

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MARIA FE ESPINOSA CANTOR, RESPONDENT.

G.R. No. 184621. December 10, 2013

Ponente: BRION, J.

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BRION, J.:

The petition for review on certiorari[1] before us assails the decision[2] dated August 27, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 01558-MIN which affirmed the order[3] dated December 15, 2006 of the Regional Trial Court (RTC), Branch 25, Koronadal City, South Cotabato, in SP Proc. Case No. 313-25, declaring Jerry F. Cantor, respondent Maria Fe Espinosa Cantor's husband, presumptively dead under Article 41 of the Family Code.

The Factual Antecedents

The respondent and Jerry were married on September 20, 1997. They lived together as husband and wife in their conjugal dwelling in Agan Homes, Koronadal City, South Cotabato. Sometime in January 1998, the couple had a violent quarrel brought about by: (1) the respondent's inability to reach "sexual climax" whenever she and Jerry would have intimate moments; and (2) Jerry's expression of animosity toward the respondent's father.

After their quarrel, Jerry left their conjugal dwelling and this was the last time that the respondent ever saw him. Since then, she had not seen, communicated nor heard anything from Jerry or about his whereabouts.

On May 21, 2002, or more than four (4) years from the time of Jerry's disappearance, the respondent filed before the RTC a petition[4] for her husband's declaration of presumptive death, docketed as SP Proc. Case No. 313-25. She claimed that she had a well-founded belief that Jerry was already dead. She alleged that she had inquired from her mother-in-law, her brothers-in-law, her sisters-in-law, as well as her neighbors and friends, but to no avail. In the hopes of finding Jerry, she also allegedly made it a point to check the patients' directory whenever she went to a hospital. All these earnest efforts, the respondent claimed, proved futile, prompting her to file the petition in court.

The Ruling of the RTC

After due proceedings, the RTC issued an order granting the respondent's petition and declaring Jerry presumptively dead. It concluded that the respondent had a well-founded belief that her husband was already dead since more than four (4) years had passed without the former receiving any news about the latter or his whereabouts. The dispositive portion of the order dated December 15, 2006 reads:

WHEREFORE, the Court hereby declares, as it hereby declared that respondent Jerry F. Cantor is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice to the effect of the reappearance of the absent spouse Jerry F. Cantor.[5]

The Ruling of the CA

The case reached the CA through a petition for certiorari^[6] filed by the petitioner, Republic of the Philippines, through the Office of the Solicitor General (OSG). In its August 27, 2008 decision, the CA dismissed the petitioner's petition, finding no grave abuse of discretion on the RTC's part, and, accordingly, fully affirmed the latter's order, thus:

WHEREFORE, premises foregoing (sic), the instant petition is hereby DISMISSED and the assailed Order dated December 15, 2006 declaring Jerry F. Cantor presumptively dead is hereby AFFIRMED in toto.^[7]

The petitioner brought the matter via a Rule 45 petition before this Court.

The Petition

The petitioner contends that certiorari lies to challenge the decisions, judgments or final orders of trial courts in petitions for declaration of presumptive death of an absent spouse under Rule 41 of the Family Code. It maintains that although judgments of trial courts in summary judicial proceedings, including presumptive death cases, are deemed immediately final and executory (hence, not appealable under Article 247 of the Family Code), this rule does not mean that they are not subject to review on certiorari.

The petitioner also posits that the respondent did not have a well-founded belief to justify the declaration of her husband's presumptive death. It claims that the respondent failed to conduct the requisite diligent search for her missing husband. Likewise, the petitioner invites this Court's attention to the attendant circumstances surrounding the case, particularly, the degree of search conducted and the respondent's resultant failure to meet the strict standard under Article 41 of the Family Code.

The Issues

The petition poses to us the following issues:

- (1) Whether certiorari lies to challenge the decisions, judgments or final orders of trial courts in petitions for declaration of presumptive death of an absent spouse under Article 41 of the Family Code; and
- (2) Whether the respondent had a well-founded belief that Jerry is already dead.

The Court's Ruling

We grant the petition.

a. On the Issue of the Propriety of Certiorari as a Remedy

Court's Judgment in the Judicial Proceedings for Declaration of Presumptive Death Is Final and Executory, Hence, Unappealable

The Family Code was explicit that the court's judgment in summary proceedings, such as the declaration of presumptive death of an absent spouse under Article 41 of the Family Code, shall be immediately final and executory.

Article 41, in relation to Article 247, of the Family Code provides:

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 of death 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 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 absent spouse.

Art. 247. The judgment of the court shall be immediately final and executory. [underscores ours]

With the judgment being final, it necessarily follows that it is no longer subject to an appeal, the dispositions and conclusions therein having become immutable and unalterable not only as against the parties but even as against the courts.[8] Modification of the court's ruling, no matter how erroneous is no longer permissible. The final and executory nature of this summary proceeding thus prohibits the resort to appeal. As explained in *Republic of the Phils. v. Bermudez-Lorino*,[9] the right to appeal is not granted to parties 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 [Article] 247, Family Code, supra, 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. [emphases ours; italics supplied]

Certiorari Lies to Challenge the Decisions, Judgments or Final Orders of Trial Courts in a Summary Proceeding for the Declaration of Presumptive Death Under the Family Code

A losing party in this proceeding, however, is not entirely left without a remedy. While jurisprudence tells us that no appeal can be made from the trial court's judgment, an aggrieved party may, nevertheless, file a petition for certiorari under Rule 65 of the Rules of Court to question any abuse of discretion amounting to lack or excess of jurisdiction that transpired.

As held in *De los Santos v. Rodriguez, et al.*,[10] the fact that a decision has become final does not automatically negate the original action of the CA to issue certiorari, prohibition and mandamus in connection with orders or processes issued by the trial court. Certiorari may be availed of where a court has acted without or in excess of jurisdiction or with grave abuse of discretion, and where the ordinary remedy of appeal is not available. Such a procedure finds support in the case of *Republic v. Tango*,[11] wherein we held that:

This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

"ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules."

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

“ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable.” (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

“ART. 247. The judgment of the court shall be immediately final and executory.”

