

ANGELITA VALDEZ, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

G.R. No. 180863. September 08, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision of the Regional Trial Court (RTC) of Camiling, Tarlac dated November 12, 2007 dismissing petitioner Angelita Valdez's petition for the declaration of presumptive death of her husband, Sofio Polborosa (Sofio).

The facts of the case are as follows:

Petitioner married Sofio on January 11, 1971 in Pateros, Rizal. On December 13, 1971, petitioner gave birth to the spouses' only child, Nancy. According to petitioner, she and Sofio argued constantly because the latter was unemployed and did not bring home any money. In March 1972, Sofio left their conjugal dwelling. Petitioner and their child waited for him to return but, finally, in May 1972, petitioner decided to go back to her parents' home in Bancay 1[st], Camiling, Tarlac. Three years passed without any word from Sofio. In October 1975, Sofio showed up at Bancay 1[st]. He and petitioner talked for several hours and they agreed to separate. They executed a document to that effect.[1] That was the last time petitioner saw him. After that, petitioner didn't hear any news of Sofio, his whereabouts or even if he was alive or not.[2]

Believing that Sofio was already dead, petitioner married Virgilio Reyes on June 20, 1985.[3] Subsequently, however, Virgilio's application for naturalization filed with the United States Department of Homeland Security was denied because petitioner's marriage to Sofio was subsisting.[4] Hence, on March 29, 2007, petitioner filed a Petition before the RTC of Camiling, Tarlac seeking the declaration of presumptive death of Sofio.

The RTC rendered its Decision[5] on November 12, 2007, dismissing the Petition for lack of merit. The RTC held that Angelita "was not able to prove the well-grounded belief that her husband Sofio Polborosa was already dead." It said that under Article 41 of the Family Code, the present spouse is burdened to prove that her spouse has been absent and that she has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. This belief, the RTC said, must be the result of proper and honest-to-goodness inquiries and efforts to ascertain the whereabouts of the absent spouse.

The RTC found that, by petitioner's own admission, she did not try to find her husband anymore in light of their mutual agreement to live separately. Likewise, petitioner's daughter testified that her mother prevented her from looking for her father. The RTC also said there is a strong possibility that Sofio is still alive, considering that he would have been only 61 years old by then, and people who have reached their 60s have not become increasingly low in health and spirits, and, even assuming as true petitioner's testimony that Sofio was a chain smoker and a drunkard, there is no evidence that he continues to drink and smoke until now.

Petitioner filed a motion for reconsideration.[6] She argued that it is the Civil Code that applies in this case and

not the Family Code since petitioner's marriage to Sofio was celebrated on January 11, 1971, long before the Family Code took effect. Petitioner further argued that she had acquired a vested right under the provisions of the Civil Code and the stricter provisions of the Family Code should not be applied against her because Title XIV of the Civil Code, where Articles 384 and 390 on declaration of absence and presumption of death, respectively, can be found, was not expressly repealed by the Family Code. To apply the stricter provisions of the Family Code will impair the rights petitioner had acquired under the Civil Code.

The RTC denied the Motion for Reconsideration in a Resolution dated December 10, 2007.[7]

Petitioner now comes before this Court seeking the reversal of the RTC Decision and Motion for Reconsideration.

In its Manifestation and Motion,[8] the Office of the Solicitor General (OSG) recommended that the Court set aside the assailed RTC Decision and grant the Petition to declare Sofio presumptively dead. The OSG argues that the requirement of "well-founded belief" under Article 41 of the Family Code is not applicable to the instant case. It said that petitioner could not be expected to comply with this requirement because it was not yet in existence during her marriage to Virgilio Reyes in 1985. The OSG further argues that before the effectivity of the Family Code, petitioner already acquired a vested right as to the validity of her marriage to Virgilio Reyes based on the presumed death of Sofio under the Civil Code. This vested right and the presumption of Sofio's death, the OSG posits, could not be affected by the obligations created under the Family Code.[9]

Next, the OSG contends that Article 390 of the Civil Code was not repealed by Article 41 of the Family Code.[10] Title XIV of the Civil Code, the OSG said, was not one of those expressly repealed by the Family Code. Moreover, Article 256 of the Family Code provides that its provisions shall not be retroactively applied if they will prejudice or impair vested or acquired rights.[11]

The RTC Decision, insofar as it dismissed the Petition, is affirmed. However, we must state that we are denying the Petition on grounds different from those cited in the RTC Decision.

