

## REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JOSE B. SAREÑOOGON, JR., RESPONDENT.

*G.R. No. 199194. February 10, 2016*

Ponente: DEL CASTILLO, J.

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### DEL CASTILLO, J.:

A petition for certiorari pursuant to Rule 65 of the Rules of Court is the proper remedy to challenge a trial court's declaration of presumptive death under Article 41 of The Family Code of the Philippines[1] (Family Code).[2]

This Petition for Review on Certiorari[3] assails the October 24, 2011 Decision[4] of the Court of Appeals (CA) in CA-GR. SP No. 04158-MIN dismissing the Petition for Certiorari filed by petitioner Republic of the Philippines (Republic).

#### Factual Antecedents

On November 4, 2008, respondent Jose B. Sareñogon, Jr. (Jose) filed a Petition[5] before the Regional Trial Court (RTC) of Ozamiz[6] City-Branch 15 the declaration of presumptive death of his wife, Netchie S.[7] Sareñogon (Netchie).[8]

In an Amended Order dated February 11, 2009, the RTC set the Petition for initial hearing on April 16, 2009. It likewise directed the publication of said Order in a newspaper of general circulation in the cities of Tangub, Ozamiz and Oroquieta, all in the province of Misamis Occidental. Nobody opposed the Petition.[9] Trial then followed.[10]

Jose testified that he first met Netchie in Clarin, Misamis Occidental in 1991,[11] They later became sweethearts and on August 10, 1996, they got married in civil rites at the Manila City Hall.[12] However, they lived together as husband and wife for a month only because he left to work as a seaman while Netchie went to Hongkong as a domestic helper.[13] For three months, he did not receive any communication from Netchie.[14] He likewise had no idea about her whereabouts.[15] While still abroad, he tried to contact Netchie's parents, but failed, as the latter had allegedly left Clarin, Misamis Occidental.[16] He returned home after his contract expired.[17] He then inquired from Netchie's relatives and friends about her whereabouts, but they also did not know where she was.[18] Because of these, he had to presume that his wife Netchie was already dead.[19] He filed the Petition before the RTC so he could contract another marriage pursuant to Article 41 of the Family Code.[20]

Jose's testimony was corroborated by his older brother Joel Sareñogon, and by Netchie's aunt, Consuelo Sande.[21] These two witnesses testified that Jose and Netchie lived together as husband and wife only for one month prior to their leaving the Philippines for separate destinations abroad.[22] These two added that they had no information regarding Netchie's location.[23]

#### Ruling of the Regional Trial Court

In its Decision[24] dated January 31, 2011 in Spec. Proc. No. 045-08, the RTC held that Jose had established by

preponderance of evidence that he is entitled to the relief prayed for under Article 41 of the Family Code.[25] The RTC found that Netchie had disappeared for more than four years, reason enough for Jose to conclude that his wife was indeed already dead.[26] The dispositive portion of the Decision reads:

VIEWED IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered declaring respondent presumptively dead for purposes of remarriage of petitioner.

SO ORDERED.[27]

#### Proceedings before the Court of Appeals

On April 19, 2011, the Republic, through the Office of the Solicitor General (OSG), elevated the judgment of the RTC to the CA via a Petition for Certiorari[28], under Rule 65 of the Revised Rules of Court.

In its Decision[29] of October 24, 2011, the CA held that the Republic used the wrong recourse by instituting a petition for certiorari under Rule 65 of the Revised Rules of Court. The CA perceived no error at all in the RTC's judgment granting Jose's Petition for the declaration of the presumptive death of his wife, Netchie. The CA thus held in effect that the Republic's appeal sought to correct or review the RTC's alleged misappreciation of evidence which could not translate into excess or lack of jurisdiction amounting to grave abuse of discretion.[30] The CA noted that the RTC properly caused the publication of the Order setting the case for initial hearing.[31] The CA essentially ruled that, "[a] writ of certiorari may not be used to correct a lower court's evaluation of the evidence and factual findings. In other words, it is not a remedy for mere errors of judgment, which are correctible by an appeal,"[32] The CA then disposed of the case in this wise:

WHEREFORE, the petition for certiorari is dismissed.

