

FIRST DIVISION

[G.R. No. 212726, June 10, 2020]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. LEILANIE
DELA CRUZ FENOL, RESPONDENT.**

DECISION

REYES, J. JR., J.:

Assailed in this Petition for Review on *Certiorari*^[1] are the Decision^[2] dated November 28, 2013 and the Resolution^[3] dated May 26, 2014 of the Court of Appeals-Cagayan De Oro City (CA) in CA-G.R. SP No. 05084[MIN] affirming *in toto* the Decision^[4] dated April 15, 2011 of the Regional Trial Court of Kabacan, Cotabato, Branch 41 (RTC) in Spl. Proc. No. 09-22 declaring Reneto Alilongan Suminguit (Reneto) presumptively dead under Article 41 of the Family Code.

The Antecedents

On July 8, 2000, Leilanie Dela Cruz Fenol (respondent) married Reneto in Kidapawan City. Out of this union, they begot a child named Loren Jade Fenol Suminguit.^[5]

Sometime in January 2001, Reneto left the conjugal dwelling in Malayan, M'lang, Cotabato and went to Manila to apply for work abroad. Since then, he has not come back to his family and his whereabouts have been unknown for a continuous period of more than eight years. Thus, respondent filed a Petition for Declaration of Presumptive Death of Reneto Alilongan Suminguit dated November 16, 2009 before the RTC of Kabacan, Cotabato.^[6]

In the petition, respondent alleged that she exerted earnest efforts to locate the whereabouts of her husband. She went to Manila sometime in 2002 and stayed there for seven months to find Reneto, but the same proved futile. She also proceeded to Reneto's relatives in Cayawan, Davao del Norte only to find out that they have no knowledge of his whereabouts either. Sometime in 2004, she applied for employment abroad and worked overseas, but she still failed to find Reneto until she returned to the Philippines in 2008.^[7]

The RTC Ruling

On April 15, 2011, the RTC declared Reneto presumptively dead subject to the restrictions and conditions imposed in Article 41 of the Family Code. The RTC reasoned:

Taking into consideration the circumstances of the absence of the [respondent]'s husband, the Court is convinced that he may be declared as presumptively dead. From the time [respondent]'s husband left the conjugal dwelling for Manila in January of 2001, purposely to apply for work abroad, his whereabouts became unknown. From the time the

whereabouts of [respondent]'s husband became unknown since he left the conjugal dwelling in 2001, up to the time that the [respondent] testified in 2010, the [respondent]'s husband has been absent for more than nine (9) years and his whereabouts unknown. And for purposes of re-marriage, a period of only four (4) years is required by law. The loss of a loved one is saddening but what is more saddening is a loved one whose whereabouts has been unknown for a long time. His absence or his presence cannot be determined, to the extent that the family left could not move on with their lives, as in this case.

In sum, the well-founded belief being required of under the Family Code has been preponderantly established by the [respondent] because although there were no concrete documentary evidences presented by her in Court to justify the declaration of [Reneto] as presumptively dead, the circumstances of the case would point to the fact that the [respondent]'s husband has already been absent for more than nine (9) years. And to allow the [respondent] to wait a little longer, to await her husband's return, without certainty, would be unfair to the [respondent] and to her daughter, who already have suffered so much when the [respondent]'s husband left them way back in 2001.^[8]

The Republic of the Philippines, through the Office of the Solicitor General (OSG), moved for reconsideration of the RTC Decision, but the same was denied in an Order dated May 31, 2012.

The CA Ruling

In its Decision dated November 28, 2013, the CA denied the OSG's appeal. It held that respondent exerted efforts to locate Reneto, but she still failed to find him. It agreed with the RTC that respondent was able to prove a well-founded belief that Reneto was already dead. It enunciated that the Decision of the RTC is already final and executory and can no longer be modified or reversed since a petition for declaration of presumptive death is a summary judicial proceeding under the Family Code.^[9]

The OSG filed a motion for reconsideration of the CA Decision which was denied in a Resolution dated May 26, 2014.

Hence, this petition.

Issues

The OSG claims that the conclusions of the RTC and the CA are not in accordance with law and jurisprudence. It maintains that while the Decision of the RTC is immediately final and executory and not appealable, it may still be reviewed *via* petition for *certiorari* under Rule 65 of the Rules of Court. It argues that, contrary to the findings of the courts below, the efforts of respondent in locating her husband were not sufficient to form a well-founded belief that he is already dead.

The Court's Ruling

The petition is granted.

The OSG raises procedural and substantive issues in its petition. Procedurally, it imputes error on the part of the CA for dismissing its petition for *certiorari* for being the wrong remedy. Substantively, it questions the factual bases of the RTC in granting respondent's petition. It asserts that respondent's efforts did not generate a well-founded belief that her husband Reneto was already dead.

