

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. GREGORIO OLASCO, RESPONDENT.

G.R. No. 94053. March 17, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

On 5 August 1988, respondent Gregorio Nolasco filed before the Regional Trial Court of Antique, Branch 10, a petition for the declaration of presumptive death of his wife Janet Monica Parker, invoking Article 41 of the Family Code. The petition prayed that respondent's wife be declared presumptively dead or, in the alternative, that the marriage be declared null and void.[1]

The Republic of the Philippines opposed the petition through the Provincial Prosecutor of Antique who had been deputized to assist the Solicitor-General in the instant case. The Republic argued, first, that Nolasco did not possess a "well-founded belief that the absent spouse was already dead;"[2] and second, Nolasco's attempt to have his marriage annulled in the same proceeding was a "cunning attempt" to circumvent the law on marriage.[3]

During trial, respondent Nolasco testified that he was a seaman and that he had first met Janet Monica Parker, a British subject, in a bar in England during one of his ship's port calls. From that chance meeting onwards, Janet Monica Parker lived with respondent Nolasco on his ship for six (6) months until they returned to respondent's hometown of San Jose, Antique on 19 November 1980 after his seaman's contract expired. On 15 January 1982, respondent married Janet Monica Parker in San Jose, Antique, in Catholic rites officiated by Fr. Henry van Tilborg in the Cathedral of San Jose.

Respondent Nolasco further testified that after the marriage celebration, he obtained another employment contract as a seaman and left his wife with his parents in San Jose, Antique. Sometime in January 1983, while working overseas, respondent received a letter from his mother informing him that Janet Monica had given birth to his son. The same letter informed him that Janet Monica had left Antique. Respondent claimed he then immediately asked permission to leave his ship to return home. He arrived in Antique in November 1983.

Respondent further testified that his efforts to look for her himself whenever his ship docked in England proved fruitless. He also stated that all the letters he had sent to his missing spouse at No. 38 Ravena Road, Allerton, Liverpool, England, the address of the bar where he and Janet Monica first met, were all returned to him. He also claimed that he inquired from among friends but they too had no news of Janet Monica.

On cross-examination, respondent stated that he had lived with and later married Janet Monica Parker despite his lack of knowledge as to her family background. He insisted that his wife continued to refuse to give him such information even after they were married. He also testified that he did not report the matter of Janet Monica's disappearance to the Philippine government authorities.

Respondent Nolasco presented his mother, Alicia Nolasco, as his witness. She testified that her daughter-in-law Janet Monica had expressed a desire to return to England even before she had given birth to Gerry Nolasco on 7

December 1982. When asked why her daughter-in-law might have wished to leave Antique, respondent's mother replied that Janet Monica never got used to the rural way of life in San Jose, Antique. Alicia Nolasco also said that she had tried to dissuade Janet Monica from leaving as she had given birth to her son just fifteen days before, but when she (Alicia) failed to do so, she gave Janet Monica P22,000.00 for her expenses before she left on 22 December 1982 for England. She further claimed that she had no information as to the missing person's present whereabouts.

The trial court granted Nolasco's petition in a Judgment dated 12 October 1988 the dispositive portion of which reads:

"Wherefore, under Article 41, paragraph 2 of the Family Code of the Philippines (Executive Order No. 209, July 6, 1987, as amended by Executive Order No. 227, July 17, 1987) this Court hereby declares as presumptively dead Janet Monica Parker Nolasco, without prejudice to her reappearance." [4]

The Republic appealed to the Court of Appeals contending that the trial court erred in declaring Janet Monica Parker presumptively dead because respondent Nolasco had failed to show that there existed a well founded belief for such declaration.

The Court of Appeals affirmed the trial court's decision, holding that respondent had sufficiently established a basis to form a belief that his absent spouse had already died.

