

## THIRD DIVISION

[ G.R. No. 219185, November 25, 2020 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JOSEPHINE PONCE-PILAPIL,\* RESPONDENTS.**

### DECISION

**HERNANDO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the May 31, 2012 Decision<sup>[2]</sup> and the June 26, 2015 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CEB SP No. 02719.

#### **The Antecedents:**

Josephine Ponce-Pilapil (Josephine) sought to declare her husband, Agapito S. Pilapil, Jr. (Agapito), presumptively dead in a petition filed before the Regional Trial Court, Branch 55 of Mandaue City (RTC).<sup>[4]</sup>

The RTC set the case for initial hearing and ordered the publication of the petition in a newspaper of general circulation in the cities and province of Cebu. At the initial hearing, petitioner established the jurisdictional facts of the petition, and no opposition thereto was registered. Trial ensued. The RTC summed up the testimonies as follows:

In support of the petition, [Josephine] testified that: She is 44 years old, married, housewife and a resident of Yati, Lilo-an, Cebu. She and [Agapito] got married in Mandaue City on June 5, 2000. Out of the union was born Juan Miguel Pilapil x x x. A few months after the marriage, which was sometime in November 2000, [Agapito] left without information where he was going. She knows of no reason why Agapito would leave her as they did not even quarrel prior to that. Insofar as she knows, her husband had a cyst in his right jaw which was getting bigger.

Before their marriage, [Josephine] was introduced to Agapito by a neighbor. Agapito was from Ormoc City and came to live in Lilo-an, Cebu, only because he worked there. She knows that [Agapito's] parents are all deceased, having died from a calamity which hit Ormoc City sometime in the 1990's. With this predicament, [Josephine], after [Agapito's] disappearance, tried to look for him from [Agapito's only surviving relative], Lydia Bueno Pilapil. The latter told [Josephine] that she does not have any knowledge or idea where Agapito was, in response to her letter. She also inquired from their friends if they saw or heard from Agapito, but all answered in the negative. She honestly believes that her husband Agapito is already dead considering that more than six (6) years have lapsed without any information on his whereabouts. She filed the

instant petition for purposes of declaring her husband Agapito presumptively dead so that she can remarry.

As second witness, Marites Longakit Toong, was presented and testified that: She is 44 years old, married, a public school teacher and a resident of Yati, Lilo-an, Cebu. She knows [Josephine], being a childhood friend and a neighbor. She also knows [Agapito]. Being neighbors, she knew that Agapito left or disappeared sometime in November 2000. She tried to help [Josephine] look for Agapito but, up to the present, they do not have any knowledge on his whereabouts. She even hand-carried a letter from [Josephine] addressed to Agapito's sister-in-law, Lydia Bueno Pilapil, in Ormoc City. She [met] Lydia Bueno Pilapil in Ormoc City, who also told her that she does not know where Agapito was. She also handcarried the letter-response of Lydia to [Josephine].<sup>[5]</sup>

**Ruling of  
the  
Regional  
Trial  
Court:**

On the basis of the evidence presented by Josephine, the RTC declared Agapito as presumptively dead, pursuant to Article 41 of the Family Code, in relation to Article 253 of the Civil Code. Josephine was found to have established the fact that Agapito has been absent for six years with his whereabouts unknown. In its February 27, 2007 Order,<sup>[6]</sup> the RTC decreed in the following manner:

**WHEREFORE**, premises considered, the petition is **GRANTED**. **AGAPITO S. PILAPIL, JR.**, is hereby declared presumptively dead.

Petitioner is directed to register a copy of this Order with the Local Civil Registrar of Mandaue City.

Furnish all parties concerned with a copy of this Order.

SO ORDERED.<sup>[7]</sup>

The Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), elevated its cause to the appellate court through a Petition for *Certiorari*<sup>[8]</sup> under Rule 65 of the Rules of Court.

**Proceedings  
before the  
Court of  
Appeals:**

The CA ruled against the Republic. While the CA afforded procedural lenience to the OSG when the latter dispensed with the filing of a motion for reconsideration of the RTC Order, it found no grave abuse of discretion on the part of the trial court. In arguing that the Order was not in accord with established jurisprudence, the Republic essentially sought to weigh and evaluate the merits of the trial court's decision to grant the petition for declaration of presumptive death. Such, according

to the CA, was an improper subject of a petition for *certiorari* under Rule 65 of the Rules of Court. The CA so decreed in its assailed May 31, 2012 Decision,<sup>[9]</sup> as follows:

IN LIGHT OF ALL THE FOREGOING, the Petition for *Certiorari* under Rule 65 of the Rules of Civil Procedure assailing the February 27, 2007 Order of the Regional Trial Court, Branch 55, Mandaue City ordering the presumptive death of Agapito S. Pilapil, Jr., is DISMISSED.

SO ORDERED.<sup>[10]</sup>

The CA denied<sup>[11]</sup> the Republic's Motion for Reconsideration. Thus, this Petition for Review on *Certiorari* by the Republic before this Court.

### **Petitioner's Arguments:**

The Republic maintains that Josephine failed to prove that she had a well-founded belief that Agapito was already dead, and that she exerted the required amount of diligence in searching for her missing husband. Despite this and over prevailing jurisprudence on the matter, the RTC granted Josephine's petition for declaration of presumptive death. This was allegedly indicative of caprice and arbitrariness on the part of the trial court which, the OSG claims, the CA should have reversed on *certiorari*.<sup>[12]</sup>

### **Respondent's Position:**

In her Comment,<sup>[13]</sup> Josephine asserts the lack of sufficient showing that the RTC exercised its discretion whimsically or arbitrarily by reason of passion, prejudice, or personal hostility for it to be reversed by the CA. She also posits that the CA was correct in dismissing the OSG's Petition for *Certiorari*, which called for a review of the trial court's appreciation of the evidence and advanced mere errors of judgment which are beyond the ambit of *certiorari* proceedings.

### **Issue:**

The Republic, through the OSG, raises the issue of whether the CA erred in finding no grave abuse of discretion on the part of the RTC and in affirming the RTC Order that granted Josephine's petition for declaration of presumptive death of Agapito, her husband.

### **Our Ruling**

The appeal is meritorious.

***Certiorari*  
answers  
only  
questions  
of  
jurisdiction:**

Oft-repeated is the principle that petitions for *certiorari* under Rule 65 of the Rules

of Court are confirmed solely to questions of jurisdiction.<sup>[14]</sup> These ask whether a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.<sup>[15]</sup> Unless the circumstances of a case qualify under established exceptions,<sup>[16]</sup> questions of law or fact pertain to a remedy other than *certiorari*.

In assailing the appreciation of the evidence by the RTC and its application of jurisprudence, the OSG, in its petition for *certiorari* before the CA, was in effect seeking a review of the RTC's findings and conclusions. The OSG has not offered the CA any exceptional circumstance that would allow a factual review in a *certiorari* proceeding.

Likewise, the propriety and soundness of a tribunal's decision is beyond the scope of *certiorari*. Nonetheless, the RTC acted within the bounds of its jurisdiction when it decided in favor of Josephine's petition. The CA thus correctly found no reason to strike down the trial court's judgment with a grant of *certiorari*.

Even so, the courts below should not have declared Agapito presumptively dead.

**Respondent  
failed to  
demonstrate  
full  
compliance  
with Article  
41 of the  
Family Code.**

Pivotal to the resolution of this case is the application of Article 41 of the Family Code:

Article 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.

Jurisprudence sets out four requisites for a grant of a petition for declaration of presumptive death under Article 41 of the Family Code: *first*, 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; *second*, the present spouse wishes to