

THIRD DIVISION

[G.R. No. 180863, September 08, 2009]

**ANGELITA VALDEZ, PETITIONER, VS. REPUBLIC OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

NACHURA, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision of the Regional Trial Court (RTC) of Camiling, Tarlac dated November 12, 2007 dismissing petitioner Angelita Valdez's petition for the declaration of presumptive death of her husband, Sofio Polborosa (Sofio).

The facts of the case are as follows:

Petitioner married Sofio on January 11, 1971 in Pateros, Rizal. On December 13, 1971, petitioner gave birth to the spouses' only child, Nancy. According to petitioner, she and Sofio argued constantly because the latter was unemployed and did not bring home any money. In March 1972, Sofio left their conjugal dwelling. Petitioner and their child waited for him to return but, finally, in May 1972, petitioner decided to go back to her parents' home in Bancay 1st, Camiling, Tarlac. Three years passed without any word from Sofio. In October 1975, Sofio showed up at Bancay 1st. He and petitioner talked for several hours and they agreed to separate. They executed a document to that effect.^[1] That was the last time petitioner saw him. After that, petitioner didn't hear any news of Sofio, his whereabouts or even if he was alive or not.^[2]

Believing that Sofio was already dead, petitioner married Virgilio Reyes on June 20, 1985.^[3] Subsequently, however, Virgilio's application for naturalization filed with the United States Department of Homeland Security was denied because petitioner's marriage to Sofio was subsisting.^[4] Hence, on March 29, 2007, petitioner filed a Petition before the RTC of Camiling, Tarlac seeking the declaration of presumptive death of Sofio.

The RTC rendered its Decision^[5] on November 12, 2007, dismissing the Petition for lack of merit. The RTC held that Angelita "was not able to prove the well-grounded belief that her husband Sofio Polborosa was already dead." It said that under Article 41 of the Family Code, the present spouse is burdened to prove that her spouse has been absent and that she has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. This belief, the RTC said, must be the result of proper and honest-to-goodness inquiries and efforts to ascertain the whereabouts of the absent spouse.

The RTC found that, by petitioner's own admission, she did not try to find her

husband anymore in light of their mutual agreement to live separately. Likewise, petitioner's daughter testified that her mother prevented her from looking for her father. The RTC also said there is a strong possibility that Sofio is still alive, considering that he would have been only 61 years old by then, and people who have reached their 60s have not become increasingly low in health and spirits, and, even assuming as true petitioner's testimony that Sofio was a chain smoker and a drunkard, there is no evidence that he continues to drink and smoke until now.

Petitioner filed a motion for reconsideration.^[6] She argued that it is the Civil Code that applies in this case and not the Family Code since petitioner's marriage to Sofio was celebrated on January 11, 1971, long before the Family Code took effect. Petitioner further argued that she had acquired a vested right under the provisions of the Civil Code and the stricter provisions of the Family Code should not be applied against her because Title XIV of the Civil Code, where Articles 384 and 390 on declaration of absence and presumption of death, respectively, can be found, was not expressly repealed by the Family Code. To apply the stricter provisions of the Family Code will impair the rights petitioner had acquired under the Civil Code.

The RTC denied the Motion for Reconsideration in a Resolution dated December 10, 2007.^[7]

Petitioner now comes before this Court seeking the reversal of the RTC Decision and Motion for Reconsideration.

In its Manifestation and Motion,^[8] the Office of the Solicitor General (OSG) recommended that the Court set aside the assailed RTC Decision and grant the Petition to declare Sofio presumptively dead. The OSG argues that the requirement of "well-founded belief" under Article 41 of the Family Code is not applicable to the instant case. It said that petitioner could not be expected to comply with this requirement because it was not yet in existence during her marriage to Virgilio Reyes in 1985. The OSG further argues that before the effectivity of the Family Code, petitioner already acquired a vested right as to the validity of her marriage to Virgilio Reyes based on the presumed death of Sofio under the Civil Code. This vested right and the presumption of Sofio's death, the OSG posits, could not be affected by the obligations created under the Family Code.^[9]

Next, the OSG contends that Article 390 of the Civil Code was not repealed by Article 41 of the Family Code.^[10] Title XIV of the Civil Code, the OSG said, was not one of those expressly repealed by the Family Code. Moreover, Article 256 of the Family Code provides that its provisions shall not be retroactively applied if they will prejudice or impair vested or acquired rights.^[11]

The RTC Decision, insofar as it dismissed the Petition, is affirmed. However, we must state that we are denying the Petition on grounds different from those cited in the RTC Decision.

Initially, we discuss a procedural issue. Under the Rules of Court, a party may directly appeal to this Court from a decision of the trial court only on pure questions of law. A question of law lies, on one hand, when the doubt or difference arises as to what the law is on a certain set of facts; on the other hand, a question of fact exists when the doubt or difference arises as to the truth or falsehood of the alleged facts.

Here, the facts are not disputed; the controversy merely relates to the correct application of the law or jurisprudence to the undisputed facts.^[12]

The RTC erred in applying the provisions of the Family Code and holding that petitioner needed to prove a "well-founded belief" that Sofio was already dead. The RTC applied Article 41 of the Family Code, to wit:

Art. 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 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 a 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.

It is readily apparent, however, that the marriages of petitioner to Sofio and Virgilio on January 11, 1971 and June 20, 1985, respectively, were both celebrated under the auspices of the Civil Code.

The pertinent provision of the Civil Code is Article 83:

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

(1) The first marriage was annulled or dissolved; or

(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 contracting such subsequent marriage, 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.

Article 390 of the Civil Code states:

Art. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.