Initially, we discuss a procedural issue. Under the Rules of Court, a party may directly appeal to this Court from a decision of the trial court only on pure questions of law. A question of law lies, on one hand, when the doubt or difference arises as to what the law is on a certain set of facts; on the other hand, a question of fact exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. Here, the facts are not disputed; the controversy merely relates to the correct application of the law or jurisprudence to the undisputed facts.[12]

The RTC erred in applying the provisions of the Family Code and holding that petitioner needed to prove a "well-founded belief" that Sofio was already dead. The RTC applied Article 41 of the Family Code, to wit:

Art. 41. A marriage contracted by any person during 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 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 a 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.

It is readily apparent, however, that the marriages of petitioner to Sofio and Virgilio on January 11, 1971 and June 20, 1985, respectively, were both celebrated under the auspices of the Civil Code.

The pertinent provision of the Civil Code is Article 83:

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 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.

Article 390 of the Civil Code states:

Art. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

The Court, on several occasions, had interpreted the above-quoted provision in this wise:

For the purposes of the civil marriage law, it is not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose to enable the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former spouse has been absent for seven consecutive years at the time of the second marriage, that the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage.[13]

Further, the Court explained that presumption of death cannot be the subject of court proceedings independent of the settlement of the absentee's estate.

In *re Szatraw*[14] is instructive. In that case, petitioner contracted marriage with a Polish national in 1937. They lived together as husband and wife for three years. Sometime in 1940, the husband, on the pretext of visiting some friends, left the conjugal abode with their child and never returned. After inquiring from friends, petitioner found that her husband went to Shanghai, China. However, friends who came from Shanghai told her that the husband was not seen there. In 1948, petitioner filed a petition for the declaration of presumptive death of her husband arguing that since the latter had been absent for more than seven years and she had not heard any news from him and about her child, she believes that he is dead. In deciding the case, the Court said:

The petition is not for the settlement of the estate of Nicolai Szatraw, because it does not appear that he possessed property brought to the marriage and because he had acquired no property during his married life with the petitioner. The rule invoked by the latter is merely one of evidence which permits the court to presume that a person is dead after the fact that such person had been unheard from in seven years had been established. This presumption may arise and be invoked and made in a case, either in an action or in a special proceeding, which is tried or heard by, and submitted for decision to, a competent court. Independently of such an action or special proceeding, the presumption of death cannot be invoked, nor can it be made the subject of an action or special proceeding. In this case, there is no right to be enforced nor is there a remedy prayed for by the petitioner against her absent husband. Neither is there a prayer for the final determination of his right or status or for the ascertainment of a particular fact (*Hagans v. Wislizenus*, 42 Phil. 880), for the petition does not pray for a declaration that the petitioner's husband is dead, but merely asks for a declaration that he be presumed

dead because he had been unheard from in seven years. If there is any pretense at securing a declaration that the petitioner's husband is dead, such a pretension cannot be granted because it is unauthorized. The petition is for a declaration that the petitioner's husband is presumptively dead. But this declaration, even if judicially made, would not improve the petitioner's situation, because such a presumption is already established by law. A judicial pronouncement to that effect, even if final and executory, would still be a prima facie presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or matter involved in a case, or upon which a competent court has to pass. The latter must decide finally the controversy between the parties, or determine finally the right or status of a party or establish finally a particular fact, out of which certain rights and obligations arise or may arise; and once such controversy is decided by a final judgment, or such right or status determined, or such particular fact established, by a final decree, then the judgment on the subject of the controversy, or the decree upon the right or status of a party or upon the existence of a particular fact, becomes *res judicata*, subject to no collateral attack, except in a few rare instances especially provided by law. It is, therefore, clear that a judicial declaration that a person is presumptively dead, because he had been unheard from in seven years, being a presumption *juris tantum* only, subject to contrary proof, cannot reach the stage of finality or become final. Proof of actual death of the person presumed dead because he had been unheard from in seven years, would have to be made in another proceeding to have such particular fact finally determined. If a judicial decree declaring a person presumptively dead, because he had not been heard from in seven years, cannot become final and executory even after the lapse of the reglementary period within which an appeal may be taken, for such presumption is still disputable and remains subject to contrary proof, then a petition for such a declaration is useless, unnecessary, superfluous and of no benefit to the petitioner.[15]

