

ESTRELLITA TADEO-MATIAS, PETITIONER, V. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

G.R. No. 230751. April 25, 2018

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal[1] assailing the Decision[2] dated November 28, 2016 and Resolution[3] dated March 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 129467.

The facts are as follows:

On April 10, 2012, petitioner Estrellita Tadeo-Matias filed before the Regional Trial Court (RTC) of Tarlac City a petition for the declaration of presumptive death of her husband, Wilfredo N. Matias (Wilfredo).[4] The allegations of the petition read:

- [Petitioner] is of legal age, married to [Wilfredo], Filipino and curr[e]ntly a resident of 106 Molave street, Zone B, San Miguel, Tarlac City;
- [Wilfredo] is of legal age, a member of the Philippine Constabulary and was assigned in Arayat, Pampanga since August 24, 1967[;]
- The [petitioner and [Wilfredo] entered into a lawful marriage on January 7, 1968 in Imbo, Anda, Pangasinan x x x;
- After the solemnization of their marriage vows, the couple put up their conjugal home at 106 Molave street, Zone B, San Miguel, Tarlac City;
- [Wilfredo] continued to serve the Philippines and on September 15, 1979, he set out from their conjugal home to again serve as a member of the Philippine Constabulary;
- [Wilfredo] never came back from his tour of duty in Arayat, Pampanga since 1979 and he never made contact or communicated with the [p]etitioner nor to his relatives;
- That according to the service record of [Wilfredo] issued by the National Police Commission, [Wilfredo] was already declared missing since 1979 x x x;
- Petitioner constantly pestered the then Philippine Constabulary for any news regarding [her] beloved husband [Wilfredo], but the Philippine Constabulary had no answer to his whereabouts, [neither] did they have any news of him going AWOL, all they know was he was assigned to a place frequented by the New People's Army;
- [W]eeks became years and years became decades, but the [p]etitioner never gave up hope, and after more than three (3) decades of waiting, the [petitioner is still hopeful, but the times had been tough on her, specially with a meager source of income coupled with her age, it is now necessary for her to request for the benefits that rightfully belong to her in order to survive;

- [T]hat one of the requirements to attain the claim of benefits is for a proof of death or at least a declaration of presumptive death by the Honorable Court;

- That this petition is being filed not for any other purpose but solely to claim for the benefit under P.D. No. 1638 as amended.

The petition was docketed as Spec. Proc. No. 4850 and was raffled to Branch 65 of the Tarlac City RTC. A copy of the petition was then furnished to the Office of the Solicitor General (OSG).

Subsequently, the OSG filed its notice of appearance on behalf of herein respondent Republic of the Philippines (Republic).[5]

On January 15, 2012, the RTC issued a Decision[6] in Spec. Proc. No. 4850 granting the petition. The dispositive portion of the Decision reads:[7]

WHEREFORE, in view of the foregoing, the Court hereby declared (sic) WILFREDO N. MATIAS absent or presumptively dead under Article 41 of the Family Code of the Philippines for purposes of claiming financial benefits due to him as former military officer.

x x x x

SO ORDERED. (Emphasis supplied)

The Republic questioned the decision of the RTC via a petition for certiorari.[8]

On November 28, 2012, the CA rendered a decision granting the certiorari petition of the Republic and setting aside the decision of the RTC. It accordingly disposed:

WFIEREFORRE, premises considered, the petition for certiorari is GRANTED. The Decision dated January 15, 2012 of the Regional Trial Court, branch 65, Tarlac City, in Special Proceeding no. 4850 is ANNULLED and SET ASIDE, and the petition is DISMISSED.

The CA premised its decision on the following ratiocinations:

- The RTC erred when it declared Wilfredo presumptively dead on the basis of Article 41 of the Family Code (FC). Article 41 of the FC does not apply to the instant petition as it was clear that petitioner does not seek to remarry. If anything, the petition was invoking the presumption of death established under Articles 390 and 391 of the Civil Code, and not that provided for under Article 41 of the FC.