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of certiorari is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. [emphasis ours]

Viewed in this light, we find that the petitioner's resort to certiorari under Rule 65 of the Rules of Court to question the RTC's order declaring Jerry presumptively dead was proper.

b. On the Issue of the Existence of Well-Founded Belief

The Essential Requisites for the Declaration of Presumptive Death Under Article 41 of the Family Code

Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief that the prior spouse was already dead. Under Article 41 of the Family Code, there are four (4) essential requisites for the declaration of presumptive death:

- That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;
- That the present spouse wishes to remarry;
- That the present spouse has a well-founded belief that the absentee is dead; and
- That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.[12]

The Present Spouse Has the Burden of Proof to Show that All the Requisites Under Article 41 of the Family Code Are Present

The burden of proof rests on the present spouse to show that all the requisites under Article 41 of the Family Code are present. Since it is the present spouse who, for purposes of declaration of presumptive death, substantially asserts the affirmative of the issue, it stands to reason that the burden of proof lies with him/her. He who alleges a fact has the burden of proving it and mere allegation is not evidence.[13]

Declaration of Presumptive Death Under Article 41 of the Family Code Imposes a Stricter Standard

Notably, Article 41 of the Family Code, compared to the old provision of the Civil Code which it superseded, imposes a stricter standard. It requires a “well-founded belief” that the absentee is already dead before a petition for declaration of presumptive death can be granted. We have had occasion to make the same observation in *Republic v. Nolasco*,[14] where we noted the crucial differences between Article 41 of the Family Code and Article 83 of the Civil Code, to wit:

Under Article 41, the time required for the presumption to arise has been shortened to four (4) years; however, there is need for a judicial declaration of presumptive death to enable the spouse present to remarry. Also, Article 41 of the Family Code imposes a stricter standard than the Civil Code: Article 83 of the Civil Code merely requires either that there be no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so by the spouse present, or is presumed dead under Articles 390 and 391 of the Civil Code. The Family Code, upon the other hand, prescribes as "well founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted.

Thus, mere absence of the spouse (even for such period required by the law), lack of any news that such absentee is still alive, failure to communicate or general presumption 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 more 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.[15]

The Requirement of Well-Founded Belief

The law did not define what is meant by "well-founded belief." It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. To be able to comply with this requirement, 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).

To illustrate this degree of "diligent and reasonable search" required by the law, an analysis of the following relevant cases is warranted:

i. Republic of the Philippines v. Court of Appeals (Tenth Div.)[16]

In Republic of the Philippines v. Court of Appeals (Tenth Div.),[17] the Court ruled that the present spouse failed to prove that he had a well-founded belief that his absent spouse was already dead before he filed his petition. His efforts to locate his absent wife allegedly consisted of the following:

- (1) He went to his in-laws' house to look for her;
- (2) He sought the barangay captain's aid to locate her;
- (3) He went to her friends' houses to find her and inquired about her whereabouts among his friends;
- (4) He went to Manila and worked as a part-time taxi driver to look for her in malls during his free time;
- (5) He went back to Catbalogan and again looked for her; and
- (6) He reported her disappearance to the local police station and to the NBI.

Despite these alleged "earnest efforts," the Court still ruled against the present spouse. The Court found that he failed to present the persons from whom he allegedly made inquiries and only reported his wife's absence after the OSG filed its notice to dismiss his petition in the RTC.

The Court also provided the following criteria for determining the existence of a "well-founded belief" under Article 41 of the Family Code:

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 present 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.[18]

ii. Republic v. Granada[19]

Similarly in Granada, the Court ruled that the absent spouse failed to prove her "well-founded belief" that her absent spouse was already dead prior to her filing of the petition. In this case, the present spouse alleged that her brother had made inquiries from their relatives regarding the absent spouse's whereabouts. The present spouse did not report to the police nor seek the aid of the mass media. Applying the standards in Republic of the Philippines v. Court of Appeals (Tenth Div.),[20] the Court ruled against the present spouse, as follows:

Applying the foregoing standards to the present case, petitioner points out that respondent Yolanda did not initiate a diligent search to locate her absent husband. While her brother Diosdado Cadacio testified to having inquired about the whereabouts of Cyrus from the latter's relatives, these relatives were not presented to corroborate Diosdado's testimony. In short, respondent was allegedly not diligent in her search for her husband. Petitioner argues that if she were, she would have sought information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines. She could have also utilized mass media for this end, but she did not. Worse, she failed to explain these omissions.

iii. Republic v. Nolasco[21]

In Nolasco, the present spouse filed a petition for declaration of presumptive death of his wife, who had been missing for more than four years. He testified that his efforts to find her consisted of:

- (1) Searching for her whenever his ship docked in England;
- (2) Sending her letters which were all returned to him; and
- (3) Inquiring from their friends regarding her whereabouts, which all proved fruitless.

The Court ruled that the present spouse's investigations were too sketchy to form a basis that his wife was already dead and ruled that the pieces of evidence only proved that his wife had chosen not to communicate with their common acquaintances, and not that she was dead.

iv. The present case

In the case at bar, the respondent's "well-founded belief" was anchored on her alleged "earnest efforts" to locate Jerry, which consisted of the following:

(1)

She made inquiries about Jerry's whereabouts from her in-laws, neighbors and friends; and

(2)

Whenever she went to a hospital, she saw to it that she looked through the patients' directory, hoping to find Jerry.

These efforts, however, fell short of the "stringent standard" and degree of diligence required by jurisprudence for the following reasons:

First, the respondent did not actively look for her missing husband. It can be inferred from the records that her hospital visits and her consequent checking of the patients' directory therein were unintentional. She did not purposely undertake a diligent search for her husband as her hospital visits were not planned nor primarily directed to look for him. This Court thus considers these attempts insufficient to engender a belief that her

husband is dead.

Second, she did not report Jerry's absence to the police nor did she seek the aid of the authorities to look for him. While a finding of well-founded belief varies with the nature of the situation in which the present spouse is placed, under present conditions, we find it proper and prudent for a present spouse, whose spouse had been missing, to seek the aid of the authorities or, at the very least, report his/her absence to the police.

Third, she did not present as witnesses Jerry's relatives or their neighbors and friends, who can corroborate her efforts to locate Jerry. Worse, these persons, from whom she allegedly made inquiries, were not even named. As held in *Nolasco*, the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts is insufficient as the names of the friends from whom he made inquiries were not identified in the testimony nor presented as witnesses.

Lastly, there was no other corroborative evidence to support the respondent's claim that she conducted a diligent search. Neither was there supporting evidence proving that she had a well-founded belief other than her bare claims that she inquired from her friends and in-laws about her husband's whereabouts.