The Republic, through the Solicitor-General, is now before this Court on a Petition for Review where the following allegations are made:

- "1. The Court of Appeals erred in affirming the trial court's finding that there existed a well-founded belief on the part of Nolasco that Janet Monica Parker was already dead; and
2. The Court of Appeals erred in affirming the trial Court's declaration that the petition was a proper case of the declaration of presumptive death under Article 41, Family Code." [5]

The issue before this Court, as formulated by petitioner is "[w]hether or not Nolasco has a well-founded belief that his wife is already dead." [6]

The present case was filed before the trial court pursuant to Article 41 of the Family Code which 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 provision 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).

When Article 41 is compared with the old provision of the Civil Code, which it superseded, [7] the following crucial differences emerge. Under Article 41, the time required for the presumption to arise has been shortened to four (4) years; however, there is need for a judicial declaration of presumptive death to enable the spouse present to remarry. [8] Also, Article 41 of the Family Code imposes a stricter standard than the Civil Code: Article 83 of the Civil Code merely requires either that there be no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so by the spouse present, or is presumed dead under Article 390 and 391 of the Civil Code. [9] The Family Code, upon the other hand, prescribes a "well founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted.

As pointed out by the Solicitor-General, there are four (4) requisites for the declaration of presumptive death under Article 41 of the Family Code:

- "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, 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." [10]

Respondent naturally asserts that he had complied with all these requirements. [11]

Petitioner's argument, upon the other hand, boils down to this: that respondent failed to prove that he had complied with the third requirement, i.e., the existence of a "well-founded belief" that the absent spouse is already dead.

The Court believes that respondent Nolasco failed to conduct a search for his missing wife with such diligence as to give rise to a "well-founded belief" that she is dead.

United States v. Biasbas, [12] is instructive as to degree of diligence required in searching for a missing spouse. In that case, defendant Macario Biasbas was charged with the crime of bigamy. He set-up the defense of a good faith belief that his first wife had already died. The Court held that defendant had not exercised due diligence to ascertain the whereabouts of his first wife, noting that:

"While the defendant testified that he had made inquiries concerning the whereabouts of his wife, he fails to state of whom he made such inquiries. He did not even write to the parents of his first wife, who lived in the Province of Pampanga, for the purpose of securing information concerning her whereabouts. He admits that he had a suspicion only that his first wife was dead. He admits that the only basis of his suspicion was the fact that she had been absent. x x x" [13]

In the case at bar, the Court considers that the investigation allegedly conducted by respondent in his attempt to ascertain Janet Monica Parker's whereabouts is too sketchy to form the basis of a reasonable or well-founded belief that she was already dead. When he arrived in San Jose, Antique after learning of Janet Monica's departure, instead of seeking the help of local authorities or of the British Embassy, [14] he secured another seaman's contract and went to London, a vast city of many millions of inhabitants, to look for her there.

"Q:

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

A:

Yes, Sir.

Court:

How did you do that?

A:

I secured another contract with the ship and we had a trip to London and I went to London to look for her I could not find her (sic)." [15] (Underscoring supplied)

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

"x x x. Well, while the cognoscente (sic) would readily know the geographical difference between London and Liverpool, for a humble seaman like Gregorio the two places could mean one --- place in England, the port where his ship docked and where he found Janet. Our own provincial folks, every time they leave home to visit relatives in Pasay City, Kalookan City, or Parañaque, would announce to friends and relatives, 'We're going to Manila.' This apparent error in naming of places of destination does not appear to be fatal." [16]

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

The Court also views respondent's claim that Janet Monica declined to give any information as to her personal background even after she had married respondent [17] too convenient an excuse to justify his failure to locate her. The same can be said of the loss of the alleged letters respondent had sent to his wife which respondent claims were all returned to him. Respondent said he had lost these returned letters, under unspecified circumstances.

Neither can this Court give much credence to respondent's bare assertion that he had inquired from their friends of her whereabouts, considering that respondent did not identify those friends in his testimony. The Court of Appeals ruled that since the prosecutor failed to rebut this evidence during trial, it is good evidence. But this kind of evidence cannot, by its nature, be rebutted. In any case, admissibility is not synonymous with credibility. [18] As noted before, there are serious doubts to respondent's credibility. Moreover, even if admitted as evidence, said testimony merely tended to show that the missing spouse had chosen not to communicate with their common acquaintances, and not that she was dead.

