nullity of his or her previous marriage. x x x.
>
> "ART. 52. The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise, the same shall not affect their persons."

Respondent, on the other hand, argues that the Australian divorce decree is a public document -- a written official act of an Australian family court. Therefore, it requires no further proof of its authenticity and due execution.

Respondent is getting ahead of himself. Before a foreign judgment is given presumptive evidentiary value, the document must first be presented and admitted in evidence.[30] A divorce obtained abroad is proven by the divorce decree itself. Indeed the best evidence of a judgment is the judgment itself.[31] The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country.[32]

Under Sections 24 and 25 of Rule 132, on the other hand, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested[33] by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.[34]

The divorce decree between respondent and Editha Samson appears to be an authentic one issued by an Australian family court.[35] However, appearance is not sufficient; compliance with the aforementioned rules on evidence must be demonstrated.

Fortunately for respondent's cause, when the divorce decree of May 18, 1989 was submitted in evidence, counsel for petitioner objected, not to its admissibility, but only to the fact that it had not been registered in the Local Civil Registry of Cabanatuan City.[36] The trial court ruled that it was admissible, subject to petitioner's qualification.[37] Hence, it was admitted in evidence and accorded weight by the judge. Indeed, petitioner's failure to object properly rendered the divorce decree admissible as a written act of the Family Court of Sydney, Australia.[38]

Compliance with the quoted articles (11, 13 and 52) of the Family Code is not necessary; respondent was no longer bound by Philippine personal laws after he acquired Australian citizenship in 1992.[39] Naturalization is the legal act of adopting an alien and clothing him with the political and civil rights belonging to a citizen.[40] Naturalized citizens, freed from the protective cloak of their former states, don the attires of their adoptive countries. By becoming an Australian, respondent severed his allegiance to the Philippines and the vinculum juris that had tied him to Philippine personal laws.

Burden of Proving Australian Law

Respondent contends that the burden to prove Australian divorce law falls upon petitioner, because she is the party challenging the validity of a foreign judgment. He contends that petitioner was satisfied with the original of the divorce decree and was cognizant of the marital laws of Australia, because she had lived and worked in that country for quite a long time. Besides, the Australian divorce law is allegedly known by Philippine courts; thus, judges may take judicial notice of foreign laws in the exercise of sound discretion.

We are not persuaded. The burden of proof lies with "the party who alleges the existence of a fact or thing

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necessary in the prosecution or defense of an action."[41] In civil cases, plaintiffs have the burden of proving the material allegations of the complaint when those are denied by the answer; and defendants have the burden of proving the material allegations in their answer when they introduce new matters.[42] Since the divorce was a defense raised by respondent, the burden of proving the pertinent Australian law validating it falls squarely upon him.

It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws.[43] Like any other facts, they must be alleged and proved. Australian marital laws are not among those matters that judges are supposed to know by reason of their judicial function.[44] The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative.

Second Issue:
Respondent's Legal Capacity
to Remarry

Petitioner contends that, in view of the insufficient proof of the divorce, respondent was legally incapacitated to marry her in 1994. Hence, she concludes that their marriage was void ab initio.

Respondent replies that the Australian divorce decree, which was validly admitted in evidence, adequately established his legal capacity to marry under Australian law.

Respondent's contention is untenable. In its strict legal sense, divorce means the legal dissolution of a lawful union for a cause arising after marriage. But divorces are of different types. The two basic ones are (1) absolute divorce or a vinculo matrimonii and (2) limited divorce or a mensa et thoro. The first kind terminates the marriage, while the second suspends it and leaves the bond in full force.[45] There is no showing in the case at bar which type of divorce was procured by respondent.

Respondent presented a decree nisi or an interlocutory decree -- a conditional or provisional judgment of divorce. It is in effect the same as a separation from bed and board, although an absolute divorce may follow after the lapse of the prescribed period during which no reconciliation is effected.[46]

Even after the divorce becomes absolute, the court may under some foreign statutes and practices, still restrict remarriage. Under some other jurisdictions, remarriage may be limited by statute; thus, the guilty party in a divorce which was granted on the ground of adultery may be prohibited from marrying again. The court may allow a remarriage only after proof of good behavior.[47]

On its face, the herein Australian divorce decree contains a restriction that reads:

> "1. A party to a marriage who marries again before this decree becomes absolute (unless the other party has died) commits the offence of bigamy."[48]

This quotation bolsters our contention that the divorce obtained by respondent may have been restricted. It did not absolutely establish his legal capacity to remarry according to his national law. Hence, we find no basis for the ruling of the trial court, which erroneously assumed that the Australian divorce ipso facto restored respondent's capacity to remarry despite the paucity of evidence on this matter.

We also reject the claim of respondent that the divorce decree raises a disputable presumption or presumptive evidence as to his civil status based on Section 48, Rule 39[49] of the Rules of Court, for the simple reason that no proof has been presented on the legal effects of the divorce decree obtained under Australian laws.

