

THIRD DIVISION

[G.R. NO. 165545, March 24, 2006]

**SOCIAL SECURITY SYSTEM, PETITIONER, VS. TERESITA JARQUE
VDA. DE BAILON, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

The Court of Appeals Decision [1] dated June 23, 2004 [2] and Resolution dated September 28, 2004 [3] reversing the Resolution dated April 2, 2003 [4] and Order dated June 4, 2003 [5] of the Social Security Commission (SSC) in SSC Case No. 4-15149-01 are challenged in the present petition for review on certiorari.

On April 25, 1955, Clemente G. Bailon (Bailon) and Alice P. Diaz (Alice) contracted marriage in Barcelona, Sorsogon. [6]

More than 15 years later or on October 9, 1970, Bailon filed before the then Court of First Instance (CFI) of Sorsogon a petition [7] to declare Alice presumptively dead.

By Order of December 10, 1970, [8] the CFI granted the petition, disposing as follows:

WHEREFORE, there being no opposition filed against the petition notwithstanding the publication of the Notice of Hearing in a newspaper of general circulation in the country, Alice Diaz is hereby declared to [sic] all legal intents and purposes, except for those of succession, presumptively dead.

SO ORDERED. [9] (Underscoring supplied)

Close to 13 years after his wife Alice was declared presumptively dead or on August 8, 1983, Bailon contracted marriage with Teresita Jarque (respondent) in Casiguran, Sorsogon. [10]

On January 30, 1998, Bailon, who was a member of the Social Security System (SSS) since 1960 and a retiree pensioner thereof effective July 1994, died. [11]

Respondent thereupon filed a claim for funeral benefits, and was granted P12,000 [12] by the SSS.

Respondent filed on March 11, 1998 an additional claim for death benefits [13] which was also granted by the SSS on April 6, 1998. [14]

Cecilia Bailon-Yap (Cecilia), who claimed to be a daughter of Bailon and one Elisa Jayona (Elisa) contested before the SSS the release to respondent of the death and funeral benefits. She claimed that Bailon contracted three marriages in his lifetime, the first with Alice, the second with her mother Elisa, and the third with respondent, all of whom are still alive; she, together with her siblings, paid for Bailon's medical and funeral expenses; and all the documents submitted by respondent to the SSS in support of her claims are spurious.

In support of her claim, Cecilia and her sister Norma Bailon Chavez (Norma) submitted an Affidavit dated February 13, 1999 [15] averring that they are two of nine children of Bailon and Elisa who cohabited as husband and wife as early as 1958; and they were reserving their right to file the necessary court action to contest the marriage between Bailon and respondent as they personally know that Alice is "still very much alive." [16]

In the meantime, on April 5, 1999, a certain Hermes P. Diaz, claiming to be the brother and guardian of "Aliz P. Diaz," filed before the SSS a claim for death benefits accruing from Bailon's death, [17] he further attesting in a sworn statement [18] that it was Norma who defrayed Bailon's funeral expenses.

Elisa and seven of her children [19] subsequently filed claims for death benefits as Bailon's beneficiaries before the SSS. [20]

Atty. Marites C. de la Torre of the Legal Unit of the SSS Bicol Cluster, Naga City recommended the cancellation of payment of death pension benefits to respondent and the issuance of an order for the refund of the amount paid to her from February 1998 to May 1999 representing such benefits; the denial of the claim of Alice on the ground that she was not dependent upon Bailon for support during his lifetime; and the payment of the balance of the five-year guaranteed pension to Bailon's beneficiaries according to the order of preference provided under the law, after the amount erroneously paid to respondent has been collected. The pertinent portions of the Memorandum read:

1. Aliz [*sic*] Diaz never disappeared. The court must have been misled by misrepresentation in declaring the first wife, Aliz [*sic*] Diaz, as presumptively dead.

x x x x

x x x the Order of the court in the "Petition to Declare Alice Diaz Presumptively Dead," did not become final. The presence of Aliz [*sic*] Diaz, is contrary proof that rendered it invalid.

x x x x

3. It was the deceased member who abandoned his wife, Aliz [*sic*] Diaz. He, being in bad faith, and is the deserting spouse, his remarriage is void, being bigamous.

x x x x

In this case, it is the deceased member who was the deserting spouse and who remarried, thus his marriage to Teresita Jarque, for the second time was void as it was bigamous. To require affidavit of reappearance to terminate the second marriage is not necessary as there is no disappearance of Aliz [sic] Diaz, the first wife, and a voidable marriage [sic], to speak of. [21] (Underscoring supplied)

In the meantime, the SSS Sorsogon Branch, by letter of August 16, 2000, [22] advised respondent that as Cecilia and Norma were the ones who defrayed Bailon's funeral expenses, she should return the P12,000 paid to her.

In a separate letter dated September 7, 1999, [23] the SSS advised respondent of the cancellation of her monthly pension for death benefits in view of the opinion rendered by its legal department that her marriage with Bailon was void as it was contracted while the latter's marriage with Alice was still subsisting; and the December 10, 1970 CFI Order declaring Alice presumptively dead did not become final, her "presence" being "contrary proof" against the validity of the order. It thus requested respondent to return the amount of P24,000 representing the total amount of monthly pension she had received from the SSS from February 1998 to May 1999.

Respondent protested the cancellation of her monthly pension for death benefits by letter to the SSS dated October 12, 1999. [24] In a subsequent letter dated November 27, 1999 [25] to the SSC, she reiterated her request for the release of her monthly pension, asserting that her marriage with Bailon was not declared before any court of justice as bigamous or unlawful, hence, it remained valid and subsisting for all legal intents and purposes as in fact Bailon designated her as his beneficiary.