Respondent testified that immediately after receiving his mother's letter sometime in January 1983, he cut short his employment contract to return to San Jose, Antique. However, he did not explain the delay of nine (9) months from January 1983, when he allegedly asked leave from his captain, to November 1983 when he finally reached San Jose. Respondent, moreover, claimed he married Janet Monica Parker without inquiring about her parents and their place of residence. [19] Also, respondent failed to explain why he did not even try to get the help of the police or other authorities in London and Liverpool in his effort to find his wife. The circumstances of Janet Monica's departure and respondent's subsequent behaviour make it very difficult to regard the claimed belief that Janet Monica was dead a well-founded one.

In *Goitia v. Campos-Rueda*, [20] the Court stressed that:

"x x x. Marriage is an institution, the maintenance of which in its purity the public is deeply interested. It is a relationship for life and the parties cannot terminate it at any shorter period by virtue of any contract they make. x x x." [21] (Underscoring supplied)

By the same token, the spouses should not be allowed, by the simple expedient of agreeing that one of them leave the conjugal abode and never to return again, to circumvent the policy of the laws on marriage. The Court notes that respondent even tried to have his marriage annulled before the trial court in the same proceeding.

In *In Re Szatraw*, [22] the Court warned against such collusion between the parties when they find it impossible to dissolve the marital bonds through existing legal means.

While the court understands the need of respondent's young son, Gerry Nolasco, for maternal care, still the

requirements of the law must prevail. Since respondent failed to satisfy the clear requirements of the law, his petition for judicial declaration of presumptive death must be denied. The law does not view marriage like an ordinary contract. Article 1 of the Family Code emphasizes that

"x x x Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this code." (Underscoring supplied)

In *Arroyo, Jr. v. Court of Appeals*,^[23] the Court stressed strongly the need to protect

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

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

The same sentiment has been expressed in the Family Code of the Philippines in Article 149:

'The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.'"^[24]

In fine, respondent failed to establish that he had the well-founded belief required by law that his absent wife was already dead that would sustain the issuance of a court order declaring Janet Monica Parker presumptively dead.

WHEREFORE, the Decision of the Court of Appeals dated 23 February 1990, affirming the trial court's decision declaring Janet Monica Parker presumptively dead is hereby REVERSED and both Decisions are hereby NULLIFIED and SET ASIDE. Costs against respondent.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

[*] Mr. Justice Hugo E. Gutierrez, Jr. is on terminal leave.

[1] Petition, p. 2; Record, p. 7.

[2] Records, p. 13.

[3] Records, p. 14.

[4] Trial Court Decision, p. 4; Records, p. 39.

[5] Petition, p. 9; Rollo, p. 13.

[6] Id.

[7] Pertinent portions of Article 83 of the Civil Code reads:

"Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any other person other than such first spouse shall be illegal and void from its performance, unless:

x x x x x x x x

(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 the contracting such subsequent marriage, and 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."

[8] See A. V. Sempio Diy, Handbook on the Family Code of the Philippines (1988), p. 48.

[9] See generally Jones v. Hortiguella, 64 Phil. 179 (1937).

[10] Petition, p. 11; Rollo; p. 15.

[11] Memorandum for Respondent, p. 4.

[12] 25 Phil. 71 (1913).

[13] 25 Phil. at 73.

[14] TSN, 28 September 1988, p. 16.

[15] Id., p. 8.

[16] Court of Appeal's Decision, p. 6.

[17] TSN, 28 September 1988, p. 14.

[18] See generally Ramos v. Sandiganbayan, 191 SCRA 671 (1990).

[19] TSN, 28 September 1988, p. 10.

[20] 35 Phil. 252 (1919).

[21] 35 Phil. at 254.

[22] 81 Phil. 461 (1948).

[23] 203 SCRA 750 (1991).

[24] 203 SCRA at 761.

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