In sum, the Court is of the view that the respondent merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. She failed to conduct a diligent search because her alleged efforts are insufficient to form a well-founded belief that her husband was already dead. As held in *Republic of the Philippines v. Court of Appeals (Tenth Div.)*,^[22] "[w]hether or not the spouse present 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."

Strict Standard Approach Is Consistent with the State's Policy to Protect and Strengthen Marriage

In the above-cited cases, the Court, fully aware of the possible collusion of spouses in nullifying their marriage, has consistently applied the "strict standard" approach. This is to ensure that a petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws. Courts should never allow procedural shortcuts and should ensure that the stricter standard required by the Family Code is met. In *Republic of the Philippines v. Court of Appeals (Tenth Div.)*,^[23] we emphasized that:

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 degree of due diligence set by this Honorable Court in the above-mentioned cases in locating the whereabouts of a missing spouse must be strictly complied with. There have been times when Article 41 of the Family Code had been resorted to by parties wishing to remarry knowing fully well that their alleged missing spouses are alive and well. It is even possible that those who cannot have their marriages xxx declared null and void under Article 36 of the Family Code resort to Article 41 of the Family Code for relief because of the xxx summary nature of its proceedings.

The application of this stricter standard becomes even more imperative if we consider the State's policy to protect and strengthen the institution of marriage.^[24] Since marriage serves as the family's foundation^[25] and since it is the state's policy to protect and strengthen the family as a basic social institution,^[26] marriage should not be permitted to be dissolved at the whim of the parties. In interpreting and applying Article 41, this is the underlying rationale – to uphold the sanctity of marriage. *Arroyo, Jr. v. Court of Appeals*^[27] reflected this sentiment when we stressed:

[The] protection of the basic social institutions of marriage and the family in the preservation of which the State has the strongest interest; the public policy here involved is of the most fundamental kind. In Article II, Section 12 of the Constitution there is set forth the following basic state policy:

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.

Strict Standard Prescribed Under Article 41 of the Family Code Is for the Present Spouse's Benefit

The requisite judicial declaration of presumptive death of the absent spouse (and consequently, the application of a stringent standard for its issuance) is also for the present spouse's benefit. It is intended to protect him/her from a criminal prosecution of bigamy under Article 349 of the Revised Penal Code which might come into play if he/she would prematurely remarry sans the court's declaration.

Upon the issuance of the decision declaring his/her absent spouse presumptively dead, the present spouse's good faith in contracting a second marriage is effectively established. The decision of the competent court constitutes sufficient proof of his/her good faith and his/her criminal intent in case of remarriage is effectively negated.[28] Thus, for purposes of remarriage, it is necessary to strictly comply with the stringent standard and have the absent spouse judicially declared presumptively dead.

Final Word

As a final word, it has not escaped this Court's attention that the strict standard required in petitions for declaration of presumptive death has not been fully observed by the lower courts. We need only to cite the instances when this Court, on review, has consistently ruled on the sanctity of marriage and reiterated that anything less than the use of the strict standard necessitates a denial. To rectify this situation, lower courts are now expressly put on notice of the strict standard this Court requires in cases under Article 41 of the Family Code.

WHEREFORE, in view of the foregoing, the assailed decision dated August 27, 2008 of the Court of Appeals, which affirmed the order dated December 15, 2006 of the Regional Trial Court, Branch 25, Koronadal City, South Cotabato, declaring Jerry F. Cantor presumptively dead is hereby REVERSED and SET ASIDE.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Reyes, and Perlas-Bernabe, JJ., concur.

Velasco, Jr., J., see concurring opinion.

Leonen, J., see dissenting opinion.

Abad, and Mendoza, JJ., join the dissenting opinion of Justice Leonen.

[1] Under Rule 45 of the Rules of Court; rollo, pp. 9-31.

[2] Id. at 33-41.

[3] Id. at 42-47.

[4] Id. at 48.

[5] Id. at 47.

[6] Under Rule 65 of the Rules of Court.

[7] Rollo, p. 40.

[8] *Philippine National Bank v. Spouses Bernard and Cresencia Maraño*, G.R. No. 189316, July 1, 2013.

[9] 489 Phil. 761, 767 (2005).

- [10] 130 Phil. 459, 464 (1968).
- [11] G.R. No. 161062, July 31, 2009, 594 SCRA 560, 566-567.
- [12] Republic v. Nolasco, G.R. No. 94053, March 17, 1993, 220 SCRA 20, 25-26; emphasis ours.
- [13] Guidangen v. Wooden, G.R. No. 174445, February 15, 2012, 666 SCRA 119, 131.
- [14] Supra note 12, at 25; emphases ours, italics supplied, citations omitted.
- [15] Republic of the Philippines v. Court of Appeals (Tenth Div.), 513 Phil. 391, 397-398 (2005).
- [16] Ibid.
- [17] Ibid.
- [18] Id. at 397-398; emphases ours.
- [19] G.R. No. 187512, June 13, 2012, 672 SCRA 432, 444-445; emphasis ours.
- [20] Supra note 15.
- [21] Supra note 12.
- [22] Supra note 15, at 398.
- [23] Id. at 396; emphasis ours, italics supplied.
- [24] Ibid.
- [25] Ibid.
- [26] CONSTITUTION, Article 2, Section 12.
- [27] G.R. Nos. 96602 and 96715, November 19, 1991, 203 SCRA 750, 761.
- [28] Manuel v. People, 512 Phil. 818, 836 (2005).

CONCURRING OPINION

VELASCO, JR., J.:

I vote for the granting of the petition.

The facts of this case are simple. Sometime in January 1998, Jerry F. Cantor (Jerry) left his wife, Maria Fe Espinosa Cantor (Maria Fe), after a violent quarrel. Since then, Maria had not seen or heard from him.

After more than four (4) years of not seeing or hearing from Jerry, Maria Fe filed a petition for the declaration of presumptive death of her husband with the Regional Trial Court, Branch 25, Koronadal City, South Cotabato (RTC). In sum, Maria Fe alleged that she conducted a diligent search for her husband and exerted earnest efforts to find him. She allegedly inquired from her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends but no one could tell her where Jerry was. Whenever she went to a hospital, she made it a point to look through the patients' directory, hoping to find Jerry. On the basis of the foregoing, Maria Fe claimed that she had a well-founded belief that her husband, Jerry, was already dead.