Significance of the Certificate
of Legal Capacity

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Petitioner argues that the certificate of legal capacity required by Article 21 of the Family Code was not submitted together with the application for a marriage license. According to her, its absence is proof that respondent did not have legal capacity to remarry.

We clarify. To repeat, the legal capacity to contract marriage is determined by the national law of the party concerned. The certificate mentioned in Article 21 of the Family Code would have been sufficient to establish the legal capacity of respondent, had he duly presented it in court. A duly authenticated and admitted certificate is prima facie evidence of legal capacity to marry on the part of the alien applicant for a marriage license.[50]

As it is, however, there is absolutely no evidence that proves respondent's legal capacity to marry petitioner. A review of the records before this Court shows that only the following exhibits were presented before the lower court: (1) for petitioner: (a) Exhibit "A" - Complaint;[51] (b) Exhibit "B" - Certificate of Marriage Between Rederick A. Recio (Filipino-Australian) and Grace J. Garcia (Filipino) on January 12, 1994 in Cabanatuan City, Nueva Ecija;[52] (c) Exhibit "C" - Certificate of Marriage Between Rederick A. Recio (Filipino) and Editha D. Samson (Australian) on March 1, 1987 in Malabon, Metro Manila;[53] (d) Exhibit "D" - Office of the City Registrar of Cabanatuan City Certification that no information of annulment between Rederick A. Recio and Editha D. Samson was in its records;[54] and (e) Exhibit "E" - Certificate of Australian Citizenship of Rederick A. Recio;[55] (2) for respondent: (a) Exhibit "1" -- Amended Answer;[56] (b) Exhibit "2" - Family Law Act 1975 Decree Nisi of Dissolution of Marriage in the Family Court of Australia;[57] (c) Exhibit "3" - Certificate of Australian Citizenship of Rederick A. Recio;[58] (d) Exhibit "4" - Decree Nisi of Dissolution of Marriage in the Family Court of Australia Certificate;[59] and Exhibit "5" -- Statutory Declaration of the Legal Separation Between Rederick A. Recio and Grace J. Garcia Recio since October 22, 1995.[60]

Based on the above records, we cannot conclude that respondent, who was then a naturalized Australian citizen, was legally capacitated to marry petitioner on January 12, 1994. We agree with petitioner's contention that the court a quo erred in finding that the divorce decree ipso facto clothed respondent with the legal capacity to remarry without requiring him to adduce sufficient evidence to show the Australian personal law governing his status; or at the very least, to prove his legal capacity to contract the second marriage.

Neither can we grant petitioner's prayer to declare her marriage to respondent null and void on the ground of bigamy. After all, it may turn out that under Australian law, he was really capacitated to marry petitioner as a direct result of the divorce decree. Hence, we believe that the most judicious course is to remand this case to the trial court to receive evidence, if any, which show petitioner's legal capacity to marry petitioner. Failing in that, then the court a quo may declare a nullity of the parties' marriage on the ground of bigamy, there being already in evidence two existing marriage certificates, which were both obtained in the Philippines, one in Malabon, Metro Manila dated March 1, 1987 and the other, in Cabanatuan City dated January 12, 1994.

WHEREFORE, in the interest of orderly procedure and substantial justice, we REMAND the case to the court a quo for the purpose of receiving evidence which conclusively show respondent's legal capacity to marry petitioner; and failing in that, of declaring the parties' marriage void on the ground of bigamy, as above discussed. No costs.

SO ORDERED.

Melo, (Chairman), Vitug, and Sandoval-Gutierrez, JJ., concur.

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[1] Penned by Judge Feliciano V. Buenaventura; rollo, pp. 7-9.

[2] Rollo, p. 10.

[3] Ibid., p. 9.

[4] Rollo, p. 37.

[5] Ibid., p. 47.

[6] Id., p. 44.

[7] Id., p. 36.

[8] Annex "1"; temporary rollo, p. 9.

[9] The couple secured an Australian "Statutory Declaration" of their legal separation and division of conjugal assets.

See Annexes "3" and "4" of Respondent's Comment; rollo, p. 48.

[10] Id., pp. 33-35.

[11] Id., p. 39.

[12] Amended Answer, p. 2; rollo, p. 39.

[13] Id., pp. 77-78.

[14] Id., p. 43.

[15] Rollo, pp. 48-51.

[16] TSN, December 16, 1998, pp. 1-8; records, pp. 172-179.

[17] RTC Order of December 16, 1998; ibid., p. 203.

[18] The case was deemed submitted for decision on January 11, 2000, upon this Court's receipt of the Memorandum for petitioner, signed by Atty. Olivia Velasco-Jacoba. The Memorandum for respondent, signed by Atty. Gloria V. Gomez of Gomez and Associates, had been filed on December 10, 1999.