SO ORDERED.[33]

#### Issues

The Republic filed the instant Petition[34] raising the following issues:

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN ITS ASSAILED DECISION BECAUSE:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN DISMISSING THE REPUBLIC'S PETITION FOR REVIEW ON CERTIORARI UNDER RULE 65, ON THE GROUND THAT THE PROPER REMEDY SHOULD HAVE BEEN TO APPEAL THE RTC DECISION, BECAUSE IMMEDIATELY FINAL AND EXECUTORY JUDGMENTS OR DECISIONS ARE NOT APPEALABLE UNDER THE EXPRESS PROVISION OF LAW.

II

THE ALLEGED EFFORTS OF RESPONDENT IN LOCATING HIS MISSING WIFE DO NOT SUFFICIENTLY SUPPORT A "WELL-FOUNDED BELIEF" THAT RESPONDENT'S ABSENT WIFE XXX IS PROBABLY DEAD.[35]

#### Petitioner's Arguments

The Republic insists that a petition for certiorari under Rule 65 of the Revised Rules of Court is the proper remedy to challenge an RTC's immediately final and executory Decision on a presumptive death.[36]

The Republic claims that based on jurisprudence, Jose's alleged efforts in locating Netchie did not engender or

generate a well-founded belief that the latter is probably dead.[37] It maintains that even as Jose avowedly averred that he exerted efforts to locate Netchie, Jose inexplicably failed to enlist the assistance of the relevant government agencies like the Philippine National Police, the National Bureau of Investigation, the Department of Foreign Affairs, the Bureau of Immigration, the Philippine Overseas Employment Administration, or the Overseas Workers Welfare Administration.[38] It likewise points out that Jose did not present any disinterested person to corroborate his allegations that the latter was indeed missing and could not be found.[39] It also contends that Jose did not advert to circumstances, events, occasions, or situations that would prove that he did in fact make a comprehensive search for Netchie.[40] The Republic makes the plea that courts should ever be vigilant and wary about the propensity of some erring spouses in resorting to Article 41 of the Family Code for the purpose of terminating their marriage.[41]

Finally, the Republic submits that Jose did not categorically assert that he wanted to have Netchie declared presumptively dead because he intends to get married again, an essential premise of Article 41 of the Family Code.[42]

#### Respondent's Arguments

Jose counters that the CA properly dismissed the Republic's Petition because the latter's petition is erected upon the ground that the CA did not correctly weigh or calibrate the evidence on record, or assigned to the evidence its due worth, import or significance; and that such a ground does not avail in a petition for certiorari under Rule 65 of the Revised Rules of Court.[43] Jose also contends that the Republic should have instead filed a motion for reconsideration[44] of the RTC's Decision of January 31, 2011, reasoning out that a motion for reconsideration is a plain, speedy and adequate remedy in law. Jose furthermore submits that the RTC did not act arbitrarily or capriciously in granting his petition because it even dutifully complied with the publication requirement.[45] He moreover argues that to sustain the present petition would allow the executive branch to unduly make inroads into judicial territory.[46] Finally, he insists that the trial court's factual findings are entitled to great weight and respect as these were arrived after due deliberation.[47]

#### This Court's Ruling

This Court finds the Republic's petition meritorious.

A petition for certiorari under Rule 65 of the Rules of Court is the proper remedy to question the RTC's Decision in a summary proceeding for the declaration of presumptive death

In the 2005 case of *Republic v. Bermudez-Lorino*,[48] we held that the RTC's Decision on a Petition for declaration of presumptive death pursuant to Article 41 of the Family Code is immediately final and executory. Thus, the CA has no jurisdiction to entertain a notice of appeal pertaining to such judgment.[49] Concurring in the result, Justice (later Chief Justice) Artemio Panganiban further therein pointed out that the correct remedy to challenge the RTC Decision was to institute a petition for certiorari under Rule 65, and not a petition for review under Rule 45.[50]

We expounded on this appellate procedure in *Republic v. Tango*: [51]

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. xxx[52] (Citation omitted; Underscoring supplied)

"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 C A, 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." [53]

In fact, in *Republic v. Narceda*, [54] we held that the OSG availed of the wrong remedy when it filed a notice of appeal under Rule 42 with the CA to question the RTCs Decision declaring the presumptive death of Marina B. Narceda. [55]

Above all, this Court's ruling in *Republic v. Cantor* [56] made it crystal clear that the OSG properly availed of a petition for certiorari under Rule 65 to challenge the RTCs Order therein declaring Jerry Cantor as presumptively dead.