The RTC granted her petition and thus declared Jerry as presumptively dead pursuant to Article 41 of the Family

Code. The Court of Appeals affirmed in toto the RTC Decision and held that there had been no grave abuse of discretion on the part of the RTC in having declared Jerry presumptively dead. Dissatisfied with the ruling of the Court of Appeals (CA), the Office of the Solicitor General (OSG) filed the present Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure arguing that Maria Fe did not have a well-founded belief that Jerry was dead.

I fully agree that whether or not one has a “well-founded belief” that his or her spouse is dead depends on the unique circumstances of each case and that there is no set standard or procedure in determining the same. It is my opinion that Maria Fe failed to conduct a search with such diligence as to give rise to a “well-founded belief” that her husband is dead. Further, the circumstances of Jerry’s departure and Maria Fe’s behavior after he left make it difficult to consider her belief a well-founded one.

To reiterate, Maria Fe’s alleged “well-founded” belief arose when: (1) Jerry’s relatives and friends could not give her any information on his whereabouts; and (2) she did not find Jerry’s name in the patients’ directory whenever she went to a hospital. To my mind, Maria Fe’s reliance on these alone makes her belief weak and flimsy rather than “well-founded.”

Further, it appears that Maria Fe did not actively look for her husband in hospitals and that she searched for Jerry’s name in these hospitals’ list of patients merely as an afterthought. Moreover, it may be sensed from the given facts that her search was not intentional or planned. This may be noted from the fact that whenever Maria Fe went to a hospital, she made it a point to look through the patients’ directory, hoping to find Jerry. Verily, it is as if she searched the patient’s directory only when she was in a hospital by coincidence.

Maria Fe’s search for Jerry was far from diligent. At the very least, Maria Fe should have looked for Jerry in the places he frequented. Moreover, she should have sought the assistance of the barangay or the police in searching for her husband, like what could be reasonably expected of any person with a missing spouse or loved one. These very basic things, she did not do. It may have been advantageous, too, if Maria Fe approached the media for help or posted photos of Jerry in public places with requests for information on his whereabouts. While I agree that we cannot ask the impossible from a spouse who was abandoned, it is not too much to expect the foregoing actions from someone who has lost a spouse.

This Court has been consistent in its strict application of Article 41 of the Family Code. This is clear in the cases cited in the ponencia where the Court, notwithstanding the evidence on the efforts of the present spouse to search for the absent spouse, still found that the present spouse’s search was not diligent enough and that the said spouse failed to prove that he or she had a well-founded belief that the absent spouse was already dead. I would like to share my observation that compared to Maria Fe, the present spouses in the said cases exerted similar, or if not, even more effort in their searches, and presented similar evidence to prove the same. Yet, the Court found their efforts and evidence wanting.

For instance, in *Republic v. Court of Appeals and Alegro*,^[1] respondent Alegro testified that when his wife Lea went missing, he asked Lea’s parents as well as their friends if they knew where she was. He stated that he went to Manila to search for her among her friends and would even look for her in malls. Alegro reported Lea’s disappearance to the local police station and the National Bureau of Investigation. Despite these efforts, this Court held that Alegro failed to prove that he had a well-founded belief, before he filed his petition in the RTC, that his spouse was already dead. The Court explained:

In this case, the respondent failed to present a witness other than Barangay Captain Juan Magat. The respondent even failed to present Janeth Bautista or Nelson Abaenza or any other person from whom he allegedly made inquiries about Lea to corroborate his testimony. On the other hand, the respondent admitted

that when he returned to the house of his parents-in-law on February 14, 1995, his father-in-law told him that Lea had just been there but that she left without notice.

The respondent declared that Lea left their abode on February 7, 1995 after he chided her for coming home late and for being always out of their house, and told her that it would be better for her to go home to her parents if she enjoyed the life of a single person. Lea, thus, left their conjugal abode and never returned. Neither did she communicate with the respondent after leaving the conjugal abode because of her resentment to the chastisement she received from him barely a month after their marriage. What is so worrisome is that, the respondent failed to make inquiries from his parents-in-law regarding Lea's whereabouts before filing his petition in the RTC. It could have enhanced the credibility of the respondent had he made inquiries from his parents-in-law about Lea's whereabouts considering that Lea's father was the owner of Radio DYMS.

The respondent did report and seek the help of the local police authorities and the NBI to locate Lea, but it was only an afterthought. He did so only after the OSG filed its notice to dismiss his petition in the RTC.[2]

Similarly, in *Republic v. Nolasco*,^[3] this Court ruled in favor of the Republic and agreed with the position of the OSG that the respondent therein failed to establish that he had a well-founded belief that his absent wife was dead. In this case, Nolasco, who was a seaman, went back home to Antique upon learning that his wife left their conjugal abode. He testified that no one among their friends could tell him where his wife was. He claimed that his efforts to look for her whenever his ship docked in England proved fruitless and also stated that all the letters he had sent to his missing spouse at an address in Liverpool, England, the address of the bar where they met, were all returned to him. This Court believed that Nolasco failed to conduct a search for his missing wife with such diligence as to give rise to a "well-founded belief" that she is dead. In the said case, it was held:

In the case at bar, the Court considers that the investigation allegedly conducted by respondent in his attempt to ascertain Janet Monica Parker's whereabouts is too sketchy to form the basis of a reasonable or well-founded belief that she was already dead. When he arrived in San Jose, Antique after learning of Janet Monica's departure, instead of seeking the help of local authorities or of the British Embassy, he secured another seaman's contract and went to London, a vast city of many millions of inhabitants, to look for her there.

"Q: After arriving here in San Jose, Antique, did you exert efforts to inquire the whereabouts of your wife:

A: Yes, Sir.

Court:

How did you do that?

A: I secured another contract with the ship and we had a trip to London and I went to London to look for her I could not find her (sic)."

Respondent's testimony, however, showed that he confused London for Liverpool and this casts doubt on his supposed efforts to locate his wife in England. The Court of Appeals' justification of the mistake, to wit:

"... Well, while the cognoscente (sic) would readily know the geographical difference between London and Liverpool, for a humble seaman like Gregorio the two places could mean one — place in England, the port where his ship docked and where he found Janet. Our own provincial folks, every time they leave home to visit relatives in Pasay City, Kalookan City. or Parañaque, would announce to friends and relatives, 'We're going to Manila.' This apparent error in naming of places of destination does not appear to be fatal,"

is not well taken. There is no analogy between Manila and its neighboring cities, on one hand, and London and Liverpool, on the other, which, as pointed out by the Solicitor-General, are around three hundred fifty (350) kilometers apart. We do not consider that walking into a major city like Liverpool or London with a simple hope of somehow bumping into one particular person there — which is in effect what Nolasco says he did — can be

regarded as a reasonably diligent search.

