

## SECOND DIVISION

[ G.R. No. 210580, April 18, 2018 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, V. LUDYSON C. CATUBAG, RESPONDENT.**

### DECISION

**REYES, JR., J:**

#### **Nature of the Petition**

Challenged before this Court *via* Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court are the Resolutions<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP. No. 131269 dated September 3, 2013<sup>[3]</sup> and December 6, 2013.<sup>[4]</sup> The assailed Resolutions denied the petition for *certiorari* filed by petitioner for failure to file a motion for reconsideration. Likewise challenged is the Decision<sup>[5]</sup> dated May 23, 2013 of the Regional Trial Court (RTC) of Tuao, Cagayan, Branch 11, declaring Ludyson C. Catubag's (private respondent) spouse, Shanaviv G. Alvarez-Catubag (Shanaviv), as presumptively dead.

#### **The Antecedent Facts**

Prior to the celebration of their marriage in 2003, private respondent and Shanaviv had been cohabiting with each other as husband and wife. Their union begot two (2) children named Mark Bryan A. Catubag and Rose Mae A. Catubag, both of whom were born on May 18, 2000 and May 21, 2001, respectively.<sup>[6]</sup>

In 2001, in order to meet the needs of his family, private respondent took work overseas. Meanwhile, Shanaviv stayed behind in the Philippines to tend to the needs of their children.<sup>[7]</sup>

On June 26, 2003, private respondent and Shanaviv tied the knot in Rizal, Cagayan. The marriage was solemnized by Honorable Judge Tomas D. Lasam at the Office of the Municipal Judge, Rizal, Cagayan.<sup>[8]</sup>

Sometime in April 2006, private respondent and his family were able to acquire a housing unit located at Rio del Grande Subdivision, Enrile Cagayan. Thereafter, private respondent returned overseas to continue his work. While abroad, he maintained constant communication with his family.<sup>[9]</sup>

On July 12, 2006, while working abroad, private respondent was informed by his relatives that Shanaviv left their house and never returned. In the meantime, private respondent's relatives took care of the children.<sup>[10]</sup>

Worried about his wife's sudden disappearance and the welfare of his children, private respondent took an emergency vacation and flew back home. Private respondent looked for his wife in Enrile Cagayan, but to no avail. He then proceeded

to inquire about Shanaviv's whereabouts from their close friends and relatives, but they too could offer no help. Private respondent travelled as far as Bicol, where Shanaviv was born and raised, but he still could not locate her.<sup>[11]</sup>

Private respondent subsequently sought the help of Bombo Radyo Philippines, one of the more well-known radio networks in the Philippines, to broadcast the fact of his wife's disappearance. Moreover, private respondent searched various hospitals and funeral parlors in Tuguegarao and in Bicol, with no avail.<sup>[12]</sup>

On May 4, 2012, after almost seven (7) years of waiting, private respondent filed with the RTC a petition to have his wife declared presumptively dead.<sup>[13]</sup>

On May 23, 2013, the RTC rendered its Decision granting the Petition. The dispositive portion of the decision which reads:

WHEREFORE, the petition is GRANTED. SHANAVIV G. ALVAREZ-CATUBAG is hereby adjudged PRESUMPTIVELY DEAD only for the purpose that petitioner LUDYSON C. CATUBAG may contract a marriage subsequent to what he had with SHANAVIV G. ALVAREZ-CATUBAG without prejudice to the reappearance of the latter.

SO ORDERED.<sup>[14]</sup>

On August 5, 2013, petitioner, through the Office of the Solicitor General (OSG), elevated the judgment of the RTC to the CA via a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court. Petitioner's main contention is that private respondent failed to establish a "well-founded belief that his missing wife was already dead."<sup>[15]</sup>

In its Resolution<sup>[16]</sup> dated September 3, 2013, the CA dismissed the petition because no motion for reconsideration was filed with the court *a quo*. The CA ruled that such defect was fatal and warranted the immediate dismissal of the petition. The dispositive portion of the CA decision reads:

**WHEREFORE**, premises considered, the instant petition for certiorari is **DISMISSED**.

**SO ORDERED.**<sup>[17]</sup>

On September 18, 2013, petitioner filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution<sup>[18]</sup> dated December 6, 2013. Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

### **The Issues**

The petitioner anchors its plea for the annulment of the assailed resolutions and the denial of private respondent's petition to declare his wife presumptively dead on the following grounds:

- I. THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI ON THE GROUND THAT PETITIONER DID NOT PREVIOUSLY FILE A MOTION FOR RECONSIDERATION BEFORE THE COURT A *QUO*.

II. THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR [*CERTIORARI*] ON THE GROUND THAT PETITIONER FAILED TO ATTACH THERETO COPIES OF ALL PERTINENT AND RELEVANT DOCUMENTS AND PLEADINGS.

III. PRIVATE RESPONDENT HAS NOT ESTABLISHED A WELL-FOUNDED BELIEF THAT HIS WIFE IS PRESUMPTIVELY DEAD.

IV. PRIVATE RESPONDENT FAILED TO PROVE HIS INTENTION TO RE-MARRY.<sup>[19]</sup>

In sum, the instant petition rests on the resolution of two issues: (1) whether or not petitioner's resort to a Petition for *Certiorari* under Rule 65 to challenge the decision of the RTC declaring Shanaviv presumptively dead was proper; and (2) whether or not private respondent complied with the essential requisites of a petition for declaration of presumptive death under Article 41 of the Family Code.