In *Lukban v. Republic*,[16] petitioner Lourdes G. Lukban contracted marriage with Francisco Chuidian on December 10, 1933. A few days later, on December 27, Francisco left Lourdes after a violent quarrel. She did not hear from him after that day. Her diligent search, inquiries from his parents and friends, and search in his last known address, proved futile. Believing her husband was already dead since he had been absent for more than twenty years, petitioner filed a petition in 1956 for a declaration that she is a widow of her husband who is presumed to be dead and has no legal impediment to contract a subsequent marriage. On the other hand, the antecedents in *Gue v. Republic*[17] are similar to *Szatraw*. On January 5, 1946, Angelina Gue's husband left Manila where they were residing and went to Shanghai, China. From that day on, he had not been heard of, had not written to her, nor in anyway communicated with her as to his whereabouts. Despite her efforts and diligence, she failed to locate him. After 11 years, she asked the court for a declaration of the presumption of death of Willian Gue, pursuant to the provisions of Article 390 of the Civil Code of the Philippines.

In both cases, the Court reiterated its ruling in *Szatraw*. It held that a petition for judicial declaration that petitioner's husband is presumed to be dead cannot be entertained because it is not authorized by law.[18]

From the foregoing, it can be gleaned that, under the Civil Code, the presumption of death is established by law[19] and no court declaration is needed for the presumption to arise. Since death is presumed to have taken place by the seventh year of absence,[20] Sofio is to be presumed dead starting October 1982.

Consequently, at the time of petitioner's marriage to Virgilio, there existed no impediment to petitioner's capacity to marry, and the marriage is valid under paragraph 2 of Article 83 of the Civil Code.

Further, considering that it is the Civil Code that applies, proof of "well-founded belief" is not required. Petitioner could not have been expected to comply with this requirement since the Family Code was not yet in effect at the time of her marriage to Virgilio. The enactment of the Family Code in 1988 does not change this conclusion. The Family Code itself states:

Art. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired

rights in accordance with the Civil Code or other laws.

To retroactively apply the provisions of the Family Code requiring petitioner to exhibit "well-founded belief" will, ultimately, result in the invalidation of her second marriage, which was valid at the time it was celebrated. Such a situation would be untenable and would go against the objectives that the Family Code wishes to achieve.

In sum, we hold that the Petition must be dismissed since no decree on the presumption of Sofio's death can be granted under the Civil Code, the same presumption having arisen by operation of law. However, we declare that petitioner was capacitated to marry Virgilio at the time their marriage was celebrated in 1985 and, therefore, the said marriage is legal and valid.

WHEREFORE, the foregoing premises considered, the Petition is DENIED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[1] Rollo, p. 33.

[2] Id. at 5-6.

[3] Id. at 10.

[4] Id. at 11.

[5] Penned by Judge Jose S. Vallo, id. at 35-39.

[6] Rollo, pp. 40-55.

[7] Id. at 56-61.

[8] Id. at 86-98.

[9] Id. at 92-93.

[10] Id. at 94.

[11] Id. at 96.

[12] *Philippine Veterans Bank v. Monillas*, G.R. No. 167098, March 28, 2008, 550 SCRA 251. (Citations omitted.)

[13] *Jones v. Hortiguëla*, 64 Phil. 179, 183 (1937).

[14] *In re Szatraw*, 81 Phil. 461 (1948).

[15] Id. at 462-463. (Emphasis supplied.)

[16] 98 Phil. 574 (1956).

[17] 107 Phil. 381 (1960).

[18] Id. at 386.

[19] *In re Szatraw*, *supra* note 14.

[20] Tolentino, *Civil Code of the Philippines*, Vol. 1, 5th ed., p. 738.

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