- Be that as it may, the petition to declare Wilfredo presumptively dead should have been dismissed by the RTC. The RTC is without authority to take cognizance of a petition whose sole purpose is to have a person declared presumptively dead under either Article 390 or Article 391 of the Civil Code. As been held by jurisprudence, Articles 390 and 391 of the Civil Code merely express rules of evidence that allow a court or a tribunal to presume that a person is dead—which presumption may be invoked in any action or proceeding, but itself cannot be the subject of an independent action or proceeding.

Petitioner moved for reconsideration, but the CA remained steadfast. Hence, this appeal.

Our Ruling

We deny the appeal.

I

The CA was correct. The petition for the declaration of presumptive death filed by the petitioner is not an authorized suit and should have been dismissed by the RTC. The RTC's decision must, therefore, be set aside.

RTC Erred in Declaring the Presumptive Death of Wilfredo under Article 41 of the FC; Petitioner's Petition for the Declaration of Presumptive Death Is Not Based on Article 41 of the FC, but on the Civil Code

A conspicuous error in the decision of the RTC must first be addressed.

It can be recalled that the RTC, in the fallo of its January 15, 2012 Decision, granted the petitioner's petition by declaring Wilfredo presumptively dead "under Article 41 of the FC." By doing so, the RTC gave the impression that the petition for the declaration of presumptive death filed by petitioner was likewise filed pursuant to Article 41 of the FC.[9] This is wrong.

The petition for the declaration of presumptive death filed by petitioner is not an action that would have warranted the application of Article 41 of the FC because petitioner was not seeking to remarry. A reading of Article 41 of the FC shows that the presumption of death established therein is only applicable for the purpose of contracting a valid subsequent marriage under the said law. Thus:

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.

Here, petitioner was forthright that she was not seeking the declaration of the presumptive death of Wilfredo as a prerequisite for remarriage. In her petition for the declaration of presumptive death, petitioner categorically stated that the same was filed "not for any other purpose but solely to claim for the benefit under P.D. No. 1638 as amended." [10]

Given that her petition for the declaration of presumptive death was not filed for the purpose of remarriage, petitioner was clearly relying on the presumption of death under either Article 390 or Article 391 of the Civil Code [11] as the basis of her petition. Articles 390 and 391 of the Civil Code express the general rule regarding presumptions of death for any civil purpose, to wit:

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

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

Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

(2) A person in the armed forces who has taken part in war, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

Verily, the RTC's use of Article 41 of the FC as its basis in declaring the presumptive death of Wilfredo was misleading and grossly improper. The petition for the declaration of presumptive death filed by petitioner was based on the Civil Code, and not on Article 41 of the FC.

Petitioner's Petition for Declaration of Presumptive Death Ought to Have Been Dismissed; A Petition Whose Sole Objective is to Declare a Person Presumptively Dead Under the Civil Code, Like that Filed by the Petitioner Before the RTC, Is Not a Viable Suit in Our Jurisdiction

The true fault in the RTC's decision, however, goes beyond its misleading fallo. The decision itself is objectionable.

Since the petition filed by the petitioner merely seeks the declaration of presumptive death of Wilfredo under the Civil Code, the RTC should have dismissed such petition outright. This is because, in our jurisdiction, a petition whose sole objective is to have a person declared presumptively dead under the Civil Code is not regarded as a valid suit and no court has any authority to take cognizance of the same.

The above norm had its conceptual roots in the 1948 case of *In re: Petition for the Presumption of Death of Nicolai Szatraw*.^[12] In the said case, we held that a rule creating a presumption of death^[13] is merely one of evidence that—while may be invoked in any action or proceeding—cannot be the lone subject of an independent action or proceeding. Szatraw explained:

The rule invoked by the latter is merely one of evidence which permits the court to presume that a person is dead after the fact that such person had been unheard from in seven years had been established. This presumption may arise and be invoked and made in a case, either in an action or in a special proceeding, which is tried or heard by, and submitted for decision to, a competent court. Independently of such an action or special proceeding, the presumption of death cannot be invoked, nor can it be made the subject of an action or special proceeding. In this case, there is no right to be enforced nor is there a remedy prayed for by the petitioner against her absent husband. Neither is there a prayer for the final determination of his right or status or for the ascertainment of a particular fact, for the petition does not pray for a declaration that the petitioner's husband is dead, but merely asks for a declaration that he be presumed dead because he had been unheard from in seven years. If there is any pretense at securing a declaration that the petitioner's husband is dead, such a pretension cannot be granted because it is unauthorized. The petition is for a declaration that the petitioner's husband is presumptively dead. But this declaration, even if judicially made, would not improve the petitioner's situation, because such a presumption is already established by law. A judicial pronouncement to that effect, even if final and executory, would still be a *prima facie* presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or matter involved in a case, or upon which a competent court has to pass. The latter must decide finally the controversy between the parties, or determine finally the right or status of a party or establish finally a particular fact, out of which certain rights and obligations arise or may arise; and once such controversy is decided by a final judgement, or such right or status determined, or such particular fact established, by a final decree, then the judgement on the subject of the controversy, or the decree upon the right or status of a party or upon the existence of a particular fact, becomes *res judicata*, subject to no collateral attack, except in a few rare instances especially provided by law. It is, therefore, clear that a judicial declaration that a person is presumptively dead, because he had been unheard from in seven years, being a presumption *juris tantum* only, subject to contrary proof, cannot reach the stage of finality or become final. (Citations omitted and emphasis supplied)

The above ruling in Szatraw has since been used by the subsequent cases of *Lukban v. Republic*^[14] and *Gue v.*

Republic[15] in disallowing petitions for the declaration of presumptive death based on Article 390 of the Civil Code (and, implicitly, also those based on Article 391 of the Civil Code).

Dissecting the rulings of Szatraw, Gue and Lukban collectively, we are able to ascertain the considerations why a petition for declaration of presumptive death based on the Civil Code was disallowed in our jurisdiction, viz:[16]

- Articles 390 and 391 of the Civil Code merely express rules of evidence that only allow a court or a tribunal to presume that a person is dead upon the establishment of certain facts.

- Since Articles 390 and 391 of the Civil Code merely express rules of evidence, an action brought exclusively to declare a person presumptively dead under either of the said articles actually presents no actual controversy that a court could decide. In such action, there would be no actual rights to be enforced, no wrong to be remedied nor any status to be established.

- A judicial pronouncement declaring a person presumptively dead under Article 390 or Article 391 of the Civil Code, in an action exclusively based thereon, would never really become "final" as the same only confirms the existence of a prima facie or disputable presumption. The function of a court to render decisions that is supposed to be final and binding between litigants is thereby compromised.

- Moreover, a court action to declare a person presumptively dead under Articles 390 and 391 of the Civil Code would be unnecessary. The presumption in the said articles is already established by law.

Verily, under prevailing case law, courts are without any authority to take cognizance of a petition that—like the one filed by the petitioner in the case at bench—only seeks to have a person declared presumptively dead under the Civil Code. Such a petition is not authorized by law.[17] Hence, by acting upon and eventually granting the petitioner's petition for the declaration of presumptive death, the RTC violated prevailing jurisprudence and thereby committed grave abuse of discretion. The CA, therefore, was only correct in setting aside the RTC's decision.

II

Before bringing this case to its logical conclusion, however, there are a few points the Court is minded to make.

It is not lost on this Court that much of the present controversy stemmed from the misconception that a court declaration is required in order to establish a person as presumptively dead for purposes of claiming his death benefits as a military serviceman under pertinent laws.[18] This misconception is what moved petitioner to file her misguided petition for the declaration of presumptive death of Wilfredo and what ultimately exposed her to unnecessary difficulties in prosecuting an otherwise simple claim for death benefits either before the Philippine Veterans' Affairs Office (PVAO) or the Armed Forces of the Philippines (AFP).

