



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

REPUBLIC OF THE  
PHILIPPINES,  
Petitioner,

G.R. No. 210929

Present:

- versus -

CARPIO, *J.*, Chairperson,  
BRION,  
MENDOZA,  
PERLAS-BERNABE,\* and  
LEONEN, *JJ.*

EDNA ORCELINO-  
VILLANUEVA,  
Respondent.

Promulgated:  
29 JUL 2015

X ----- X

DECISION

MENDOZA, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, the Office of the Solicitor General (*OSG*), on behalf of the Republic of the Philippines, assails the October 18, 2013 Decision<sup>1</sup> and the January 8, 2014 Resolution<sup>2</sup> of the Court of Appeals (*CA*), in CA-G.R. S.P. No. 03768-MIN, which affirmed the October 8, 2009 Judgment<sup>3</sup> of the Regional Trial Court, Branch 10, Malaybalay City, Bukidnon (*RTC*), in SP Proc. Case No. 3316-09, granting the petition of respondent Edna Orcelino-Villanueva

\* Designated Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 2115, dated July 22, 2015.

<sup>1</sup> *Rollo*, pp. 27-35. Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo T. Lloren and Marie Christine Azcarraga Jacob, concurring.

<sup>2</sup> *Id.* at 36-37.

<sup>3</sup> *Id.* at 48-49. Penned by Judge Centiles Bacal.

(*Edna*) and declaring her husband, Romeo L. Villanueva (*Romeo*), as presumptively dead under Article 41 of the Family Code.<sup>4</sup>

### **The Antecedents**

Edna and Romeo were married on December 21, 1978, in Iligan City.

In 1992, Edna worked as domestic helper in Singapore while her husband worked as a mechanic in Valencia City, Bukidnon. In 1993, Edna heard the news from her children that Romeo had left their conjugal home without reason or information as to his whereabouts.

Thereafter, Edna took a leave from work and returned to the country to look for Romeo. She inquired from her parents-in-law and common friends in Iligan City. Still, she found no leads as to his whereabouts or existence. She also went to his birthplace in Escalante, Negros Oriental, and inquired from his relatives.

On August 6, 2009, Edna filed before the RTC a petition<sup>5</sup> to declare Romeo presumptively dead under Article 41 of the Family Code.

During the trial, Edna was presented as the *lone witness*. In its October 8, 2009 Order,<sup>6</sup> the RTC granted the petition on the basis of her well-founded belief of Romeo's death. Hence:

**WHEREFORE**, premises considered, judgment is hereby rendered declaring Romeo L. Villanueva to be presumptively dead for all legal intents and purposes in accordance with Article 41 of the Family Code of the Philippines, without prejudice to his reappearance.

**SO ORDERED.** <sup>7</sup>

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<sup>4</sup> The Family Code, 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 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 absent spouse.

<sup>5</sup> *Rollo*, pp. 38-40.

<sup>6</sup> *Id.* at 48-49. Penned by Judge Josefina Centiles Bacal.

<sup>7</sup> *Id.* at 49.

On August 13, 2010, the OSG filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA alleging grave abuse of discretion on the part of the RTC in finding that Edna had a well-founded belief that Romeo, her absent spouse, was dead. It argued that the conclusions reached by the RTC were in direct opposition to established jurisprudence, as ruled by the Court in *Republic v. Nolasco*<sup>8</sup> (*Nolasco*) and *U.S. v. Biasbas*.<sup>9</sup>

On October 18, 2013, the CA dismissed the petition, holding that the RTC acted within its jurisdiction in issuing the assailed decision having been expressly clothed with the power to determine the case.<sup>10</sup> It also cited Article 247 of the Family Code<sup>11</sup> which provided for the final and immediate executory character of the decision of the RTC, acting as a family court, thus, rendering the issue of whether or not Edna had sufficiently established a well-founded belief to warrant the decree of presumptive death of her absent spouse, as moot and academic.

On November 20, 2013, the OSG filed a motion for reconsideration but the CA denied it on January 8, 2014.

Hence, this petition.

## ISSUES

### I.

**WHETHER OR NOT THE CA ERRED IN AFFIRMING THE RTC DECISION DESPITE THE FACT THAT THE CONCLUSION REACHED BY THE RTC IS CONTRARY TO PREVAILING JURISPRUDENCE.**

### II.

**WHETHER OR NOT THE CA ERRED IN RULING THAT THE GROUNDS RAISED BY THE PETITIONER TO ASSAIL THE RTC DECISION ARE MERE ERRORS OF JUDGMENT.**<sup>12</sup>

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<sup>8</sup> G.R. No. 94053, March 17, 1993, 220 SCRA 20.

<sup>9</sup> 25 Phil. 71 (1913).

<sup>10</sup> *Rollo*, p. 34.