The procedural aspect of the case is governed by Article 41 in relation to Articles 238, 247 and 253 of the Family Code. The provisions read:

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. (Underscoring supplied)

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TITLE XI SUMMARY JUDICIAL PROCEEDING IN THE FAMILY LAW

Chapter 1. Scope of the Application

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.

Chapter 2. Separation in Fact Between Husband and Wife

x x x x

ART. 247. The judgment of the court shall be immediately final and executory. (Underscoring supplied)

x x x x

Chapter 4. Other Matters Subject to Summary Proceedings

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. (Underscoring supplied)

Nothing could be clearer from the above legal provisions than that a petition for declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage under Article 41 of the Family Code involves a proceeding that is summary in nature, the judgment of the court therein shall be immediately

final and executory.^[10] Consequently, a judicial declaration of presumptive death cannot be a proper subject of an appeal and the filing of a motion for reconsideration or a notice of appeal is a procedural misstep which warrants an outright denial or dismissal. The final and executory nature of the judgment in a petition for declaration of presumptive death renders the court's dispositions and conclusions therein immutable and unalterable not only as against the parties, but even as against the courts.^[11] Hence, except for correction of clerical errors, the courts are barred from modifying or altering a definitive final judgment, such as the one assailed in the case, even if the modification is intended to correct erroneous conclusion of fact or law.^[12]

But the losing party in a summary court proceeding is not left without a legal recourse. When the present spouse successfully obtains a judicial declaration of his/her spouse's presumptive death, the OSG may properly bring an original action for *certiorari* under Rule 65 of the Rules of Court, as it actually did in this case, before the appellate court on the ground that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered its judgment. In declaring that the OSG resorted to a wrong remedy by filing a petition for *certiorari*, the CA had been unmindful of our consistent pronouncement that "*certiorari* lies to challenge the decisions, judgments or final orders of trial courts in a summary proceeding for the declaration of presumptive death under the Family Code."^[13] We held in *Republic v. Narceda*:^[14]

As explained in *Republic v. Tango*, the remedy of a losing party in a summary proceeding is not an ordinary appeal, but a petition for *certiorari*, to wit:

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

There is, thus, no doubt that the OSG availed of the correct remedy when it filed a petition for *certiorari* before the CA.

Going into the merits of the case, we find that the respondent failed to satisfy the "well-founded belief" requirement in Article 41 of the Family Code.

In *Republic v. Tampus*,^[15] the Court clarified the scope and extent of the present spouse's duty before he/she can obtain a judicial declaration of spouse's presumptive death, viz.:

The "well-founded belief" in the absentee's death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts 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 necessitates exertion of active effort, not a passive one. As such, the mere absence of the spouse for such periods prescribed under the law, lack of any news that such absentee spouse is still alive, failure to communicate, or general presumption of absence under the Civil Code would not suffice. The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts, but more importantly, whether the latter is still alive or is already dead. (Underscoring supplied)

Clearly, it is not enough that the present spouse holds a firm conviction that his/her spouse is already dead and alleges the same in his/her petition. Belief is a state of the mind which may only be established by direct evidence or circumstantial evidence that tends, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth.^[16] At the same time, the law does not demand positive certainty of the absent spouse's death, for to do so would run counter to the very essence of a petition for declaration of presumptive death. Thus, to meet the requirement of the law, the present spouse must allege and prove that his/her belief is the result of proper and honest-to-goodness inquiries and efforts to locate the absent spouse and determine whether he/she is still alive or not. The term "proper and honest-to-goodness inquiries and efforts" is tantamount to diligent and reasonable inquiries and search to ascertain the absent spouse's whereabouts.

In this case, the RTC and the CA were in unison in holding that the efforts exerted by the respondent are adequate to substantiate her belief that Reneto was already dead. But a careful examination of the records proved otherwise.

Respondent's so-called "earnest efforts" only consisted of two instances: (1) from Cotabato, respondent went to Manila and stayed there for seven months to look for Reneto; and (2) respondent went to Davao del Norte, Reneto's birthplace, to inquire about her husband's whereabouts from his family and relatives. When Reneto's family members denied knowing his whereabouts, respondent took it as gospel truth without even bothering to inquire from the neighbors or other disinterested persons as to the veracity of their narrative. She heavily relied on the uncorroborated and naturally biased statement of her husband's relatives. Interestingly, respondent did not present Reneto's family and relatives who could have attested that she personally inquired from them about Reneto's whereabouts and that she exerted active efforts to ascertain his location and status. Time and again, we have held that the present spouse's bare assertion that he inquired from his friends or from the relatives of his absent spouse about the latter's whereabouts is insufficient especially when the names of the persons from whom he made inquiries were not identified in the testimony nor presented as witnesses,^[17] as in this case.