What the Court finds deeply disconcerting, however, is the possibility that such misconception may have been peddled by no less than the PVAO and the AFP themselves; that such agencies, as a matter of practice, had been requiring claimants, such as the petitioner, to first secure a court declaration of presumptive death before processing the death benefits of a missing serviceman.

In view of the foregoing circumstance, the Court deems it necessary to issue the following guidelines—culled from relevant law and jurisprudential pronouncements—to aid the public, PVAO and the AFP in making or dealing with claims of death benefits which are similar to that of the petitioner:

- The PVAO and the AFP can decide claims of death benefits of a missing soldier without requiring the claimant to first produce a court declaration of the presumptive death of such soldier. In such claims, the PVAO and the

AFP can make their own determination, on the basis of evidence presented by the claimant, whether the presumption of death under Articles 390 and 391 of the Civil Code may be applied or not. It must be stressed that the presumption of death under Articles 390 and 391 of the Civil Code arises by operation of law, without need of a court declaration, once the factual conditions mentioned in the said articles are established.[19] Hence, requiring the claimant to further secure a court declaration in order to establish the presumptive death of a missing soldier is not proper and contravenes established jurisprudence on the matter.[20]

- In order to avail of the presumption, therefore, the claimant need only present before the PVAO or the appropriate office of the AFP, as the case may be, any "evidence" which shows that the concerned soldier had been missing for such number of years and/or under the circumstances prescribed under Articles 390 and 391 of the Civil Code. Obviously, the "evidence" referred to here excludes a court declaration of presumptive death.

- The PVAO or the AFP, as the case may be, may then weigh the evidence submitted by the claimant and determine their sufficiency to establish the requisite factual conditions specified under Article 390 or 391 of the Civil Code in order for the presumption of death to arise. If the PVAO or the AFP determines that the evidence submitted by the claimant is sufficient, they should not hesitate to apply the presumption of death and pay the latter's claim. 4. If the PVAO or the AFP determines that the evidence submitted by the claimant is not sufficient to invoke the presumption of death under the Civil Code and denies the latter's claim by reason thereof, the claimant may file an appeal with the Office of the President (OP) pursuant to the principle of exhaustion of administrative remedies.

If the OP denies the appeal, the claimant may next seek recourse via a petition for review with the CA under Rule 43 of the Rules of the Court. And finally, should such recourse still fail, the claimant may file an appeal by certiorari with the Supreme Court.

While we are constrained by case law to deny the instant petition, the Court is hopeful that, by the foregoing guidelines, the unfortunate experience of the petitioner would no longer be replicated in the future.

WHEREFORE, the instant appeal is DENIED. The Decision dated November 28, 2016 and Resolution dated March 20, 2017 of the Court of Appeals in CA-G.R. SP No. 129467 are AFFIRMED. The Court declares that a judicial decision of a court of law that a person is presumptively dead is not a requirement before the Philippine Veterans' Affairs Office or the Armed Forces of the Philippines can grant and pay the benefits under Presidential Decree No. 1638.

Let a copy of this decision be served to the Philippine Veterans' Affairs Office and the Armed Forces of the Philippines for their consideration.

SO ORDERED.

Bersamin, Martires, and Gesmundo, JJ., concur.

Leonen, J., dissent. See separate opinion.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 29-36. The decision was penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Magdangal M. De Leon and Elihu A. Ybañez concurring.

[3] Id. at 38-39.

[4] Id. at 46-48.

[5] Id. at 78.

[6] Id. at 78-80. The decision was penned by Judge Ma. Magdalena A. Balderama.

[7] This is actually the corrected version of the dispositive portion of the RTC decision. Originally, the dispositive portion of the said decision read:

WHEREFORE, in view of the foregoing, the Court hereby declared (sic) WILFREDO N. MATIAS absent or presumptively dead under Article 41 of the Family Code of the Philippines for purposes of remarriage. x x x x

SO ORDERED. (Emphasis supplied)

The RTC issued the corrected version of the dispositive portion on the same day it issued the decision.

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

[9] Executive Order No. 209, s. 1987.