### **The Court's Ruling**

The petition is impressed with merit.

Basic is the rule that the nature of the proceeding determines the appropriate remedy or remedies available. Hence, a party aggrieved by an action of a court must first correctly determine the nature of the order, resolution, or decision, in order to properly assail it.<sup>[20]</sup>

Since what is involved in the instant case is a petition for declaration of presumptive death, the relevant provisions of law are Articles 41, 238, and 253 of the Family Code. These provisions explicitly provide that actions for presumptive death are summary in nature. Article 41 provides:

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. (Emphasis supplied)

Likewise, Article 238 in relation to Article 253, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, of the Family Code provides:

Article 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.

x x x x

Article 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)

Consequently, parties cannot seek reconsideration, nor appeal decisions in summary judicial proceedings under the Family Code because by express mandate of law, judgments rendered thereunder are immediately final and executory.<sup>[21]</sup> As explained by the Court in *Republic of the Phils. vs. Bermudez-Lorino*,<sup>[22]</sup> citing *Atty. Veloria vs. Comelec*:<sup>[23]</sup>

[T]he right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege. Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are "immediately final and executory," the right to appeal was not granted to any of the parties therein. The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001.<sup>[24]</sup>

Further, it is well settled in our laws and jurisprudence that a decision that has acquired finality becomes immutable and unalterable. As such, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.<sup>[25]</sup>

While parties are precluded from filing a motion for reconsideration or a notice of appeal, in a petition for declaration of presumptive death, they may challenge the decision of the court *a quo* through a petition for *certiorari* to question grave abuse of discretion amounting to lack of jurisdiction.<sup>[26]</sup>

In *Republic vs. Sareñogon, Jr.*,<sup>[27]</sup> the Court outlined the legal remedies available in a summary proceeding for the declaration of presumptive death. If aggrieved by the decision of the RTC, then filing with the CA a Petition for *Certiorari* under Rule 65 would be proper. Any subsequent decision by the CA may then be elevated to the Court via a Petition for Review on *Certiorari* under Rule 45.<sup>[28]</sup>

Considering the foregoing, the Court finds that petitioner's resort to *certiorari* under Rule 65 of the Rules of Court to challenge the RTC's Order declaring Shanaviv presumptively dead was proper.

Having determined the propriety of petitioner's mode of challenging the RTC's Order, the Court shall now proceed to tackle the issue of whether or not private respondent has sufficiently complied with the essential requisites in a petition for declaration of presumptive death.

Prevailing jurisprudence has time and again pointed out four (4) requisites under Article 41 of the Family Code that must be complied with for the declaration of presumptive death to prosper: 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.<sup>[29]</sup> Second, the present spouse wishes to remarry. Third, the present spouse has a wellfounded belief that the absentee is dead. Fourth, the present spouse files

for a summary proceeding for the declaration of presumptive death of the absentee.  
[30]

In seeking a declaration of presumptive death, it is the present spouse who has the burden of proving that all the requisites under Article 41 of the Family Code are present. In the instant case, since it is private respondent who asserts the affirmative of the issue, then it is his duty to substantiate the same. He who alleges a fact has the burden of proving it and mere allegations will not suffice.[31]

Notably, the records reveal that private respondent has complied with the first, second, and fourth requisites. Thus, what remains to be resolved is whether or not private respondent successfully discharged the burden of establishing a well-founded belief that his wife, Shanaviv, is dead.

The Court in *Cantor*, [32] pointed out that the term, "well-founded belief" has no exact definition under the law. In fact, the Court notes that such belief depends on the circumstances of each particular case. As such, each petition must be judged on a case-to-case basis.[33]

This is not to say, however, that there is no guide in establishing the existence of a well-founded belief that an absent spouse is already dead. In *Republic vs. Orcelino-Villanueva*, [34] the Court, through Justice Mendoza, provided that such belief must result from diligent efforts to locate the absent spouse. Such diligence entails an active effort on the part of the present spouse to locate the missing one. The mere absence of a spouse, devoid of any attempt by the present spouse to locate the former, will not suffice. The Court expounded on the required diligence, *to wit*:

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 mere passive one). Mere absence of the spouse (even beyond the period required by law), lack of any news that the absentee spouse is still alive, mere 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 absent spouse is still alive or is already dead.[35] (Citations omitted)

Furthermore, jurisprudence is replete with cases which help determine whether belief of an absent spouses' death is well-founded or not. A perusal of the cases of *Republic vs. Granada*, [36] *Cantor*, [37] and *Orcelino-Villanueva* [38] reveal the circumstances which do not meet the Court's standards in establishing a "well-founded belief."

In *Granada*, [39] the present spouse alleged that she exerted efforts in locating her absent spouse by inquiring from the latter's relatives regarding his whereabouts. The Court ruled against the present spouse and stated that the mere act of inquiring