

THIRD DIVISION

[G.R. No. 135216, August 19, 1999]

**TOMASA VDA. DE JACOB, AS SPECIAL ADMINISTRATRIX OF THE
INTESTATE ESTATE OF DECEASED ALFREDO E. JACOB,
PETITIONER, VS. COURT OF APPEALS, PEDRO PILAPIL, THE
REGISTER OF DEEDS FOR THE PROVINCE OF CAMARINES SUR,
AND JUAN F. TRIVINO AS PUBLISHER OF "BALALONG,"
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

The contents of a document may be proven by competent evidence other than the document itself, provided that the offeror establishes its due execution and its subsequent loss or destruction. Accordingly, the fact of marriage may be shown by extrinsic evidence other than the marriage contract.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court, assailing the Decision of the Court of Appeals^[1] (CA) dated January 15, 1998, and its Resolution dated August 24, 1998, denying petitioner's Motion for Reconsideration.

The dispositive part of the CA Decision reads:

"WHEREFORE, finding no reversible error in the decision appealed from it being more consistent with the facts and the applicable law, the challenged Decision dated 05 April 1994 of the RTC, Br. 30, Tigaon, Camarines Sur is AFFIRMED in toto."^[2]

The decretal portion of the trial court Decision^[3] is as follows:

"WHEREFORE, premises considered, decision is hereby rendered in favor of [herein Respondent] Pedro Pilapil, and against [herein Petitioner] Tomasa Guison as follows:

- a) Declaring Exh. B, the so called 'reconstructed marriage contract' excluded under the best evidence rule, and therefore declaring said Exh. B spurious and non-existent.
- b) Declaring Exh. 3 Order dated July 18, 1961, and the signature of the issuing Judge JOSE L. MOYA (Exh. 34) to be genuine.
- c) Permanently setting aside and lifting the provisional writ of injunction earlier issued; and

d) To pay attorney's fees of P50,000.

And costs against [herein petitioner.]"

The Facts

The Court of Appeals narrates the facts thus:

"Plaintiff-appellant [petitioner herein] claimed to be the surviving spouse of deceased Dr. Alfredo E. Jacob and was appointed Special Administratrix for the various estates of the deceased by virtue of a *reconstructed* Marriage Contract between herself and the deceased.

"Defendant-appellee on the other hand, claimed to be the legally-adopted son of Alfredo. In support of his claim, he presented an Order dated 18 July 1961 issued by then Presiding Judge Jose L. Moya, CFI, Camarines Sur, granting the petition for adoption filed by deceased Alfredo in favor of Pedro Pilapil.

"During the proceeding for the settlement of the estate of the deceased Alfredo in Case No. T-46 (entitled "Tomas vda. de Jacob v. Jose Centenera, et al) herein defendant-appellee Pedro sought to intervene therein claiming his share of the deceased's estate as Alfredo's adopted son and as his sole surviving heir. Pedro questioned the validity of the marriage between appellant Tomas and his adoptive father Alfredo.

"Appellant Tomas opposed the Motion for Intervention and filed a complaint for injunction with damages (Civil Case No. T-83) questioning appellee's claim as the legal heir of Alfredo.

"The following issues were raised in the court a quo:

a) Whether the marriage between the plaintiff-appellant and deceased Alfredo Jacob was valid;

b) Whether the defendant-appellee is the legally adopted son of deceased Jacob.

"On the first issue, appellant claims that the marriage between her and Alfredo was solemnized by one Msgr. Florencio C. Yllana, CBCP, Intramuros, Manila sometime in 1975. She could not however present the original copy of the Marriage Contract stating that the original document was lost when Msgr. Yllana allegedly gave it to Mr. Jose Centenera for registration. In lieu of the original, Tomas presented as secondary evidence a *reconstructed* Marriage Contract issued in 1978.

"During the trial, the court a quo observed the following irregularities in the execution of the reconstructed Marriage Contract, to wit:

1. No copy of the Marriage Contract was sent to the local civil registrar by the solemnizing officer thus giving the implication that there was no copy of the marriage contract sent to, nor a record existing in

the civil registry of Manila;

2. In signing the Marriage Contract, the late Alfredo Jacob merely placed his "thumbmark" on said contract purportedly on 16 September 1975 (date of the marriage). However, on a Sworn Affidavit executed between appellant Tomasa and Alfredo a day before the alleged date of marriage or on 15 September 1975 attesting that both of them lived together as husband and wife for five (5) years, Alfredo [af]fixed his customary signature. Thus the trial court concluded that the "thumbmark" was logically "not genuine". In other words, not of Alfredo Jacob's;
3. Contrary to appellant's claim, in his Affidavit stating the circumstances of the loss of the Marriage Contract, the affiant Msgr. Yllana never mentioned that he allegedly "gave the copies of the Marriage Contract to Mr. Jose Centenera for registration". And as admitted by appellant at the trial, Jose Centenera (who allegedly acted as padrino) was not present at the date of the marriage since he was then in Australia. In fact, on the face of the reconstructed Marriage Contract, it was one "Benjamin Molina" who signed on top of the typewritten name of Jose Centenera. This belies the claim that Msgr. Yllana allegedly gave the copies of the Marriage Contract to Mr. Jose Centenera;
4. Appellant admitted that there was no record of the purported marriage entered in the book of records in San Agustin Church where the marriage was allegedly solemnized.