[10] Rollo, p. 47.

[11] Republic Act No. 386.

[12] No. L-1780, August 31, 1948.

[13] The rule expressing the presumption of death referred to in the case of Szatraw is found under Section 334 (24) of Act No. 190 or the Code of the Civil Procedure of the Philippines. The section reads:

Section 334. Disputable Presumptions. - The following presumptions are satisfactory, if uncontradicted, but they are disputable, and may be contradicted by other evidence:

x x x x

24. That a person not heard from in seven years is dead.

[14] 98 Phil. 574 (1956)

[15] 107 Phil. 381 (1960).

[16] In re: Petition for the Presumption of Death of Nicolai Szatraw, supra note 12, in relation to Lukban v. Republic, supra note 14 and Gue v. Republic, supra note 15.

[17] Valdez v. Republic of the Philippines, G.R. No. 180863, September 8, 2009, citing Gue v. Republic, supra note 15.

[18] Rollo, p. 47.

[19] Manuel v People of the Philippines, G.R. No. 165842, November 29, 2005 citing TOLENTINO, THE NEW CIVIL CODE, VOL. I, 690. See also Valdez v. Republic, supra note 17.

[20] In re: Petition for the Presumption of Death of Nicolai Szatraw, supra note 12, in relation to Lukban v. Republic, supra note 14 and Gue v. Republic, supra note 15.

[21] The "evidence" referred to include, but are not limited to, the official service records of the missing soldier showing for how long he had been missing and his last assignments and affidavits of persons who knew the circumstances of the missing soldiers' disappearance.

DISSENTING OPINION

LEONEN, J:

I dissent.

Petitioner is 72 years old. Her husband, Wilfredo N. Matias (Wilfredo), a soldier with the Philippine Constabulary, has been missing since 1979, or for almost 39 years now, after being assigned to Arayat, Pampanga, an area heavy with the presence of the New People's Army. For decades, petitioner single-handedly raised and supported their three (3) children. The case arose for the sole reason that petitioner has, since 1987,[1] sought the benefits due her husband under Presidential Decree No. 1638, in relation to Republic Act No. 6948.

Considering these circumstances, on the basis of equity, I vote to grant the petition.

I

On January 15, 2012, the trial court released two (2) decisions. While the bodies of the decisions are the same, the fallo of the first decision stated:

WHEREFORE, in view of the foregoing, the Court hereby declares WILFREDO N. MATIAS absent or presumptively dead under Article 41 of the Family Code of the Philippines for purposes of remarriage.

It is understood that this Decision is without prejudice to the re-appearance of WILFREDO N. MATIAS.

SO ORDERED.[2]

The second one corrected the fallo of the first decision as to the purpose of declaring Wilfredo presumptively dead, but still erroneously mentioned Article 41[3] as the applicable law:

WHEREFORE, in view of the foregoing, the Court hereby declares WILFREDO N. MATIAS absent or presumptively dead under Article 41 of the Family Code of the Philippines for purposes of claiming financial benefits due to him as former military officer.

It is understood that this Decision is without prejudice to the re-appearance of WILFREDO N. MATIAS.

SO ORDERED.[4]

The bodies of these decisions never mentioned Article 41 of the Family Code. The petition itself never mentioned it. From the start, petitioner was clear that her intention in filing a case for the declaration of presumptive death was to be able to avail of the benefits that Wilfredo had as a member of the Philippine Constabulary. One of the requirements to claim such benefits is proof of death or a declaration of presumptive death by the court.[5]

As no mention of Article 41 of the Family Code was made by petitioner or by the trial court, and petitioner has made it clear that the petition was to claim her husband's financial benefits and not to remarry, to my mind, it is unambiguous that Articles 390[6] and 391[7] of the Civil Code are applicable. While the general rule is that the fallo "prevails over the body of the decision in case of conflict, this rule does not apply where it is clear from the body of the decision that there was a glaring error made in the dispositive portion, in which case the body of the decision will control." [8]

Asian Center for Career and Employment v. National Labor Relations Commission[9] instructed:

The general rule is that where there is a conflict between the dispositive portion or the fallo and the body of the decision, the fallo controls. This rule rests on the theory that the fallo is the final order while the opinion in the body is merely a statement ordering nothing. However, where the inevitable conclusion from the body of

the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.[10] (Citation omitted)

II

The ponente relies on *In re: Szatraw v. Sors*,[11] and *Gue v. Republic*[12] to support the claim that pursuing as a separate action the declaration of presumptive death of a person cannot prosper. I agree, but offer a different appreciation of these cases.

