

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. YOLANDA CADACIO GRANADA, RESPONDENT.

G.R. No. 187512. June 13, 2012

Ponente: SERENO, J.

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SERENO, J.:

This is a Rule 45 Petition seeking the reversal of the Resolutions dated 23 January 2009[1] and 3 April 2009[2] issued by the Court of Appeals (CA), which affirmed the grant by the Regional Trial Court (RTC) of the Petition for Declaration of Presumptive Death of the absent spouse of respondent.

In May 1991, respondent Yolanda Cadacio Granada (Yolanda) met Cyrus Granada (Cyrus) at Sumida Electric Philippines, an electronics company in Paranaque where both were then working. The two eventually got married at the Manila City Hall on 3 March 1993. Their marriage resulted in the birth of their son, Cyborg Dean Cadacio Granada.

Sometime in May 1994, when Sumida Electric Philippines closed down, Cyrus went to Taiwan to seek employment. Yolanda claimed that from that time, she had not received any communication from her husband, notwithstanding efforts to locate him. Her brother testified that he had asked the relatives of Cyrus regarding the latter's whereabouts, to no avail.

After nine (9) years of waiting, Yolanda filed a Petition to have Cyrus declared presumptively dead. The Petition was raffled to Presiding Judge Avelino Demetria of RTC Branch 85, Lipa City, and was docketed as Sp. Proc. No. 2002-0530.

On 7 February 2005, the RTC rendered a Decision declaring Cyrus as presumptively dead.

On 10 March 2005, petitioner Republic of the Philippines, represented by the Office of the Solicitor General (OSG), filed a Motion for Reconsideration of this Decision. Petitioner argued that Yolanda had failed to exert earnest efforts to locate Cyrus and thus failed to prove her well-founded belief that he was already dead. However, in an Order dated 29 June 2007, the RTC denied the motion.

Petitioner filed a Notice of Appeal to elevate the case to the CA, presumably under Rule 41, Section 2(a) of the Rules of Court. Yolanda filed a Motion to Dismiss on the ground that the CA had no jurisdiction over the appeal. She argued that her Petition for Declaration of Presumptive Death, based on Article 41 of the Family Code, was a summary judicial proceeding, in which the judgment is immediately final and executory and, thus, not appealable.

In its 23 January 2009 Resolution, the appellate court granted Yolanda's Motion to Dismiss on the ground of lack of jurisdiction. Citing *Republic v. Bermudez-Lorino*,[3] the CA ruled that a petition for declaration of presumptive death under Rule 41 of the Family Code is a summary proceeding. Thus, judgment thereon is immediately final and executory upon notice to the parties.

Petitioner moved for reconsideration, but its motion was likewise denied by the CA in a Resolution dated 3 April

2009.[4]

Hence, the present Rule 45 Petition.

Issues

1. Whether the CA seriously erred in dismissing the Petition on the ground that the Decision of the RTC in a summary proceeding for the declaration of presumptive death is immediately final and executory upon notice to the parties and, hence, is not subject to ordinary appeal
2. Whether the CA seriously erred in affirming the RTC's grant of the Petition for Declaration of Presumptive Death under Article 41 of the Family Code based on the evidence that respondent presented

Our Ruling

1. On whether the CA seriously erred in dismissing the Petition on the ground that the Decision of the RTC in a summary proceeding for the declaration of presumptive death is immediately final and executory upon notice to the parties and, hence, is not subject to ordinary appeal

In the assailed Resolution dated 23 January 2009, the CA dismissed the Petition assailing the RTC's grant of the Petition for Declaration of Presumptive Death of the absent spouse under Article 41 of the Family Code. Citing *Republic v. Bermudez-Lorino*,^[5] the appellate court noted that a petition for declaration of presumptive death for the purpose of remarriage is a summary judicial proceeding under the Family Code. Hence, the RTC Decision therein is immediately final and executory upon notice to the parties, by express provision of Article 247 of the same Code. The decision is therefore not subject to ordinary appeal, and the attempt to question it through a Notice of Appeal is unavailing.

We affirm the CA ruling.

Article 41 of the Family Code provides:

Art. 41. A marriage contracted by any person during the 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. (Underscoring supplied.)

Clearly, a petition for declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage under Article 41 of the Family Code is a summary proceeding "as provided for" under the Family Code.

Further, Title XI of the Family Code is entitled "Summary Judicial Proceedings in the Family Law." Subsumed thereunder are Articles 238 and 247, which provide:

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.

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

Further, Article 253 of the Family Code reads:

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.

Taken together, Articles 41, 238, 247 and 253 of the Family Code provide that since a petition for declaration of presumptive death is a summary proceeding, the judgment of the court therein shall be immediately final and executory.

In *Republic v. Bermudez-Lorino*,^[6] the Republic likewise appealed the CA's affirmation of the RTC's grant of respondent's Petition for Declaration of Presumptive Death of her absent spouse. The Court therein held that it was an error for the Republic to file a Notice of Appeal when the latter elevated the matter to the CA, 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 Section 247, Family Code, supra, are "immediately final and executory."

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But, if only to set the records straight and for the future guidance of the bench and the bar, let it be stated that the RTC's decision dated November 7, 2001, was immediately final and executory upon notice to the parties. It was erroneous for the OSG to file a notice of appeal, and for the RTC to give due course thereto. The Court of Appeals acquired no jurisdiction over the case, and should have dismissed the appeal outright on that ground.

Justice (later Chief Justice) Artemio Panganiban, who concurred in the result reached by the Court in *Republic v. Bermudez-Lorino*, additionally opined that what the OSG should have filed was a petition for certiorari under Rule 65, not a petition for review under Rule 45.

In the present case, the Republic argues that *Bermudez-Lorino* has been superseded by the subsequent Decision of the Court in *Republic v. Jomoc*,^[7] issued a few months later.