Based on the foregoing, it is clear that the Republic correctly availed of certiorari under Rule 65 of the Revised Rules of Court in assailing before the CA the aforesaid RTCs Decision.

The "well-founded belief" requisite under Article 41 of the Family Code is complied with only upon a showing that sincere honest-to-goodness efforts had indeed been made to ascertain whether the absent spouse is still alive or is already dead

We now proceed to determine whether the RTC properly granted Jose's Petition. Article 41 of the Family Code pertinently provides that:

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 had 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. (83a)

In *Republic v. Cantor*,<sup>[57]</sup> we further held that:

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 essential requisites for the declaration of presumptive death:

1. 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 of the Civil Code;
2. That the present spouse wishes to remarry;
3. That the present spouse has a well-founded belief that the absentee is dead; and
4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.<sup>[58]</sup> (Underscoring supplied)

With respect to the third element (which seems to be the element that in this case invites extended discussion), the holding is that the -

mere absence of the spouse (even for such period required by the law), or lack of news that such absentee is still alive, failure to communicate [by the absentee spouse or invocation of the] general presumption on 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 due 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 [either] still alive or is already dead.

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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).<sup>[59]</sup> (Emphasis omitted; underscoring supplied)

In the case at bar, the RTC ruled that Jose 1ms "well-founded belief that Netchie was already dead upon the following grounds:

- (1) Jose allegedly tried to contact Netchie's parents while he was still out of the country, but did not reach them as they had allegedly left Clarin, Misamis Occidental;
- (2) Jose believed/presumed that Netchie was already dead because when he returned home, he was not able to obtain any information that Netchie was still alive from Netchie's relatives and friends;
- (3) Jose's testimony to the effect that Netchie is no longer alive, hence must be presumed dead, was corroborated by Jose's older brother, and by Netchie's aunt, both of whom testified that he (Jose) and Netchie lived together as husband and wife only for one month and that after this, there had been no information as to Netchie's whereabouts.

In the above-cited case of *Republic v. Cantor*,<sup>[60]</sup> this Court held that the present spouse (Maria Fe Espinosa

Cantor) merely conducted a "passive search" because she simply made unsubstantiated inquiries from her in-laws, from neighbors and friends. For that reason, this Court stressed that the degree of diligence and reasonable search required by law is not met (1) when there is failure to present the persons from whom the present spouse allegedly made inquiries especially the absent spouse's relatives, neighbors, and friends, (2) when there is failure to report the missing spouse's purported disappearance or death to the police or mass media, and (3) when the present spouse's evidence might or would only show that the absent spouse chose not to communicate, but not necessarily that the latter was indeed dead.[61] The rationale for this palpably stringent or rigorous requirement has been marked out thus:

xxx [T]he 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. xxx

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. Since marriage serves as the family's foundation and since it is the state's policy to protect and strengthen the family as a basic social institution, marriage should not be permitted to be dissolved at the whim of the parties. xxx

xxx [I]t 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." (Citations omitted)[62]

Given the Court's imposition of "strict standard" in a petition for a declaration of presumptive death under Article 41 of the Family Code, it must follow that there was no basis at all for the RTC's finding that Jose's Petition complied with the requisites of Article 41 of the Family Code, in reference to the well-founded belief standard. If anything, Jose's pathetically anemic efforts to locate the missing Netchie are notches below the required degree of stringent diligence prescribed by jurisprudence. For, aside from his bare claims that he had inquired from alleged friends and relatives as to Netchie's whereabouts, Jose did not call to the witness stand specific individuals or persons whom he allegedly saw or met in the course of his search or quest for the allegedly missing Netchie. Neither did he prove that he sought the assistance of the pertinent government agencies as well as the media, Nor did he show that he undertook a thorough, determined and unflagging search for Netchie, say for at least two years (and what those years were), and naming the particular places, provinces, cities, barangays or municipalities that he visited, or went to, and identifying the specific persons he interviewed or talked to in the course of his search.