In *In re: Szatraw*,[13] petitioner was married to a Polish national. Three (3) years into their marriage, petitioner's husband left their conjugal home with their only son. Upon inquiry from friends, petitioner was told that her husband was in Shanghai. However, Polish citizens who visited Shanghai informed her that her husband and child could not be found in Shanghai. After an absence of seven (7) years, petitioner filed a case to have her husband declared presumptively dead and to preserve her parental authority over their son, should he resurface. This Court denied the petition as the case was neither for the settlement of the estate of the husband, as he had no property with petitioner, nor was it to claim insurance benefits, as his life was not insured.

Gue v. Republic[14] involved almost the same circumstances. Petitioner was married to her husband with whom she had two (2) children. After eight (8) years of marriage, her husband left for Shanghai, never to be heard from again. He had not written, called, or communicated with petitioner. Despite petitioner's diligent efforts, she could not locate her husband. They did not have any property together. This Court quoted *In re: Szatraw* at length and ruled that based on the doctrine in that case, the petition for the declaration of presumptive death must be denied.

The doctrine in these two (2) cases is not applicable to the present case as petitioner did not institute the case independently, in a vacuum. She did so because she needed a document, an official declaration of her husband's death in order to claim benefits. I am certain that this Court is aware of petitioner's long-standing effort to claim from the Philippine Veteran's Affairs Office. She failed precisely because the mere insistence that no case has to be filed for the presumption of death under Articles 390 and 391 of the Civil Code was insufficient.

Nowhere in the rules and jurisprudence does it state that a case for presumptive death may only be filed for purposes of remarriage or succession. While Article 41 of the Family Code is specific to remarriage, Articles 390 and 391 of the Civil Code are silent on the scope of its application. I submit that it can also be to claim government and insurance benefits, as in this case, where money, a means of support, and even the preservation of property, are at stake. What jurisprudence guards against is the blanket remedy of having a person declared presumptively dead without specifying this declaration's purpose because then, it becomes susceptible to unscrupulous use.

Moreover, while it is true that filing a case for the declaration of presumptive death may not have been necessary, still no damage will result in granting the petition.

Under the October 12, 2005 Philippine Veteran's Affairs Office Memorandum on the Guidelines on Disposition of Posthumous Pensions, a certified true copy of the death certificate of the member is required to claim benefits.[15] In the Philippine Veteran's Affairs Office website, the same requirement appears with the additional requirement of a "court declaration":

Effectivity of pension:

Death of the veteran or 09 April 1990 whichever is later.

1. Surviving spouse (death result of service connected disability)

1.1 Last re-rating from [Disability Ratings Board]

1.2 Death certificate of veteran from [Local Civil Registrar] with registry number/casualty report

1.3 Marriage contract certificates from [Local Civil Registrar] with registry number

- 1.4 AGO form 23
- 1.5 Marriage contract
-

All documents must be either or (sic) authenticated by the office which issued the same. We do not honor photocopies. The claimant must personally file.

Note:

- 1. Burial permit
- 2. Death certificate of veteran issued b[y] the parish church
- 3. Late registration of court declaration[16]

It would be a most unjust outcome for this Court to deny this petition when the only reason the case was filed was because petitioner was instructed that she needed a court order that establishes her husband as presumptively dead. She has long suffered in wait before the Philippine Veteran's Affairs Office where the most definitive declaration she obtained was that Wilfredo "was declared missing since 1979 and up to present." [17] This declaration, under the Philippine Veteran's Affairs Office rules, is inadequate to claim benefits. In this case, court action clearly had to be pursued.