The Court also views respondent's claim that Janet Monica declined to give any information as to her personal background even after she had married respondent too convenient an excuse to justify his failure to locate her. The same can be said of the loss of the alleged letters respondent had sent to his wife which respondent claims were all returned to him. Respondent said he had lost these returned letters, under unspecified circumstances.

Neither can this Court give much credence to respondent's bare assertion that he had inquired from their friends of her whereabouts, considering that respondent did not identify those friends in his testimony. The Court of Appeals ruled that since the prosecutor failed to rebut this evidence during trial, it is good evidence. But this kind of evidence cannot, by its nature, be rebutted. In any case, admissibility is not synonymous with credibility. As noted before, there are serious doubts to respondent's credibility. Moreover, even if admitted as evidence, said testimony merely tended to show that the missing spouse had chosen not to communicate with their common acquaintances, and not that she was dead.

Also, in *Republic v. Granada*,^[4] while the Court denied the petition of the OSG on procedural grounds and consequently upheld the declaration of presumptive death of the missing husband, this Court agreed with the OSG's assertion that the respondent therein was not diligent in her search for her husband when she, just like Maria Fe in this case, merely inquired about the whereabouts of his spouse from the latter's relatives and failed to seek information and assistance from government agencies and the mass media. The Court held:

Applying the foregoing standards to the present case, petitioner points out that respondent Yolanda did not initiate a diligent search to locate her absent husband. While her brother Diosdado Cadacio testified to having inquired about the whereabouts of Cyrus from the latter's relatives, these relatives were not presented to corroborate Diosdado's testimony. In short, respondent was allegedly not diligent in her search for her husband. Petitioner argues that if she were, she would have sought information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines. She could have also utilized mass media for this end, but she did not. Worse, she failed to explain these omissions.

The Republic's arguments are well-taken. Nevertheless, we are constrained to deny the Petition.

The RTC ruling on the issue of whether respondent was able to prove her "well-founded belief" that her absent spouse was already dead prior to her filing of the Petition to declare him presumptively dead is already final and can no longer be modified or reversed. Indeed, "[n]othing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law."^[5]

Were it not for the finality of the RTC ruling, the declaration of presumptive death should have been recalled and set aside for utter lack of factual basis.

It is the policy of the State to protect and preserve marriage. Courts should be ever mindful of this policy and, hence, must exercise prudence in evaluating petitions for declaration of presumptive death of an absent spouse. Otherwise, spouses may easily circumvent the policy of the laws on marriage by simply agreeing that one of them leave the conjugal abode and never return again.

[1] G.R. No. 159614, December 9, 2005, 477 SCRA 277.

[2] *Id.* at 284-285.

[3] G.R. No. 94053, March 17, 1993, 220 SCRA 20.

[4] G.R. No. 187512, June 13, 2012, 672 SCRA 432.

[5] Id. at 445.

DISSENTING OPINION

LEONEN, J.:

“Love cannot endure indifference. It needs to be wanted. Like a lamp it needs to be fed out of the oil of another’s heart or its flames burn low.”

Henry Ward Beecher

I dissent.

A wife, abandoned with impunity, also deserves to be happy.

The Case

Through this Rule 45 petition for review on certiorari, the Office of the Solicitor General for the Republic of the Philippines prays that the decision[1] of the Court of Appeals be reversed and set aside and that a new judgment be entered annulling and setting aside the order[2] of the Regional Trial Court, Branch 25, Koronadal City, South Cotabato.

On May 21, 2002, Maria Fe Espinosa Cantor filed a petition[3] for the declaration of presumptive death of her husband, Jerry F. Cantor.[4] She claimed that she had a well-founded belief that her husband was already dead since four (4) years had lapsed without Jerry making his presence known to her.

Trial began after the Regional Trial Court found Maria Fe’s petition sufficient in form and substance.

According to their Certificate of Marriage,[5] Maria Fe and Jerry were married on September 20, 1997 at the Christ the King Cathedral in Koronadal City, South Cotabato. They lived together in their conjugal dwelling in Agan Homes, Koronadal City, South Cotabato.[6]

In her petition, Maria Fe alleges that sometime in January 1998, she and Jerry had a violent quarrel in their house. During the trial, she admitted that the quarrel had to do with her not being able to reach her “climax” whenever she would have sexual intercourse with Jerry. Maria Fe emphasized that she even suggested to him that he consult a doctor, but Jerry brushed aside this suggestion. She also said that during the quarrel, Jerry had expressed animosity toward her father, saying “I will not respect that old man outside.”[7]

Jerry left after their quarrel.[8] Since then, Maria Fe had not seen or heard from him. On May 21, 2002 after more than four (4) years without word from Jerry, Maria Fe filed her petition with the Regional Trial Court.

Maria Fe exerted “earnest efforts x x x to locate the whereabouts or actual address of [Jerry].”[9] She inquired from her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends, but no one could tell her where Jerry had gone.[10] Whenever she went to a hospital, she would check the patients’ directory, hoping to find Jerry.[11]

On December 15, 2006, the Regional Trial Court issued an order granting her petition declaring Jerry presumptively dead. The Regional Trial Court agreed that she had a well-founded belief that Jerry was dead. It declared that Jerry had not been heard from and his fate uncertain and whereabouts unknown for more than four

(4) years at the time Maria Fe's petition was filed. When the Regional Trial Court issued its order, Jerry had been absent for eight (8) years.

The fallo of the Regional Trial Court's order[12] reads:

WHEREFORE, the Court hereby declares, as it hereby declared [sic] that respondent Jerry F. Cantor is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice to the effect of the reappearance of the absent spouse Jerry F. Cantor.[13]

Not satisfied with the Regional Trial Court's order, the Republic of the Philippines through the Office of the Solicitor General filed a petition for certiorari with the Court of Appeals.

In a decision dated August 27, 2008, the Court of Appeals affirmed in toto the Regional Trial Court's order dated December 15, 2006. The Court of Appeals held that there was no grave abuse of discretion on the part of the Regional Trial Court in having declared Jerry presumptively dead. The Court of Appeals also emphasized "that 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' upon notice to the parties; hence, no longer appealable." [14]

Still dissatisfied with the ruling of the Court of Appeals, the Office of the Solicitor General filed the present petition for review on certiorari under Rule 45 of the Rules of Civil Procedure.