WHEREFORE, the Petition is GRANTED, The Decision dated October 24, 2011 of the Court of Appeals in CA-GR. SP No. 04158-MN is REVERSED AND SET ASIDE. The respondent's Petition in said Spec. Proc. No. 045-08 is accordingly DISMISSED.

### **SO ORDERED.**

Carpio, (Chairperson), Brion, and Mendoza, JJ., concur.  
Leonen, J., see dissenting opinion.

**[1] EXECUTIVE ORDER NO. 209.**

[2] Republic v. Cantor, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 16-18.

[3] Rollo, pp. 9-40.

[4] Id. at 42-50; penned by Associate Justice Pamela Ann Abelia Maxino and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Zenaida T. Galapate-Laguilles.

[5] Id. at. 51-52.

[6] Also spelled as "Ozamis" in other parts of the CA Decision.

[7] In Rollo, p. 53, Netchie's maiden name per a copy of their Marriage Contract dated August 10, 1996 is "Netchie S. Polistico".

[8] Rollo, p. 43.

[9] Id. at 54.

[10] Id. at 43.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id. at 43-44 and 54.

[17] Id. at 44 and 54.

[18] Id.

[19] Id.

[20] Id. at 44 and 55.

[21] Id. at 44 and 54.

[22] Id.

[23] Id.

[24] Id. at 54-55; penned by Executive Judge Edmundo P. Pintac.

[25] Id. at 44 and 55.

[26] Id.

[27] Id. at 55.

[28] Id. at 42 and 44.

[29] Id. at 42-50.

- [30] Id. at 49.
- [31] Id.
- [32] Id.
- [33] Id. at 50.
- [34] Id at 9-40.
- [35] Id. at 16-17.
- [36] Id. at 17-27, 102-109.
- [37] Id. at 27-35, 109-114.
- [38] Id. at 31, 111-112.
- [39] Id. at 31-32, 112.
- [40] Id. at 31, 112.
- [41] Id. at 33-35, 113-114.
- [42] Id. at 35-36, 114-115.
- [43] Id. at 62-63, 90-92.
- [44] Id. at 63, 93.
- [45] Id. at 63-65, 92.
- [46] Id. at 64, 92.
- [47] Id. at 65, 92-93.
- [48] 489 Phil. 761 (2005).
- [49] Id. at 768-769.
- [50] Republic v. Granada, 687 Phil. 403, 408-409 (2012), citing Republic v. Bermudez-Lorino, supra.
- [51] 612 Phil. 76 (2009).
- [52] Id. at 82-83.
- [53] Republic v. Granada, supra note 50 at 411.
- [54] G.R. No. 182760, April 10, 2013, 695 SCRA 483.
- [55] Id. at 489-490.
- [56] Supra note 2 at 14-18.
- [57] Id.
- [58] Id. at 18.
- [59] Republic v. Cantor, supra note 2 at 20, citing Republic v. Court of Appeals, 513 Phil. 391, 397-398 (2005).
- [60] Supra note 2.

[61] Republic v. Cantor, supra note 2 at 20-25, citing Republic v. Court of Appeals, supra, Republic v. Granada, supra note 50, and Republic v. Nolasco, G.R. No. 94053, March 17, 1993, 220 SCRA 20.

[62] Republic v. Cantor, supra note 1 at 25-27.

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## DISSENTING OPINION

**LEONEN, J.:**

I dissent.