[19] Petitioner's Memorandum, pp. 8-9; rollo, pp. 242-243.

[20] 43 Phil. 43, 49, March 3, 1922.

[21] Ruben F. Balane, "Family Courts and Significant Jurisprudence in Family Law," Journal of the Integrated Bar of the Philippines, 1[st] & 2[nd] Quarters, 2001, Vol. XXVII, No. 1, p. 25.

[22] "ART. 15. 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."

[23] "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.

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"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."

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[24] Tenchaves v. Escano 15 SCRA 355, 362, November 29, 1965; Barretto Gonzalez v. Gonzalez, 58 Phil. 67, 71-72, March 7, 1933.

[25] "Art. 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5), and (6), 36, 37, and 38. (71a)

"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 have capacity to remarry under Philippine law." (As amended by EO 227, prom. July 27, 1987)

[26] Cf. Van Dorn v. Romillo Jr., 139 SCRA 139, 143-144, October 8, 1985; and Pilapil v. Ibay-Somera, 174 SCRA 653, 663, June 30, 1989.

[27] Van Dorn v. Romillo Jr., supra.

[28] Ibid., p. 143.

[29] For a detailed discussion of Van Dorn, see Salonga, Private International Law, 1995 ed. pp. 295-300. See also Jose C. Vitug, Compendium of Civil Law and Jurisprudence, 1993 ed., p. 16;

[30] "SEC. 19. Classes of documents.--For the purpose of their presentation in evidence, documents are either public or private.

> "Public documents are:
>
> "(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether in the Philippines, or of a foreign country.
>
> x x x x x x x x x."

[31] Burr W. Jones, Commentaries on the Law of Evidence in Civil Cases, Vol. IV, 1926 ed., p. 3511; §3, Rule 130 of the Rules on Evidence provides that "when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself."

[32] "SEC. 19. Classes of documents.-- For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether in the Philippines, or of a foreign country.

x x x x x x x x x."

[33] "Sec. 25. What attestation of copy must state. - Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court."

[34] "Sec. 24. Proof of official record.--The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a

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foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office."

See also Asiavest Ltd. v. Court of Appeals, 296 SCRA 539, 550-551, September 25, 1998; Pacific Asia Overseas Shipping Corp. v. National Labor Relations Commission, 161 SCRA 122, 133-134, May 6, 1988.

[35] The transcript of stenographic notes states that the original copies of the divorce decrees were presented in court (TSN, December 16, 1998, p. 5; records, p. 176), but only photocopies of the same documents were attached to the records (Records, Index of Exhibits, p. 1.).

[36] TSN, December 15, 1998, p. 7; records, p. 178.

[37] TSN, December 16, 1998, p. 7; records, p. 178.

[38] People v. Yatco, 97 Phil. 941, 945, November 28, 1955; Marella v. Reyes, 12 Phil. 1, 3, November 10, 1908; People v. Diaz, 271 SCRA 504, 516, April 18, 1997; De la Torre v. Court of Appeals, 294 SCRA 196, 203-204, August 14, 1998; Maunlad Savings & Loan Asso., Inc. v. Court of Appeals, GR No. 114942, November 27, 2000, pp. 8-9.

[39] Art. 15, Civil Code.

[40] Joaquin Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, 1996 ed., p. 566.

[41] Ricardo J. Francisco, Evidence: Rules of Court in the Philippines, second edition, p. 382.

[42] Ibid., p. 384.

[43] Wildvalley Shipping Co., Ltd. v. Court of Appeals, GR No. 119602, October 6, 2000, p. 7.

[44] Francisco, p. 29, citing De los Angeles v. Cabahug, 106 Phil. 839, December 29, 1959.

[45] 27A CJS, 15-17, §1.

[46] Ibid., p. 611-613, §161.

[47] 27A CJS, 625, §162.

[48] Rollo, p. 36.

[49] "SEC. 48. Effect of foreign judgments or final orders.--The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

x x x x x x x x x

"(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

"In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

[50] In passing, we note that the absence of the said certificate is merely an irregularity in complying with the formal requirement for procuring a marriage license. Under Article 4 of the Family Code, an irregularity will not affect the validity of a marriage celebrated on the basis of a marriage license issued without that certificate. (Vitug, Compendium, pp. 120-126; Sempio-Diy, Handbook on the Family Code of the Philippines, 1997 reprint,

p. 17; Rufus Rodriguez, The Family Code of the Philippines Annotated, 1990 ed., p. 42; Melencio Sta. Maria Jr., Persons and Family Relations Law, 1999 ed., p. 146.)

[51] Records, pp. 1-3.

[52] Ibid., p. 4.

[53] Id., p. 5.

[54] Id., p. 180.

[55] Id., pp. 170-171.

[56] Id., pp. 84-89.

[57] Id., pp. 181-182.

[58] Id., pp. 40-41.

[59] Id., p. 183.

[60] Id., pp. 184-187.

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