In *Jomoc*, the RTC granted respondent's Petition for Declaration of Presumptive Death of her absent husband for the purpose of remarriage. Petitioner Republic appealed the RTC Decision by filing a Notice of Appeal. The trial court disapproved the Notice of Appeal on the ground that, under the Rules of Court,^[8] a record on appeal is required to be filed when appealing special proceedings cases. The CA affirmed the RTC ruling. In reversing the CA, this Court clarified that while an action for declaration of death or absence under Rule 72, Section 1(m), expressly falls under the category of special proceedings, a petition for declaration of presumptive death under Article 41 of the Family Code is a summary proceeding, as provided for by Article 238 of the same Code. Since its purpose was to enable her to contract a subsequent valid marriage, petitioner's action was a summary proceeding based on Article 41 of the Family Code, rather than a special proceeding under Rule 72 of the Rules of Court. Considering that this action was not a special proceeding, petitioner was not required to file a record on appeal when it appealed the RTC Decision to the CA.

We do not agree with the Republic's argument that *Republic v. Jomoc* superseded our ruling in *Republic v. Bermudez-Lorino*. As observed by the CA, the Supreme Court in *Jomoc* did not expound on the characteristics of a summary proceeding under the Family Code. In contrast, the Court in *Bermudez-Lorino* expressly stated that its ruling on the impropriety of an ordinary appeal as a vehicle for questioning the trial court's Decision in a summary proceeding for declaration of presumptive death under Article 41 of the Family Code was intended "to

set the records straight and for the future guidance of the bench and the bar.”

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*:^[9]

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.

Evidently then, the CA did not commit any error in dismissing the Republic's Notice of Appeal on the ground that the RTC judgment on the Petition for Declaration of Presumptive Death of respondent's spouse was immediately final and executory and, hence, not subject to ordinary appeal.

2. On whether the CA seriously erred in affirming the RTC's grant of the Petition for Declaration of Presumptive Death under Article 41 of the Family Code based on the evidence that respondent had presented

Petitioner also assails the RTC's grant of the Petition for Declaration of Presumptive Death of the absent spouse

of respondent on the ground that she had not adduced the evidence required to establish a well-founded belief that her absent spouse was already dead, as expressly required by Article 41 of the Family Code. Petitioner cites *Republic v. Nolasco*,^[10] *United States v. Biasbas*^[11] and *Republic v. Court of Appeals and Alegro*^[12] as authorities on the subject.

In *Nolasco*, petitioner Republic sought the reversal of the CA's affirmation of the RTC's grant of respondent's Petition for Declaration of Presumptive Death of his absent spouse, a British subject who left their home in the Philippines soon after giving birth to their son while respondent was on board a vessel working as a seafarer. Petitioner Republic sought the reversal of the ruling on the ground that respondent was not able to establish his "well-founded belief that the absentee is already dead," as required by Article 41 of the Family Code. In ruling thereon, this Court recognized that this provision imposes more stringent requirements than does Article 83 of the Civil Code.^[13] The Civil Code provision merely requires either that there be no news that the absentee is still alive; or that the absentee is generally considered to be dead and is believed to be so by the spouse present, or is presumed dead under Articles 390 and 391 of the Civil Code. In comparison, the Family Code provision prescribes a "well-founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted. As noted by the Court in that case, the four requisites for the declaration of presumptive death under the Family Code are as follows:

- 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.

In evaluating whether the present spouse has been able to prove the existence of a "well-founded belief" that the absent spouse is already dead, the Court in *Nolasco* cited *United States v. Biasbas*,^[14] which it found to be instructive as to the diligence required in searching for a missing spouse.

In *Biasbas*, the Court held that defendant *Biasbas* failed to exercise due diligence in ascertaining the whereabouts of his first wife, considering his admission that that he only had a suspicion that she was dead, and that the only basis of that suspicion was the fact of her absence.

Similarly, in *Republic v. Court of Appeals and Alegro*, petitioner Republic sought the reversal of the CA ruling affirming the RTC's grant of the Petition for Declaration of Presumptive Death of the absent spouse on the ground that the respondent therein had not been able to prove a "well-founded belief" that his spouse was already dead. The Court reversed the CA, granted the Petition, and provided the following criteria for determining the existence of a "well-founded belief" under Article 41 of the Family Code:

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.

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 [sic] 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. (Footnotes omitted, underscoring supplied.)

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." [15]

WHEREFORE, premises considered, the assailed Resolutions of the Court of Appeals dated 23 January 2009 and 3 April 2009 in CA-G.R. CV No. 90165 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] Rollo, pp. 30-33. The Court of Appeals Fifth Division Decision in CA-G.R. CV No. 90165 was penned by Justice Remedios A. Salazar-Fernando and concurred in by Justices Jose C. Reyes, Jr. and Normandie B. Pizarro.

[2] Rollo, pp. 35-36.

[3] 489 Phil. 761 (2005).

[4] Rollo, pp. 35-36.

[5] Supra note 3.

[6] Supra note 3.

[7] 497 Phil. 528 (2005).

[8] The case cited Rule 41, Sec. 2(a), which reads:

SEC. 2. Modes of appeal.—

(a) Ordinary appeal.—The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record -on appeal shall be filed and served in like manner. (Underscoring supplied.)

[9] G.R. No. 161062, 31 July 2009, 594 SCRA 560.

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

[11] 25 Phil. 71 (1913).

[12] 513 Phil. 391 (2005).

[13] 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.

[14] The case originated from a bigamy suit against defendant Biasbas, whose defense was that he contracted a second marriage on the good faith belief that his first wife was already dead.

[15] Chan-Tan v. Tan, G.R. No. 167139, 25 February 2010, 613 SCRA 592.

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