

## THIRD DIVISION

[ G.R. No. 186571, August 11, 2010 ]

**GERBERT R. CORPUZ, PETITIONER, VS. DAISYLYN TIROL STO. TOMAS AND THE SOLICITOR GENERAL, RESPONDENTS.**

### D E C I S I O N

**BRION, J.:**

Before the Court is a direct appeal from the decision<sup>[1]</sup> of the Regional Trial Court (RTC) of Laoag City, Branch 11, elevated *via* a petition for review on *certiorari*<sup>[2]</sup> under Rule 45 of the Rules of Court (present petition).

Petitioner Gerbert R. Corpuz was a former Filipino citizen who acquired Canadian citizenship through naturalization on November 29, 2000.<sup>[3]</sup> On January 18, 2005, Gerbert married respondent Daisylyn T. Sto. Tomas, a Filipina, in Pasig City.<sup>[4]</sup> Due to work and other professional commitments, Gerbert left for Canada soon after the wedding. He returned to the Philippines sometime in April 2005 to surprise Daisylyn, but was shocked to discover that his wife was having an affair with another man. Hurt and disappointed, Gerbert returned to Canada and filed a petition for divorce. The Superior Court of Justice, Windsor, Ontario, Canada granted Gerbert's petition for divorce on December 8, 2005. The divorce decree took effect a month later, on January 8, 2006.<sup>[5]</sup>

Two years after the divorce, Gerbert has moved on and has found another Filipina to love. Desirous of marrying his new Filipina fiancée in the Philippines, Gerbert went to the Pasig City Civil Registry Office and registered the Canadian divorce decree on his and Daisylyn's marriage certificate. Despite the registration of the divorce decree, an official of the National Statistics Office (NSO) informed Gerbert that the marriage between him and Daisylyn still subsists under Philippine law; to be enforceable, the foreign divorce decree must first be judicially recognized by a competent Philippine court, pursuant to NSO Circular No. 4, series of 1982.<sup>[6]</sup>

Accordingly, **Gerbert filed a petition for judicial recognition of foreign divorce and/or declaration of marriage as dissolved** (*petition*) with the RTC. Although summoned, Daisylyn did not file any responsive pleading but submitted instead a notarized letter/manifestation to the trial court. She offered no opposition to Gerbert's petition and, in fact, alleged her desire to file a similar case herself but was prevented by financial and personal circumstances. She, thus, requested that she be considered as a party-in-interest with a similar prayer to Gerbert's.

In its October 30, 2008 decision,<sup>[7]</sup> the **RTC denied Gerbert's petition**. The RTC concluded that Gerbert was *not the proper party* to institute the action for judicial recognition of the foreign divorce decree as he is a naturalized Canadian citizen. It ruled that *only the Filipino spouse can avail of the remedy, under the second*

paragraph of Article 26 of the Family Code,<sup>[8]</sup> in order for him or her to be able to remarry under Philippine law.<sup>[9]</sup> Article 26 of the Family Code reads:

Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

**Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.**

This conclusion, the RTC stated, is consistent with the legislative intent behind the enactment of the second paragraph of Article 26 of the Family Code, as determined by the Court in *Republic v. Orbecido III*;<sup>[10]</sup> the provision was enacted to "avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse."<sup>[11]</sup>

### **THE PETITION**

From the RTC's ruling,<sup>[12]</sup> Gerbert filed the present petition.<sup>[13]</sup>

Gerbert asserts that his petition before the RTC is essentially for declaratory relief, similar to that filed in *Orbecido*; he, thus, similarly asks for a determination of his rights under the second paragraph of Article 26 of the Family Code. Taking into account the rationale behind the second paragraph of Article 26 of the Family Code, he contends that the provision applies as well to the benefit of the alien spouse. He claims that the RTC ruling unduly stretched the doctrine in *Orbecido* by limiting the standing to file the petition only to the Filipino spouse - an interpretation he claims to be contrary to the essence of the second paragraph of Article 26 of the Family Code. He considers himself as a proper party, vested with sufficient legal interest, to institute the case, as there is a possibility that he might be prosecuted for bigamy if he marries his Filipina fiancée in the Philippines since two marriage certificates, involving him, would be on file with the Civil Registry Office. The Office of the Solicitor General and Daisylyn, in their respective Comments,<sup>[14]</sup> both support Gerbert's position.

Essentially, the petition raises the issue of ***whether the second paragraph of Article 26 of the Family Code extends to aliens the right to petition a court of this jurisdiction for the recognition of a foreign divorce decree.***

### **THE COURT'S RULING**

***The alien spouse can claim no right under the second paragraph of Article 26 of the Family Code as the substantive right it establishes is in favor of the Filipino spouse***

The resolution of the issue requires a review of the legislative history and intent behind the second paragraph of Article 26 of the Family Code.