The Office of the Solicitor General argued that a petition for certiorari lies to challenge decisions, judgments or final orders of trial courts in petitions for the declaration of presumptive death of a missing or absent spouse. The Office of the Solicitor General agreed that under Article 247 of the Family Code, decisions and final orders of trial courts in petitions for the declaration of the presumptive death of a missing or absent spouse are immediately final and executory, and therefore, cannot be appealed. However, the Office of the Solicitor General disagreed with the assertion that judgments or decisions in these cases can no longer be reviewed by the higher courts. It maintained that even though judgments or final orders in summary judicial proceedings such as presumptive death cases are no longer appealable, they may still be reviewed by the Court of Appeals, and, ultimately, by this court.[15]

The Office of the Solicitor General pointed out that "appeal" and "certiorari" are not synonymous remedies. By filing a petition for certiorari before the Court of Appeals, it could not be considered to have "appealed" the challenged order of the Regional Trial Court. A petition for certiorari under Rule 65 is not, in its strict sense, an appeal. It is an original action and a mode of review under which the Court of Appeals may re-examine the challenged order to determine whether it was rendered in accordance with law and established jurisprudence. Hence, judgments of trial courts in presumptive death cases are not immutable because such decisions may be reviewed by higher courts. The only possible recourse of a losing party in summary judicial proceedings is a petition for certiorari under Rule 65.[16]

The Office of the Solicitor General likewise argued that Maria Fe did not have a well-founded belief that Jerry was dead. It claimed that she failed to conduct a diligent search for her missing husband. Its theory was that Jerry consciously chose not to return to their conjugal home and that he chose not to communicate with Maria Fe. The Office of the Solicitor General claimed that it was possible that Jerry did not want to be found and that he chose to live in a place where even his family and friends could not reach him. From the perspective of the Office of the Solicitor General, it was Jerry's choice to disappear; thus, in all likelihood, he was not dead.

The Office of the Solicitor General claimed that Article 41 of the Family Code requires more than the absence of the missing spouse for him or her to be declared presumptively dead. There must be events, circumstances, and reasons sufficient in themselves to at least support the proposition that the absentee spouse is already dead.

Absence per se is not enough.

The Office of the Solicitor General capitalized on the failure of Maria Fe to give the names of relatives and friends she had approached when she testified. It asserted that she failed to present them at the witness stand.[17] Moreover, the Office of the Solicitor General assailed the description of her husband as “not really healthy” when he left the conjugal dwelling. It characterized this description as being “too vague to even support the speculation that Jerry is already dead.”[18]

On June 26, 2009, Maria Fe filed her comment on the Office of the Solicitor General’s petition. She argued that there was no factual or legal basis for the Office of the Solicitor General to seek a reversal of the Court of Appeal’s decision. She asserted that the declaration of Jerry’s death was in order as it was in accord or consistent with established facts, as well as with law and jurisprudence on the matter.

This court is asked to decide on the following issues:

- Whether certiorari lies to challenge decisions, judgments or final orders of trial courts in petitions for the declaration of presumptive death of a missing person or absent spouse; and
- Whether Maria Fe has a well-founded belief that Jerry is already dead.

Certiorari lies as a remedy to annul the judgment of a trial court in summary proceedings for the declaration of presumptive death of an absent spouse

I agree that certiorari lies as a remedy to annul a judgment in proceedings for the declaration of presumptive death of an absent spouse where grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Regional Trial Court is clearly and convincingly shown.

A petition for the declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage is a summary proceeding. Article 41 of the Family Code is clear on this point:

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 of death 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 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 absent spouse.

Articles 238, 247, and 252 of Title XI of the Family Code (Summary Judicial Proceedings in the Family Law) provide:

Art. 238. Until modified by the Supreme Court, the procedural rules provided for in this Title shall apply as regards separation in fact between husband and wife, abandonment by one of the other, and incidents involving parental authority.

Art. 247. The judgment of the court shall be immediately final and executory.

Art. 252. The rules in Chapter 2 hereof shall also govern summary proceedings under this Chapter insofar as they are applicable. (n)

From these provisions, it is clear that a petition for the declaration of presumptive death of an absent spouse is a summary proceeding; more so, judgments of a trial court relating to such petitions shall be considered

immediately final and executory.

However, while a trial court's judgment relating to a petition for the declaration of presumptive death of an absent spouse is considered immediately final and executory, the Office of the Solicitor General is not entirely without remedy to assail the propriety of a trial court's judgment. Where the judgment is attended by grave abuse of discretion amounting to lack or excess of jurisdiction, the Office of the Solicitor General may file with the Court of Appeals a petition for certiorari under Rule 65 and have the judgment annulled. Should the Court of Appeals still render an adverse decision, the Office of the Solicitor General may then file a petition for review on certiorari under Rule 45 with this court. This is what the Office of the Solicitor General did in this case.

Any doubt on this matter was settled in *Republic v. Granada*:^[19]

At any rate, four years after *Jomoc*, this Court settled the rule regarding appeal of judgments rendered in summary proceedings under the Family Code when it ruled in *Republic v. Tango*:

"This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

ART 247. The judgment of the court shall be immediately final and executory.

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of certiorari is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the Court of Appeals, the losing party may then file a petition for review on certiorari under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal."

In sum, under Article 41 of the Family Code, the losing party in a summary proceeding for the declaration of presumptive death may file a petition for certiorari with the CA on the ground that, in rendering judgment thereon, the trial court committed grave abuse of discretion amounting to lack of jurisdiction. From the decision of the CA, the aggrieved party may elevate the matter to this Court via a petition for review on certiorari under Rule 45 of the Rules of Court.^[20]

Strict standards should not be imposed upon the present spouse in evaluating his or her efforts to search for the

absent spouse

However, I disagree with the position that “well-founded belief” should be interpreted as an imposition of stringent standards in evaluating the efforts and inquiries made by the present spouse in ascertaining the absent spouse’s status and whereabouts. “Well-founded belief” should be based on the circumstances of each case. It should not be based on a prior limited enumeration of what acts indicate a “well-founded belief.”

In cases for declaration of presumptive death under Article 41 of the Family Code, we cannot ask the impossible from a spouse who was abandoned. In interpreting this provision, we must keep in mind that both spouses are under many obligations in the Family Code,[21] all of which require their presence.