Though it can be argued that the Philippine Veteran's Affairs Office must change its rules, or that it was incumbent upon the office to honor this Court's previous pronouncements to act on the presumption as it was merely disputable and evidentiary in nature, without prejudice to the deceased's reappearance, the discourse will not serve the ends of justice. Petitioner will languish further in uncertainty, not knowing if and when the Philippine Veteran's Affairs Office will release Wilfredo's benefits to her. We are here to breathe life into law, and not to stifle the outcome it seeks to achieve. If relief can be obtained more swiftly by petitioner, then we must, in good conscience, give it.

Another argument can be made in that petitioner should have just filed a case for the settlement of Wilfredo's estate, and then pleaded that he be declared presumptively dead in those proceedings. Again, I am of the opinion that petitioner should not be made to suffer when she only followed, as best she could, the requirements of the Philippine Veteran's Affairs Office. Even amongst us there is much discourse on how to proceed with Wilfredo's disappearance. It is unfair to expect petitioner to expertly navigate the nuanced jurisprudence on cases involving the declaration of presumptive death.

III

Another matter I would like to raise that was no longer discussed in the Resolution is the seemingly settled doctrine that a petition for certiorari is the proper mode of elevating matters to the Court of Appeals in all presumptive death cases, whether under Article 41 of the Family Code or under Articles 390 and 391 of the Civil Code.

This generalization must be clarified.

Article 41 of the Family Code explicitly states that the Rules on Summary Procedure shall apply if the declaration for presumptive death is sought for purposes of remarriage. The Rules on Summary Procedure prohibit the filing of a motion for reconsideration to expedite the resolution of cases.[18] Since the decision will be final and executory, no motion for reconsideration is needed. The Office of the Solicitor General must file a petition for certiorari under Rule 65 of the Rules of Court before the Court of Appeals.[19]

I submit, however, that the Rules on Summary Procedure is not applicable in cases where a declaration for presumptive death is sought to settle the estate of the deceased, or as in this case, to claim benefits.

Rule 72 of the Rules of Court enumerates the instances where the rules on special proceedings should apply:

Section 1. Subject matter of special proceedings. — Rules of special proceedings are provided for in the following cases:

- (a) Settlement of estate of deceased persons;
- (b) Escheat;
- (c) Guardianship and custody of children;
- (d) Trustees;
- (e) Adoption;
- (f) Rescission and revocation of adoption;
- (g) Hospitalization of insane persons;
- (h) Habeas corpus;
- (i) Change of name;
- (j) Voluntary dissolution of corporations;
- (k) Judicial approval of voluntary recognition of minor natural children;
- (l) Constitution of family home;
- (m) Declaration of absence and death;
- (n) Cancellation or correction of entries in the civil registry.

Section 2. Applicability of rules of civil actions. — In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings. (Emphasis supplied)

The provision on the settlement of a presumptively deceased person's estate appears in Rule 73 of the Rules of Court:

Section 4. Presumption of death. — For purposes of settlement of his estate, a person shall be presumed dead if absent and unheard from for the periods fixed in the Civil Code. But if such person proves to be alive, he shall be entitled to the balance of his estate after payment of all his debts. The balance may be recovered by motion in the same proceeding.

Rule 109 of the Rules of Court outlines cases where appeals may be made in special proceedings:

Section 1. Orders or judgments from which appeals may be taken. — An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

- (a) Allows or disallows a will;
- (b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person, is entitled;
- (c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;
- (d) Settles the account of an executor, administrator, trustee or guardian;
- (e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and
- (f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration. (Emphasis supplied).

According to Rule 40 of the Rules of Court, the manner of appeal in special proceedings is through a record on appeal.[20]

From these provisions, it is apparent that in an action for the declaration of death of a person under Articles 390 and 391 of the Civil Code, whether it is to settle his estate or for other reasons apart from remarriage, the appeal

must be made through record on appeal. No exception to the application of these rules is present. The Republic therefore availed of the wrong remedy to question the decision of the trial court.