A petition praying for the declaration of presumptive death of an absent spouse should be resolved on its own merits, not on the basis of preconceived notions of acts that the present spouse ought to have done. Approaching such cases with an a priori disapproving stance, which may be trumped only by compliance with an idealized "to-do list," is unreasonable. It not only prevents courts from appreciating the present spouse's efforts for their inherent merits; it also casts aside the more basic—and statutorily imposed<sup>[1]</sup>—duty of each spouse to be present: "to live together, observe mutual love, respect and fidelity, and render mutual help and support."<sup>[2]</sup>

Respondent Jose B. Sareñogon (Jose) was an overseas Filipino worker. Harsh realities, such as the lack of economic opportunities at home compounded with the need to provide for a fledgling family, compelled him to work abroad as a seafarer. However, because of Jose's dire situation, not only he but also his wife Netchie S. Sareñogon (Netchie) was compelled to go abroad in search of greener pastures. Within a month of being married, Jose and Netchie had to endure the bitterness of being separated in foreign lands just to make ends meet.<sup>[3]</sup>

As things would turn out, it was not only their deliberate, self-imposed separation that Jose would have to endure. Three months after leaving home for employment overseas, Jose received no communication from Netchie.<sup>[4]</sup> Even his inquiries with Netchie's parents proved futile as they were not to be found in their residence in Clarin, Misamis Occidental.<sup>[5]</sup> Undaunted, Jose personally searched for Netchie as soon as his means allowed him—that is, as soon as his contract as a seafarer expired—approaching her relatives and friends, all to no avail.<sup>[6]</sup> It was only after all these that Jose resigned himself to Netchie's loss and pursued appropriate legal action through the Petition we now resolve.<sup>[7]</sup>

The majority is of the opinion that Jose's Petition for declaration of Netchie's presumptive death must be denied. It concludes that Jose failed to show that he acted out of the well-founded belief that Netchie was already dead and asserts that Jose's efforts did not show "honest-to-goodness efforts"<sup>[8]</sup> to ascertain whether Netchie was still alive. In doing so, the majority relies chiefly on Republic of the Philippines v. Cantor,<sup>[9]</sup> where a "strict standard"<sup>[10]</sup> was imposed on petitions for declaration of presumptive death of absent spouses.

I registered my Dissent in Cantor, I do so again here.

As in Cantor,<sup>[11]</sup> I maintain that such a strict standard cannot be the basis for appreciating the efforts made by a spouse in ascertaining the status and whereabouts of his or her absent spouse. This strict standard makes it apparent that marital obligations remain incumbent only upon the present spouse. It unduly reduces the mutual duty of presence to the sole and exclusive obligation of the spouse compelled to embark on a search. It turns a blind eye to how the absent spouse has failed to live up to his or her own duty to be present. As I emphasized in my Dissent in the similar case of Republic of the Philippines v. Orcelino-Villanueva:<sup>[12]</sup>

The marital obligations provided for by the Family Code require the continuing presence of each spouse. A spouse is well to suppose that this shall be resolutely fulfilled by the other spouse. Failure to do so for the period established by law gives rise to the presumption that the absent spouse is dead, thereby enabling the

spouse present to remarry.[13]

Petitions for declaration of presumptive death of an absent spouse are specifically provided for in Article 41 of the Family Code, which reads:

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.

Article 41 permits a spouse to seek judicial relief, not on the basis of antecedent occurrences that have actually transpired, but on the mere basis of a "belief." Article 41 petitions are, thus, unique in that they may be initiated and prosper not based on something concrete, but based on something that can be considered an abstraction: a spouse's state of mind.[14] Because this abstraction cannot otherwise be factually established, it becomes necessary to inquire into how the petitioning spouse actually conducted himself or herself, that is, his or her overt acts.

Article 41 imposes a qualitative standard for the availing of relief. Not only must there be a belief, this belief must be "well-grounded." To say that this belief is well-grounded is to say that there is "reasonable basis for holding to such belief." [15] Therefore, what Article 41 requires is the satisfaction of a basic and plain test rationality.[16]

What is rational or reasonable to a person is a matter that cannot be dealt with in absolute terms. Context is imperative. In appreciating reasonableness, cut-and-dried a priori standards cannot control. Reliance on such standards erroneously presupposes similarity, if not complete uniformity, of human experience:

What is rational in each case depends on context. Rationality is not determined by the blanket imposition of pre-conceived standards. Rather, it is better determined by an appreciation of a person's unique circumstances.[17]

As vital as the point from which Article 41 petitions proceed (i.e., reasonable belief) is the point to which they intend to proceed, that is, sustaining a mere presumption. As crucial as the starting point of a well-founded belief is the intended endpoint of a mere presumption:

[A]ll that Article 41 calls to sustain is a presumption. By definition, there is no need for absolute certainty. A presumption is, by nature, favorable to a party and dispenses with the burden of proving. Consequently, neither is there a need for conduct that establishes such a high degree of cognizance that what is established is proof, and no longer a presumption:

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 to show enough proof of a well-founded belief, is to insist on an inordinate and intemperate standard.[18]

The figurative bookends—the root and the cusp—of Article 41 petitions delineate the boundaries of judicial inquiry. A strict standard grounded on idealized standards, on "what should have been," is misplaced.