The SSS, however, by letter to respondent dated January 21, 2000, [26] maintained the denial of her claim for and the discontinuance of payment of monthly pension. It advised her, however, that she was not deprived of her right to file a petition with the SSC.

Respondent thus filed a petition [27] against the SSS before the SSC for the restoration to her of her entitlement to monthly pension.

In the meantime, respondent informed the SSS that she was returning, under protest, the amount of P12,000 representing the funeral benefits she received, she alleging that Norma and her siblings "forcibly and coercively prevented her from spending any amount during Bailon's wake." [28]

After the SSS filed its Answer [28] to respondent's petition, and the parties filed their respective Position Papers, one Alicia P. Diaz filed an Affidavit [30] dated August 14, 2002 with the SSS Naga Branch attesting that she is the widow of Bailon; she had only recently come to know of the petition filed by Bailon to declare her presumptively dead; it is not true that she disappeared as Bailon could have easily located her, she having stayed at her parents' residence in Barcelona, Sorsogon after she found out that Bailon was having an extramarital affair; and Bailon used to visit her even after their separation.

By Resolution of April 2, 2003, the SSC found that the marriage of respondent to Bailon was void and, therefore, she was "just a common-law-wife." Accordingly it disposed as follows, quoted *verbatim*:

WHEREFORE, this Commission finds, and so holds, that petitioner Teresita Jarque-Bailon is not the legitimate spouse and primary beneficiary of SSS member Clemente Bailon.

Accordingly, the petitioner is hereby ordered to refund to the SSS the amount of P24,000.00 representing the death benefit she received therefrom for the period February 1998 until May 1999 as well as P12,000.00 representing the funeral benefit.

The SSS is hereby ordered to pay Alice (a.k.a. Aliz) Diaz-Bailon the appropriate death benefit arising from the demise of SSS member Clemente Bailon in accordance with Section 8(e) and (k) as well as Section 13 of the SS Law, as amended, and its prevailing rules and regulations and to inform this Commission of its compliance herewith.

SO ORDERED. [31] (Underscoring supplied)

In so ruling against respondent, the SSC ratiocinated.

After a thorough examination of the evidence at hand, this Commission comes to the inevitable conclusion that the petitioner is not the legitimate wife of the deceased member.

x x x x

There is x x x ample evidence pointing to the fact that, contrary to the declaration of the then CFI of Sorsogon (10th Judicial District), the first wife never disappeared as the deceased member represented in bad faith. This Commission accords credence to the findings of the SSS contained in its Memorandum dated August 9, 1999, [32] revealing that Alice (a.k.a. Aliz) Diaz never left Barcelona, Sorsogon, after her separation from Clemente Bailon x x x.

As the declaration of presumptive death was extracted by the deceased member using artifice and by exerting fraud upon the unsuspecting court of law, x x x it never had the effect of giving the deceased member the right to marry anew. x x x [I]t is clear that the marriage to the petitioner is void, considering that the first marriage on April 25, 1955 to Alice Diaz was not previously annulled, invalidated or otherwise dissolved during the lifetime of the parties thereto. x x x as determined through the investigation conducted by the SSS, Clemente Bailon was the abandoning spouse, not Alice Diaz Bailon.

x x x x

It having been established, by substantial evidence, that the petitioner was just a common-law wife of the deceased member, it necessarily follows that she is not entitled as a primary beneficiary, to the latter's

death benefit. x x x

x x x x

It having been determined that Teresita Jarque was not the legitimate surviving spouse and primary beneficiary of Clemente Bailon, it behooves her to refund the total amount of death benefit she received from the SSS for the period from February 1998 until May 1999 pursuant to the principle of ***solutio indebiti*** x x x

Likewise, it appearing that she was not the one who actually defrayed the cost of the wake and burial of Clemente Bailon, she must return the amount of P12,000.00 which was earlier given to her by the SSS as funeral benefit. [33]. (Underscoring supplied)

Respondent's Motion for Reconsideration [34] having been denied by Order of June 4, 2003, she filed a petition for review [35] before the Court of Appeals (CA).

By Decision of June 23, 2004, the CA reversed and set aside the April 2, 2003 Resolution and June 4, 2003 Order of the SSC and thus ordered the SSS to pay respondent all the pension benefits due her. Held the CA:

x x x [T]he paramount concern in this case transcends the issue of whether or not the decision of the then CFI, now RTC, declaring Alice Diaz presumptively dead has attained finality but, more importantly, whether or not the respondents SSS and Commission can validly re-evaluate the findings of the RTC, and on its own, declare the latter's decision to be bereft of any basis. On similar import, can respondents SSS and Commission validly declare the first marriage subsisting and the second marriage null and void?

x x x x

x x x while it is true that a judgment declaring a person presumptively dead never attains finality as the finding that "the person is unheard of in seven years is merely a presumption *juris tantum*," the second marriage contracted by a person with an absent spouse endures until annulled. **It is only the competent court that can nullify the second marriage** pursuant to Article 87 of the Civil Code and upon the reappearance of the missing spouse, which action for annulment may be filed. Nowhere does the law contemplate [sic] the possibility that respondent SSS may validly declare the second marriage null and void on the basis alone of its own investigation and declare that the decision of the RTC declaring one to be presumptively dead is without basis.

Respondent SSS cannot arrogate upon itself the authority to review the decision of the regular courts under the pretext of determining the actual and lawful beneficiaries of its members. Notwithstanding its opinion as to the soundness of the findings of the RTC, it should extend due credence to the decision of the RTC absent of [sic] any judicial pronouncement to the contrary. x x x