On substantial grounds, even assuming that a petition for certiorari was the correct mode of elevating the case to the Court of Appeals, the Republic was still required to file a motion for reconsideration. Generally, a motion for reconsideration must be filed before the filing of a petition for certiorari.[21] Exceptions to this requirement are:

(a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency.[22]

None of these exceptions are present in this case. Again, it is my position that no damage will be caused in granting the petition—there is no conflict with settled jurisprudence, and relief is finally afforded to petitioner who has taken decades chasing after it.

ACCORDINGLY, I vote to GRANT the petition in order to release the benefits due to petitioner with dispatch.

[1] Rollo, p. 52.

[2] Id. at ____.

[3] FAMILY CODE, art. 41 provides:

Article 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.

[4] Rollo, p. 80.

[5] Id. at 47.

[6] CIVIL CODE, art. 390 provides:

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

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

[7] CIVIL CODE, art. 391 provides:

Article 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

- (1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;
- (2) A person in the armed forces who has taken part in war, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

[8] *Rosales v. Court of Appeals*, 405 Phil. 638, 655 (2001) [Per J. Ynares-Santiago, First Division].

[9] 358 Phil. 380 (1998) [Per J. Puno, Second Division].

[10] *Id.* at 386.

[11] 81 Phil. 461 (1948) [Per J. Padilla, En Banc].

[12] 107 Phil. 381 (1960) [Per J. Montemayor, En Banc].

[13] 81 Phil. 461 (1948) [Per J. Padilla, En Banc].

[14] 107 Phil. 381 (1960) [Per J. Montemayor, En Banc].

[15] PVAO Memorandum on Guidelines on Disposition of Posthumous Pensions (2005).

- Entitlement — Pursuant to the DOJ Opinion No. 23, Series of 2001, old age, disability and death pensions under the provisions of Republic Act No. 6948 as amended by Republic Act No. 7696 and its implementing rules and regulations, due the estate of a deceased veteran or his/her widow shall be claimed in due form by his/her legal heirs by PVAO in cases only where the veteran or his/her widow/er has duly approved application for such pension benefit.

- Basic Requirements — In all cases and regardless of the amount of the accrued/uncollected/posthumous pension, the following documents shall be submitted:

- a.) Certified True Copy of the Death Certificate of the deceased pensioner — veteran/surviving spouse pensioner or with approved claim duly issued by the NSO with corresponding Official Receipt of payment;
- b.) Evidence of filiation/relationship of the person/s claiming the accrued/uncollected/posthumous pension, e.g., birth certificate/s, marriage certificate, certified true copies thereof issued by NSO with Official Receipts of payments; AND
- c.) Application form duly accomplished and filed by qualified claimant to the posthumous pension, marked as PVAO PP Form A.

[16] Philippines Veterans Affairs Office, Death Pension < <http://server.pvao.mil.ph/Death-Pension.aspx> > (last visited on April 23, 2018).

[17] *Rollo*, p. 51.

[18] REV. SUMMARY PROC. RULE, sec. 19(c) provides:

Section 19. Prohibited pleadings and motions. — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

....

(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial[.]

[19] See *Republic v. Granada*, 687 Phil. 403 (2012) [Per J. Sereno, Second Division].

[20] RULES OF COURT, Rule 40, sec. 3 provides:

Section 3. How to appeal. — The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal.

A record on appeal shall be required only in special proceedings and in other cases of multiple or separate appeals.

The form and contents of the record on appeal shall be as provided in section 6, Rule 41. Copies of the notice of appeal, and the record on appeal where required, shall be served on the adverse party.

[21] See *Castro v. Guevarra*, 686 Phil. 1125 (20 12) [Per J. Mendoza, Third Division].

[22] *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 338 (2011) [Per J. Bersamin, First Division], citing *Francisco Motors v. Court of Appeals*, 535 Phil. 736 (2006) [Per J. Velasco, Jr., Third Division].

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