THIRD DIVISION

[CA-G.R. CV NO. 101445, November 17, 2014]

IN RE: SUMMARY PETITION FOR DECLARATION OF PRESUMPTION OF DEATH OF HUSBAND EDGAR MORALES FERNANDEZ, JUVY ANN RAGADIO, PETITIONER-APPELLANT, VS. EDGAR MORALES FERNANDEZ, RESPONDENT,

REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLEE.

D E C I S I O N

DE GUIA-SALVADOR, R., J.:

Evidentiary sufficiency is at issue in this appeal from the Decision[1] rendered by the Regional Trial Court, Branch 71, Iba, Zambales ***(court a quo)***, in SP. PROC. No. RTC-1684-I, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the instant petition for declaration of presumptive death of Edgar Morales Fernandez is hereby dismissed for lack of merit.
>
> SO ORDERED."[2]

The Facts

On January 21, 1994, Edgar Morales Fernandez ***(Edgar)*** and Juvy Ann Ragadio ***(Juvy Ann)*** were married before the Municipal Mayor of Castillejos, Zambales.[3] After the celebration of their marriage, Edgar went back to work in Manila. Born out of their marriage is their daughter named Katherine Jelle.[4] On June 12, 1994, Edgar returned to Zambales to inform his wife Juvy Ann that he was involved in a homicide case, and thus needed to hide in Mindanao. He also told her that he would enlist with the Civilian Armed Force Geographical Unit (CAFGU).[5] From then on and for the next eighteen (18) years, Edgar had not communicated his wife. Neither has she received any news about him, thereby giving rise to a belief that he may already be dead.[6]

On October 4, 2012, Juvy Ann filed before the court *a quo*, a Petition for Declaration of Presumption of Death of Husband Edgar Morales Fernandez under Article 41 of the Family Code.[7] The case was docketed as SP PROC. No. RTC-1684-I.

The RTC Decision

On July 29, 2013, the court *a quo* rendered its appealed Decision, dismissing for

lack of merit the Petition for Declaration of Presumptive Death, ratiocinating in this wise:

"xxx xxx xxx

> In the instant case, there is no evidence whatsoever, presented by the petitioner that certain overt acts or strides were done by her to ascertain whether or not her husband is already dead. Her testimony that respondent had not communicated to her for almost 18 years is insufficient to deduce a well-founded belief that the absent spouse is already dead. There was even no evidence presented to show proper and honest to goodness inquiries and efforts to ascertain her husband's whereabouts, particularly in Mindanao, his alleged destination after he left petitioner.
>
> With the lack of two of the basic requisites enumerated above, the petitioner clearly was not able to discharge the burden of proof for the Court to grant this petition.

xxx xxx xxx"[8]

The Issue

Aggrieved by the Decision rendered by the court *a quo*, Juvy Ann is now before Us, seeking the reversal of the appealed decision, raising the following lone issue:

> **"WHETHER OR NOT THERE IS A WELL FOUNDED BELIEF THAT THE MISSING SPOUSE IS ALREADY DEAD."**[9]

Juvy Ann maintains that Edgar's act of going to Mindanao and joining the CAFGU, coupled with his absence for more than 18 years, constitute a well-founded belief that her absent spouse is already dead.[10]

The oppositor-appellee Republic of the Philippines did not file its Appellee's Brief.[11]

The Court's Ruling

We dismiss the appeal for of lack of jurisdiction, as well as for lack of merit.

There is no dispute regarding the fact that the petition from which the instant suit stemmed was filed by Juvy Ann for the purpose of contracting a second marriage. The petition is, consequently, anchored on Article 41 of the ***Family Code of the Philippines*** which, in full, provides as follows:

> "Article 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 had 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 provision 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 absentee."

Being a summary judicial proceeding in the Family Law, the proceedings a quo was, consequently, governed by Title XI of the ***Family Code*** which, under Article 247 thereof, provides that "(t)he judgment of the court shall be immediately final and executory." The propriety of the appeal at bench is, consequently, cast in dubious light when viewed in the light of the foregoing considerations. Significantly, in ***Republic of the Philippines vs. Cantor***,[12] the Supreme Court ruled that the right to appeal is not granted because of the express mandate of Article 247 of the Family Code, *to wit*:

> "In Summary Judicial Proceedings under the Family Code, there is no reglementary period within which to perfect an appeal, precisely because judgments rendered thereunder, by express provision of Section 247, Family Code, are 'immediately final and executory'.It was erroneous, therefore, on the part of the RTC to give due course to the Republic's appeal and order the transmittal of the entire records of the case to the Court of Appeals.
>
> An appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory. As we have said in ***Veloria vs. Comelec***, 'the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege.' Since, by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are 'immediately final and executory', the right to appeal was not granted to any of the parties therein. The Republic of the Philippines, as oppositor in the petition for declaration of presumptive death, should not be treated differently. It had no right to appeal the RTC decision of November 7, 2001."

As the right to appeal is not a natural right, but merely a statutory privilege,[13] an appellate court acquires no jurisdiction to review a judgment which, by express provision of law, is immediately final and executory.[14] Therefore, the filing of an appeal from a decision rendered by the lower court in a petition for declaration of presumptive death under the Article 41 is indeed a "serious procedural lapse" and the Court of Appeals has no jurisdiction to review the judgment rendered therein.[15] The court *a quo* likewise erred by giving due course to the appeal and ordering the transmittal of the records of the case to Us[16] since the judgment of the court *a*