Article 41 of the Family Code provides:

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 of death 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 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 absent spouse.

From the text of Article 41, there are two substantive requirements and two procedural requirements for a spouse to be declared presumptively dead for the purpose of remarriage.

The two substantive requirements are the following: first, the absent spouse has been missing for four (4) consecutive years or two (2) consecutive years if the disappearance occurred under circumstances where there is danger of death per Article 391 of the Civil Code; second, the present spouse has a well-founded belief that the absent spouse is dead.

The two procedural requirements are the following: first, the present spouse files a summary proceeding for the declaration of presumptive death of the absent spouse; second, there is the underlying intent of the present spouse to remarry.

In this case, it is necessary to interpret what is meant by “well-founded belief.”

We said in *Republic of the Philippines v. Court of Appeals and Alegro*:[22]

The spouse present is, thus, burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The law does not define what is meant by a well-grounded belief. Cuello Callon writes that “es menester que su creencia sea firme se funde en motivos racionales.”

Belief is a state of the mind or condition prompting the doing of an overt act. It may be proved by direct evidence or circumstantial evidence which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth. Any fact or circumstance relating to the character, habits, conditions, attachments, prosperity and objects of life which usually control the conduct of men, and are the motives of their actions, was, so far as it tends to explain or characterize their disappearance or throw light on their intentions, competence evidence on the ultimate question of his death.

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 present 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 present spouse.[23]

Applying its construction of what constitutes a “well-founded belief” in *Republic v. Nolasco*,^[24] this court reversed the Regional Trial Court and Court of Appeals decisions which declared an absent spouse presumptively dead as the present spouse was deemed to have “failed to conduct a search for his missing wife with such diligence as to give rise to a ‘well-founded belief’ that she is dead.”^[25] In 2005, *Republic of the Philippines v. Court of Appeals and Alegro*,^[26] which relied heavily on *Nolasco*, likewise held that “the respondent failed to prove that he had a well-founded belief x x x that his spouse x x x was already dead.”^[27] In the 2012 case of *Republic v. Granada*,^[28] while this court denied the Office of the Solicitor General’s petition on procedural grounds, this court nevertheless favorably considered the Office of the Solicitor General’s assertions that “respondent was allegedly not diligent in her search for her husband.”^[29]

Belief is a state of mind and can only be ascertained in reference to a person’s overt acts. In making such an evaluation, one must evaluate a case on the basis of its own merits – cognizant of its unique facts, context, and other nuances – rather than be compelled to satisfy a pre-conceived determination of what acts are sufficiently indicative of the belief being ascertained.

A belief is well-founded when a person has reasonable basis for holding on to such belief. It is to say that such belief is not arbitrary and whimsical. Such belief must, thus, be evaluated on the basic and uncomplicated standard of rationality.

In declaring a person presumptively dead, a court is called upon to sustain a presumption. It is not called upon to conclude on verity or to establish actuality. In so doing, a court infers despite an acknowledged uncertainty. Thus, to insist on such demanding and extracting evidence as to practically require enough proof of a well-founded belief, as the Office of the Solicitor General suggests, is to insist on an inordinate, intemperate, and non-rational standard.

Maria Fe testified in court that months after their wedding, she and her husband had a violent quarrel, and he had left after the fight. She noted the two (2) causes of the quarrel: first, she could not “climax” every time they would have sexual intercourse; second, Jerry disrespected her father every time he would visit them. She likewise stated that she went to see her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends to ask about her husband’s whereabouts. She said that every time she would go to a hospital, she would check its directory to find out anything about her husband, but her efforts proved futile.

The Office of the Solicitor General faulted her for “fall[ing] short of the degree of diligence required for the search of a missing spouse.”^[30] In effect, the Office of the Solicitor General insinuated that she should have exerted more painstaking efforts to ascertain her husband’s whereabouts.

The majority agrees with the Office of the Solicitor General. The majority views Maria Fe’s efforts as a mere “passive search” that is short of the diligent search required to form a well-founded belief that her husband was already dead.^[31]

Maria Fe exerted the best efforts to ascertain the location of her husband but to no avail. She bore the indignity of being left behind. She suffered the indifference of her husband. Such indifference was not momentary. She anguished through years of never hearing from him. The absence of a few days between spouses may be tolerable, required by necessity. The absence of months may test one’s patience. But the absence of years of someone who made the solemn promise to stand by his partner in sickness and in health, for richer or poorer, is intolerable. The waiting is as painful to the spirit as the endless search for a person that probably did not want to be found or could no longer be found.

To require more from Maria Fe who did what she could, given the resources available to her, is to assert the oppressiveness of our laws. It is to tell her that she has to suffer from causes which she cannot understand for more years to come. It should be in the public interest to assume that Jerry, or any husband for that matter, as a matter of moral and legal obligation, would get in touch with Maria Fe even if only to tell her that he is alive.

It behooves this court not to have pre-conceived expectations of a standard operating procedure for spouses who are abandoned. Instead, it should, with the public interest in mind and human sensitivity at heart, understand the domestic situation.

A review of the cases that the Office of the Solicitor General cited reveals this same conclusion.

Republic of the Philippines v. Court of Appeals and Alegro[32] acknowledges that “testimonial evidence may suffice to prove the well-founded belief of the present spouse that the absent spouse is already dead x x x.”[33]

In another case cited by the Office of the Solicitor General, Republic v. Nolasco,[34] which similarly considered the matter of whether respondent therein was able to establish a well-founded belief of the death of his absent spouse, this court cited the 1913 case of United States v. Biasbas,[35] finding it to be “instructive as to degree [sic] of diligence required in searching for a missing spouse.”[36] In Biasbas, defendant Biasbas’ defense of a good faith belief that his wife was already dead was not sustained, and his conviction for bigamy was affirmed. Speaking on Biasbas’ lack of due diligence, this court said:

While the defendant testified that he had made inquiries concerning the whereabouts of his wife, he fails to state of whom he made such inquiries. He did not even write to the parents of his first wife, who lived in the Province of Pampanga, for the purpose of securing information concerning her or her whereabouts. He admits that he had a suspicion only that his first wife was dead. He admits that the only basis of his suspicion was the fact that she had been absent.[37] (Emphasis supplied)

What was involved in Biasbas was a mere suspicion – totally bereft of any other rational basis. Moreover, the defendant himself admitted that all he had was a mere suspicion.