"Anent the second issue, appellee presented the Order dated 18 July 1961 in Special Proceedings No. 192 issued by then Presiding Judge Moya granting the petition for adoption filed by deceased Alfredo which declared therein Pedro Pilapil as the legally adopted son of Alfredo.

"Appellant Tomasa however questioned the authenticity of the signature of Judge Moya.

"In an effort to disprove the genuineness and authenticity of Judge Moya's signature in the Order granting the petition for adoption, the deposition of Judge Moya was taken at his residence on 01 October 1990.

"In his deposition, Judge Moya attested that he could no longer remember the facts in judicial proceedings taken about twenty-nine (29) years ago when he was then presiding judge since he was already 79 years old and was suffering from "glaucoma".

"The trial court then consulted two (2) handwriting experts to test the authenticity and genuineness of Judge Moya's signature.

"A handwriting examination was conducted by Binevenido C. Albacea, NBI Document Examiner. Examiner Albacea used thirteen (13) specimen signatures of Judge Moya and compared it with the questioned signature. He pointed out irregularities and "significant fundamental differences in

handwriting characteristics/habits existing between the questioned and the 'standard' signature" and concluded that the questioned and the standard signatures "JOSE L. MOYA" were NOT written by one and the same person.

"On the other hand, to prove the genuineness of Judge Moya's signature, appellee presented the comparative findings of the handwriting examination made by a former NBI Chief Document Examiner Atty. Desiderio A. Pagui who examined thirty-two (32) specimen signatures of Judge Moya inclusive of the thirteen (13) signatures examined by Examiner Albacea. In his report, Atty. Pagui noted the existence of significant similarities of unconscious habitual pattern within allowable variation of writing characteristics between the standard and the questioned signatures and concluded that the signature of Judge Moya appearing in the Order dated 18 July 1961 granting the petition for adoption was indeed genuine.

"Confronted with two (2) conflicting reports, the trial court sustained the findings of Atty. Pagui declaring the signature of Judge Moya in the challenged Order as genuine and authentic.

"Based on the evidence presented, the trial court ruled for defendant-appellee sustaining his claim as the legally adopted child and sole heir of deceased Alfredo and declaring the reconstructed Marriage Contract as spurious and non-existent."^[4] (citations omitted, emphasis in the original)

Ruling of the Court of Appeals

In affirming the Decision of the trial court, the Court of Appeals ruled in this wise:

"Dealing with the issue of validity of the *reconstructed* Marriage Contract, Article 6, par. 1 of the Family Code provides that the declaration of the contracting parties that they take each other as husband and wife 'shall be set forth in an instrument signed by the parties as well as by their witnesses and the person solemnizing the marriage.' Accordingly, the primary evidence of a marriage must be an authentic copy of the marriage contract.

"And if the authentic copy could not be produced, Section 3 in relation to Section 5, Rule 130 of the Revised Rules of Court provides:

`Sec. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court without bad faith on the part of the offeror;

x x x x x x x x

`Sec. 5. When the original document is unavailable. - When the original

document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy. Or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.'

"As required by the Rules, before the terms of a transaction in reality may be established by secondary evidence, it is necessary that the due execution of the document and subsequent loss of the original instrument evidencing the transaction be proved. For it is the due execution of the document and subsequent loss that would constitute the foundation for the introduction of secondary evidence to prove the contents of such document.

"In the case at bench, proof of due execution besides the loss of the three (3) copies of the marriage contract has not been shown for the introduction of secondary evidence of the contents of the *reconstructed* contract. Also, appellant failed to sufficiently establish the circumstances of the loss of the original document.

"With regard to the trial court's finding that the signature of then Judge Moya in the questioned Order granting the petition for adoption in favor of Pedro Pilapil was genuine, suffice it to state that, in the absence of clear and convincing proof to the contrary, the presumption applies that Judge Moya in issuing the order acted in the performance of his regular duties.

"Furthermore, since the signature appearing in the challenged Order was subjected to a rigid examination of two (2) handwriting experts, this negates the possibility of forgery of Judge Moya's signature. The value of the opinion of a handwriting expert depends not upon his mere statement of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics, and discrepancies in and between genuine and false specimens of writing of which would ordinarily escape notice or detection from an unpracticed observer. And in the final analysis, the assessment of the credibility of such expert witnesses rests largely in the discretion of the trial court, and the test of qualification is necessarily a relative one, depending upon the subject under investigation and the fitness of the particular witness. Except in extraordinary cases, an appellate court will not reverse on account of a mistake of judgment on the part of the trial court in determining qualifications of this case.

"Jurisprudence is settled that the trial court's findings of fact when ably supported by substantial evidence on record are accorded with great weight and respect by the Court. Thus, upon review, We find that no material facts were overlooked or ignored by the court below which if considered might vary the outcome of this case nor there exist cogent reasons that would warrant reversal of the findings below. Factual findings of the trial court are entitled to great weight and respect on appeal especially when established by unrebutted testimony and documentary evidence."^[5] (citations omitted, emphasis in the original)

Disagreeing with the above, petitioner lodged her Petition for Review before this Court.^[6]

The Issues