The Family Code recognizes only two types of defective marriages - void<sup>[15]</sup> and voidable<sup>[16]</sup> marriages. In both cases, the basis for the judicial declaration of absolute nullity or annulment of the marriage exists *before* or *at the time of* the marriage. Divorce, on the other hand, contemplates the dissolution of the lawful union for cause arising *after* the marriage.<sup>[17]</sup> Our family laws do not recognize absolute divorce between Filipino citizens.<sup>[18]</sup>

Recognizing the reality that divorce is a possibility in marriages between a Filipino and an alien, President Corazon C. Aquino, in the exercise of her legislative powers under the Freedom Constitution,<sup>[19]</sup> enacted Executive Order No. (EO) 227, amending Article 26 of the Family Code to its present wording, as follows:

Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

**Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.**

Through the second paragraph of Article 26 of the Family Code, EO 227 effectively incorporated into the law this Court's holding in *Van Dorn v. Romillo, Jr.*<sup>[20]</sup> and *Pilapil v. Ibay-Somera*.<sup>[21]</sup> In both cases, the Court refused to acknowledge the alien spouse's assertion of marital rights after a foreign court's divorce decree between the alien and the Filipino. The Court, thus, recognized that the foreign divorce had already severed the marital bond between the spouses. The Court reasoned in *Van Dorn v. Romillo* that:

**To maintain x x x that, under our laws, [the Filipino spouse] has to be considered still married to [the alien spouse] and still subject to a wife's obligations x x x cannot be just.** [The Filipino spouse] should not be obliged to live together with, observe respect and fidelity, and render support to [the alien spouse]. The latter should not continue to be one of her heirs with possible rights to conjugal property. **She should not be discriminated against in her own country if the ends of justice are to be served.**<sup>[22]</sup>

As the RTC correctly stated, the provision was included in the law "to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse."<sup>[23]</sup> The legislative intent is for the benefit of the Filipino spouse, by clarifying his or her

marital status, settling the doubts created by the divorce decree. **Essentially, the second paragraph of Article 26 of the Family Code provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry.**<sup>[24]</sup> Without the second paragraph of Article 26 of the Family Code, the judicial recognition of the foreign decree of divorce, whether in a proceeding instituted precisely for that purpose or as a related issue in another proceeding, would be of no significance to the Filipino spouse since our laws do not recognize divorce as a mode of severing the marital bond;<sup>[25]</sup> Article 17 of the Civil Code provides that the policy against absolute divorces cannot be subverted by judgments promulgated in a foreign country. The inclusion of the second paragraph in Article 26 of the Family Code provides the direct exception to this rule and serves as basis for recognizing the dissolution of the marriage between the Filipino spouse and his or her alien spouse.

Additionally, an action based on the second paragraph of Article 26 of the Family Code is not limited to the recognition of the foreign divorce decree. If the court finds that the decree capacitated the alien spouse to remarry, the courts can declare that the Filipino spouse is likewise capacitated to contract another marriage. No court in this jurisdiction, however, can make a similar declaration for the alien spouse (other than that already established by the decree), whose status and legal capacity are generally governed by his national law.<sup>[26]</sup>

Given the rationale and intent behind the enactment, and the purpose of the second paragraph of Article 26 of the Family Code, the RTC was correct in limiting the applicability of the provision for the benefit of the Filipino spouse. In other words, only the Filipino spouse can invoke the second paragraph of Article 26 of the Family Code; the alien spouse can claim no right under this provision.

***The foreign divorce decree is presumptive evidence of a right that clothes the party with legal interest to petition for its recognition in this jurisdiction***

We qualify our above conclusion - *i.e.*, that the second paragraph of Article 26 of the Family Code bestows no rights in favor of aliens - with the complementary statement that this conclusion is not sufficient basis to dismiss Gerbert's petition before the RTC. In other words, the unavailability of the second paragraph of Article 26 of the Family Code to aliens does not necessarily strip Gerbert of legal interest to petition the RTC for the recognition of his foreign divorce decree. The foreign divorce decree itself, after its authenticity and conformity with the alien's national law have been duly proven according to our rules of evidence, serves as a presumptive evidence of right in favor of Gerbert, pursuant to Section 48, Rule 39 of the Rules of Court which provides for the effect of foreign judgments. This Section states:

**SEC. 48. *Effect of foreign judgments or final orders.*--The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is** as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title of the thing; and

**(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.**

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

To our mind, direct involvement or being the subject of the foreign judgment is sufficient to clothe a party with the requisite interest to institute an action before our courts for the recognition of the foreign judgment. In a divorce situation, we have declared, no less, that the divorce obtained by an alien abroad may be recognized in the Philippines, provided the divorce is valid according to his or her national law.<sup>[27]</sup>

The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country."<sup>[28]</sup> This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself.<sup>[29]</sup> The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.

In Gerbert's case, since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Section 24, Rule 132 of the Rules of Court comes into play. This Section requires proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

The records show that Gerbert attached to his petition a copy of the divorce decree, as well as the required certificates proving its authenticity,<sup>[30]</sup> but failed to include a copy of the Canadian law on divorce.<sup>[31]</sup> Under this situation, we can, at this point, simply dismiss the petition for insufficiency of supporting evidence, unless we deem it more appropriate to remand the case to the RTC to determine whether the divorce decree is consistent with the Canadian divorce law.

We deem it more appropriate to take this latter course of action, given the Article 26 interests that will be served and the Filipina wife's (Daisylyn's) obvious conformity with the petition. A remand, at the same time, will allow other interested parties to oppose the foreign judgment and overcome a petitioner's presumptive evidence of a right by proving want of jurisdiction, want of notice to a party, collusion, fraud, or