What is involved in this case is not a mere suspicion. In Biasbas, the defendant could be faulted for failing to even write the parents of his wife. Here, Maria Fe testified to her having visited and personally inquired with her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends. Moreover, Maria Fe repeatedly checked hospital entries to check if her husband was admitted or otherwise was pronounced deceased.

While it may be true that it would have been ideal for Maria Fe to have exerted more exceptional efforts in locating her husband, the hypothetical issue of what else she could have done or ought to have done should not diminish the import of her efforts. It is for Maria Fe to resort to the courses of action permitted to her given her stature and means. We are called upon to make an appreciation of the reasonable, not of the exceptional. In adjudicating this case, this court must ground itself on what is real, not dwell on a projected ideal.

In the case of Maria Fe, she did what, in her circumstances, are to be considered as an efficient search. Again, she got in touch with her husband’s relatives and searched hospitals. More importantly, she waited for more than four (4) long years for her husband to get in touch with her.

Also, the insistence on the need for Maria Fe to ascertain the whereabouts of her deserting husband undermines the significance and weight of her husband’s own duty. In the normal course of things, a spouse is well in a position to expect that the other spouse will return to their common dwelling. Article 68 of the Family Code obliges the husband and the wife “to live together, observe mutual love, respect and fidelity, and render mutual help and support.”

The opinions of a recognized authority in civil law, Arturo M. Tolentino, are particularly enlightening:

Meaning of “Absent” Spouse. – The provisions of this article are of American origin, and must be construed in the light of American jurisprudence. An identical provision (except for the period) exists in the California civil code (section 61); California jurisprudence should, therefore, prove enlightening. It has been held in that jurisdiction that, as respects the validity of a husband’s subsequent marriage, a presumption as to the death of his first wife cannot be predicated upon an absence resulting from his leaving or deserting her, as it is his duty to keep her advised as to his whereabouts. The spouse who has been left or deserted is the one who is considered as the “spouse present”; such spouse is not required to ascertain the whereabouts of the deserting spouse, and after the required number of years of absence of the latter, the former may validly remarry.[38] (Underscoring supplied)

Precisely, it is a deserting spouse’s failure to comply with what is reasonably expected of him or her and to fulfill the responsibilities that are all but normal to a spouse which makes reasonable (i.e., well-founded) the belief that should he or she fail to manifest his or her presence within a statutorily determined reasonable period, he or she must have been deceased. The law is of the confidence that spouses will in fact “live together, observe mutual love, respect and fidelity, and render mutual help and support”[39] such that it is not the business of the law to assume any other circumstance than that a spouse is deceased in case he or she becomes absent.

It is unfortunate that the majority fails to appreciate Maria Fe’s predicament and instead places upon her the burden to prove good faith in her painstaking efforts.

To be present in any human relationship especially that of marriage is a complex affair. There are interests to be compromised for each other, temperaments to be adjusted, evolving personalities to be understood in the crucible of common experiences. The moments of bliss are paid for by the many moments of inevitable discomfort as couples adjust their many standpoints, attitudes, and values for each other. It is a journey that takes time and in that time, presence.

This case does not present that kind of complexity. It is simple enough. Maria Fe was left behind. She looked for Jerry, in good faith. Jerry could not be found. He did not leave word. He did not make the slightest effort to get in touch with Maria Fe. His absence did not make the difficult compromises possible. There were no adjustments in their temperaments, no opportunities to further understand each other, no journey together. His absence was palpable: not moments, not days, not months, but years. Maria Fe deserves more. The law, in Article 41, allows her succor.

Given the circumstances, Maria Fe acted adequately. Her actions were sufficient to form the well-founded belief that her husband passed away. It was proper that he be declared presumptively dead. In the far possibility that he reappears and is not dead, the law provides remedies for him. In the meantime, the Court of Appeals committed no reversible error in affirming the Regional Trial Court’s declaration.

WHEREFORE, I vote to DENY the petition.

[1] This order was dated August 27, 2008 and docketed under CA-G.R. SP. No. 01558-MIN, rollo, p. 33.

[2] This order was dated December 15, 2006, rollo, p. 42.

[3] Rollo, p. 48-50. This petition was docketed as Special Proceeding No. 313-25.

[4] This petition falls under Article 41 of the Family Code.

[5] Rollo, p. 51.

[6] Id. at 34 and 44.

[7] Id. at 45.

[8] Id. at 48.

[9] Id. at 49.

[10] Id. at 34.

[11] Id.

[12] Id. at 42. This order was dated December 15, 2006.

[13] Id. at 47.

[14] Id. at 35.

[15] Id. at 16.

[16] Id. at 17-19.

[17] Id. at 24.

[18] Id. at 23.

[19] G.R. No. 187512, June 13, 2012, 672 SCRA 432. [Second Division, per Sereno, J.]

[20] Id. at 440-441.

[21] Title III

Rights and Obligations Between Husband and Wife

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Art. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

Art. 71. The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

Art. 72. When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief.

Art. 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

In case of disagreement, the court shall decide whether or not:

(1)

She made inquiries about Jerry's whereabouts from her in-laws, neighbors and friends; and

(2)

Whenever she went to a hospital, she saw to it that she looked through the patients' directory, hoping to find Jerry.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.

[22] 513 Phil. 391 (2005).

[23] Id. at 397-398.

[24] G.R. No. 94053, March 17, 1993, 220 SCRA 20. [Third Division, per Feliciano, J.]

[25] Id. at 26.

[26] Republic of the Philippines v. Court of Appeals and Alegro, supra.

[27] Id. at 399.

[28] G.R. No. 187512, June 13, 2012, 672 SCRA 432. [Second Division, per Sereno, J.]

[29] Id. at 445.

[30] Rollo, p. 24.

[31] Majority opinion, p. 12.

[32] Republic of the Philippines v. Court of Appeals and Alegro, supra note 22.

[33] Id. at 398.

[34] Republic v. Nolasco, supra note 24.

[35] 25 Phil. 71 (1913).

[36] Republic v. Nolasco, supra note 24, at 26.

[37] United States v. Biasbas, supra at 73.

[38] A.M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 281-282 (Vol. I, 1990) citing People v. Glab, 13 App. (2d) 528, 57 Pac. (2d) 588 and Harrington Estate, 140 Cal. 244, 73 Pac. 1000.

[39] FAMILY CODE, Art. 68.

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