The dearth of resources at Jose's disposal is manifest. It was for the precise reason of his modest status that both he and his wife found themselves having to leave the Philippines for employment within only a month of being

married.

What remains clear is that Jose exerted efforts as best as he could. Even as his circumstances prevented him from returning to the Philippines, he searched for Netchie through her parents. However, even Netchie's parents could not be found. As soon as he was able to return to the Philippines, that is, as soon as his contract as a seafarer expired, he personally launched a search for Netchie. Undaunted by the absence of Netchie's own parents, Jose asked Netchie's other relatives and friends for her whereabouts. Even this, however, proved futile.

The circumstances of Netchie's absence are attested to not only by Jose's own testimony but also by those of Netchie's own aunt and Jose's brother.[19]

Jose may not have been a man of disconsolate or utterly miserable means, but he was certainly one who had to contend with his modest and limited capacities. It is in light of this that his efforts must be appreciated. It may be conceded that Jose could have engaged in other, ostensibly more painstaking efforts, such as seeking the aid of police officers, filing a formal missing person report, and announcing Netchie's absence in radio or television programs. However, insisting on these other, idyllic acts that Jose could have done compels him to comply with illusory objectives that may just have been beyond his means. As I emphasized in my Dissent in *Orcelino-Villanueva*:

This court must realize that insisting upon an ideal will never yield satisfactory results. A stringent evaluation of a party's efforts made out of context will always reveal means through which a spouse could have 'done more' or walked the proverbial extra mile to ascertain his or her spouse's whereabouts. A reason could always be conceived for concluding that a spouse did not try 'hard enough.' [20]

The majority characterizes Jose's search as a mere "passive search"[21] and notes that Jose failed to satisfy the standards supposedly set by Cantor.[22] I caution against the use of such dismissive descriptions as "passive" in the face of seeming non-compliance with Cantor's requirements. Even more, I caution against a continuing and indiscriminate reliance on Cantor's stringent requirements. Doing so proceeds from a misplaced presumption that the factual moorings of all Article 41 petitions are alike and that the standards that suffice for one case are the only ones that will suffice for all others.

Spouses are fundamentally called "to live together, observe mutual love, respect and fidelity, and render mutual help and support." [23] Presence is integral to marital relations. As I explained in my Dissent in *Cantor*:

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.

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-grounded) 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" 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.[24] (Emphasis in the

original)

Focusing on the supposed inadequacies of Jose's efforts makes it seem as though the burden of presence is his alone to bear, when it is Netchie who is missing. It is she who has proven herself no longer capable of performing her marital obligations. As she has been absent for the statutorily prescribed period despite her obligations as Jose's spouse, Netchie must be considered presumptively dead.

The majority heavily quotes from Cantor and cites the supposed rationale for imposing a strict standard: that is, to ensure that Article 41 petitions are not used as shortcuts to undermine the indissolubility of marriage. I addressed this matter in my Dissent in *Orcelino-Villanueva*:

While this is a valid concern, the majority goes to unnecessary lengths to discharge this burden. Article 41 of the Family Code itself concedes that there is a degree of risk in presuming a spouse to be dead, as the absent spouse may, in fact, be alive and well. Thus, Article 41 provides that declarations of presumptive death are "without prejudice to the reappearance of the absent spouse." The state is thus not bereft of remedies.

Consistent with this, Article 42 of the Family Code provides for the automatic termination of the subsequent marriage entered into by the present spouse should the absent spouse reappear:

Art. 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

Moreover, in *Santos v. Santos*, we recognized that in cases where a declaration of presumptive death was fraudulently obtained, the subsequent marriage shall not only be terminated, but all other effects of the declaration nullified by a successful petition for annulment of judgment:

The proper remedy for a judicial declaration of presumptive death obtained by extrinsic fraud is an action to annul the judgment. An affidavit of reappearance is not the proper remedy when the person declared presumptively dead has never been absent.

