

## TWENTY-FIRST DIVISION

[ CA-G.R. SP NO. 04554-MIN, March 28, 2014 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MA. BETH R. ANTONIO AND HON. EDUARDO S. CASALS IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 1, BUTUAN CITY, AGUSAN DEL NORTE, RESPONDENTS.**

### D E C I S I O N

**FRANCISCO, J.:**

Before Us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 assailing the Decision dated August 5, 2011<sup>[2]</sup> issued by public respondent Hon. Eduardo S. Casals, Presiding Judge, Regional Trial Court, Branch 1, Butuan City, Agusan del Norte in Special Proc. Case No. 4133 entitled "*In the Matter of the Petition for Declaration of Presumptive Death of Alex L. Antonio.*"

The assailed Decision dated August 5, 2011 granted private respondent Ma. Beth Antonio's petition<sup>[3]</sup> for declaration of presumptive death of her absent spouse Alex L. Antonio and declared the latter presumptively dead.

#### The Facts

Private respondent Ma. Beth Antonio (hereinafter referred to as private respondent) and Alex L. Antonio (Alex for brevity) were married<sup>4</sup> on May 3, 1990 before the Municipal Trial Court in Cities, Davao City. They were blessed with three children: Kenneth<sup>[5]</sup>, Melody<sup>[6]</sup>, and Alex Jr.<sup>[7]</sup>, surnamed Antonio. Sometime in 1999, Alex suddenly left the conjugal home at Purok 1, Manapa, Buenavista, Agusan del Norte, and has never been heard of since then. Private respondent neither received letters, emails, nor any other form of communication from him. Despite earnest efforts, she failed to ascertain Alex's whereabouts.

On January 5, 2011, or 12 years after Alex disappeared, private respondent filed a petition for declaration of presumptive death of Alex. Finding the petition sufficient in form and substance, and after private respondent complied with the jurisdictional requirements, the court *a quo* gave due course to the petition and set it for hearing.

During trial, private respondent testified that sometime in 1999, after a minor argument, Alex left the conjugal home and never came back. After a 2-week absence, private respondent went to look for her husband at his home address at Bajada, Davao City but his family did not know his whereabouts. She likewise asked his friends and relatives in Butuan City but such friends and relatives neither knew Alex's location. She searched for her husband for 3 years from 1999 to 2002, to no avail. While abroad, she also searched for Alex online in facebook and other social media sites but her online search also proved futile. She claimed that she was informed by her sister-in-law that Alex even failed to attend the wakes of two of their siblings who died.

On cross-examination, private respondent testified that she was not able to report her husband's disappearance to police authorities nor search for him through radio broadcast due to financial constraints. She further testified that Alex was thin and not that healthy when he disappeared in 1999.

Private respondent also presented as witness her eldest son Kenneth who mainly corroborated private respondent's testimony.

After trial, the court *a quo* granted the petition and declared private respondent's husband presumptively dead in its Decision dated August 5, 2011, the dispositive portion of which reads:

WHEREFOR[E], considering all the foregoing circumstances, petitioner's absent spouse Alex L. Antonio is hereby declared presumptively dead for the purpose of petitioner's contracting a subsequent marriage, without prejudice to the effect of reappearance of her absentee spouse.

IT IS SO ORDERED.

In this petition, the Republic, through the OSG, now assails the decision of the court *a quo* raising this lone issue to wit:

**[WHETHER OR NOT] PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED ALEX L. ANTONIO PRESUMPTIVELY DEAD DESPITE LACK OF PROOF OF A WELL-FOUNDED BELIEF ON THE PART OF PRIVATE RESPONDENT THAT HER SPOUSE IS ALREADY DEAD.**<sup>[8]</sup>

#### Our Ruling

The petition lacks merit.

Article 41 of the Family Code states:

Art. 41. A marriage contracted by any person during the 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.)

The Supreme Court has laid down the four (4) requisites for the declaration of presumptive death under the Family Code as follows, *viz*:

1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of