....

Therefore, for the purpose of not only terminating the subsequent marriage but also of nullifying the effects of the declaration of presumptive death and the subsequent marriage, mere filing of an affidavit of reappearance would not suffice.[25] (Citations omitted)

As with Cantor and *Orcelino-Villanueva*, "[t]he majority is gripped with the apprehension that a petition for declaration of presumptive death may be availed of as a dangerous expedient." [26] As also with these cases, however, nothing here sustains and justifies fear. Inordinate anxiety is all that there is. What is manifest is that Jose has established facts that warrant the declaration that Netchie is presumptively dead. Thus, the present Petition must be denied.

ACCORDINGLY, I vote to DENY the Petition. The Decision of the Court of Appeals in CA-G.R. SP No. 04158-MIN affirming the January 31, 2011 Decision of Branch 15 of the Regional Trial Court, Ozamis City, declaring Netchie S. Sareñogon presumptively dead, pursuant to Article 41 of the Family Code, must be affirmed.

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[1] 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."

[2] FAMILY CODE, art. 68.

[3] Rollo, p. 43

[4] Id.

[5] Id. at 43-44.

[6] Id.

[7] Id.

[8] Ponencia, p. 7.

[9] G.R. No. 184621, December 10, 2013, 712 SCRA 1 [Per J. Brion, En Banc].

[10] Ponencia, p. 10.

[11] J. Leonen, Dissenting Opinion in Republic of the Philippines v. Cantor, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 35-53 [Per J. Brion, En Banc].

[12] J. Leonen, Dissenting Opinion in Republic of the Philippines v. Orcelino-Villanueva, G.R. No. 210929, July 29, 2015 <[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf)> [Per J. Mendoza, Second Division].

[13] Id. at 2.

[14] Republic v. Court of Appeals and Alegro, 513 Phil. 391 (2005) [Per J. Callejo, Sr., Second Division].

[15] J. Leonen, Dissenting Opinion in Republic v. Cantor, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 48 [Per J. Brion, En Banc].

[16] Id.

[17] J. Leonen, Dissenting Opinion in Republic of the Philippines v. Orcelino-Villanueva, G.R. No. 210929, July 29, 2015 <[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf)> 3 [Per J. Mendoza, Second Division].

[18] Id., citing J. Leonen, Dissenting Opinion in Republic v. Cantor, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 48 [Per J. Brion, En Banc].

[19] Rollo, p. 44.

[20] J. Leonen, Dissenting Opinion in Republic of the Philippines v. Orcelino-Villanueva, G.R. No. 210929, July 29, 2015 <[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf)> [Per J. Mendoza, Second Division].

[21] Ponencia, p. 9.

[22] Id. As the ponencia summarizes: "[T]he degree of diligence and reasonable search required by law is not met (1) when there is failure to present the persons from whom the present spouse allegedly made inquiries especially the absent spouse's relatives or neighbors and friends, (2) when there is failure to report the missing spouse's purported disappearance or death to the police or mass media, and (3) when the present spouse's evidence might or would only show that the absent spouse chose not to communicate, but not necessarily that the latter was

indeed dead."

[23] FAMILY CODE, art. 68.

[24] J. Leonen, Dissenting Opinion in Republic v. Cantor, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 51-52 [Per J. Brion, En Banc], citing 1 ARTURO M. TOLENTINO, Commentaries and Jurisprudence on the Civil Code of the Philippines, 281-282 (1990), in turn citing People v. Glab, 13 App (2d) 528, 57 Pac. (2d) 588 and Harrington Estate, 140 Cal. 244, 73 Pac. 1000; and FAMILY CODE, art. 68.

[25] J. Leonen, Dissenting Opinion in Republic of the Philippines v. Orcelino-Villanueva, G.R. No. 210929, July 29, 2015 <[http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929\\_leonen.pdf](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf)> 5-6 [Per J. Mendoza, Second Division].

[26] Id. at 6.

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