<sup>11</sup> The Family Code, Art. 247. The judgment of the court shall be immediately final and executory.

<sup>12</sup> *Rollo*, pp. 14-15.

The OSG argues that the CA erred in not finding grave abuse of discretion on the part of the RTC when the latter affirmed the existence of Edna's well-founded belief as to the death of her absent spouse. It claims that the evidence presented by Edna, which merely consisted of bare and uncorroborated assertions, never amounted to a diligent and serious search required under prevailing jurisprudence.

Respondent Edna, through her counsel, invokes the finality, inalterability and immutability of the RTC decision, which was affirmed by the CA.<sup>13</sup>

### **Ruling of the Court**

The Court grants the petition.

Article 41 of the Family Code provides that before a judicial declaration of presumptive death may be granted, the present spouse must prove that he/she has a well-founded belief that the absentee is dead.<sup>14</sup> In this case, Edna failed. The RTC and the CA overlooked Edna's patent non-compliance with the said requirement.

The well-founded belief in the absentee's death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort (not a mere passive one). Mere absence of the spouse (even beyond the period required by law), lack of any news that the absentee spouse is still alive, mere failure to communicate, or general presumption of absence under the Civil Code would not suffice.<sup>15</sup> The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, whether the absent spouse is still alive or is already dead.<sup>16</sup>

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<sup>13</sup> Id. at 66-70.

<sup>14</sup> *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2013/december2013/184621.pdf>> (Last visited: April 28, 2015).

<sup>15</sup> Id.

<sup>16</sup> Id., citing *Republic of the Philippines v. Court of Appeals (Tenth Div.)*, 513 Phil. 391, 397-398 (2005).

This strict standard approach ensures that a petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws in light of the State's policy to protect and strengthen the institution of marriage. Courts should never allow procedural shortcuts but instead should see to it that the stricter standard required by the Family Code is met.<sup>17</sup>

Accordingly, in a string of cases, this Court has denied petitions for the declaration of presumptive death on the said basis.

In *Republic of the Philippines v. Court of Appeals*,<sup>18</sup> the Court ruled that the present spouse failed to prove that he had a well-founded belief that his absent spouse was already dead before he filed his petition. His efforts to locate his absent wife allegedly consisted of the following:

- (1) He went to his in-laws' house to look for her;
- (2) He sought the barangay captain's aid to locate her;
- (3) He went to her friends' houses to find her and inquired about her whereabouts among her friends;
- (4) He went to Manila and worked as a part-time taxi driver to look for her in malls during his free time;
- (5) He went back to Catbalogan and again looked for her; and
- (6) He reported her disappearance to the local police station and to the NBI.

Despite these claimed "earnest efforts," the Court still ruled against the present spouse. The Court explained that he failed to present the persons from whom he made inquiries and only reported his wife's absence after the OSG filed its notice to dismiss his petition in the RTC.

Similarly in *Republic v. Granada*,<sup>19</sup> the Court ruled that the present spouse failed to prove her "well-founded belief" that her absent spouse was already dead prior to her filing of the petition. She simply did not exert diligent efforts to locate her husband either in the country or in Taiwan, where he was known to have worked. Moreover, she did not explain her omissions. In said case, the Court wrote:

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<sup>17</sup> *Republic v. Cantor*, supra note 14.

<sup>18</sup> 513 Phil. 391 (2005).

<sup>19</sup> G.R. No. 187512, June 13, 2012, 672 SCRA 432, 444-445.

The belief of the present spouse must be the result of proper and honest to goodness inquiries and efforts to ascertain the whereabouts of the absent spouse and whether the absent spouse is still alive or is already dead. Whether or not the spouse present acted on a well-founded belief of the death of the absent spouse depends upon inquiries to be drawn from a great many circumstances occurring before and after the disappearance of an absent spouse and the nature and extent of the inquiries made by the present spouse.

In *Nolasco*, the present spouse filed a petition for declaration of presumptive death of his wife, who had been missing for more than four years. He testified that his efforts to find her consisted of:

- (1) Searching for her whenever his ship docked in England;
- (2) Sending her letters which were all returned to him; and
- (3) Inquiring from their friends regarding her whereabouts, which all proved fruitless.

The Court held that the present spouse's methods of investigation were too sketchy to form a basis that his wife was already dead. It stated that the pieces of evidence only proved that his wife had chosen not to communicate with their common acquaintances, and not that she was dead.

Recently, in *Republic v. Cantor*<sup>20</sup> (*Cantor*), the Court considered the present spouse's efforts to have fallen short of the "stringent standard" and lacked the degree of diligence required by jurisprudence as she did not actively look for her missing husband; that she did not report his absence to the police or seek the aid of the authorities to look for him; that she did not present as witnesses her missing husband's relatives or their neighbors and friends, who could corroborate her efforts to locate him; that these persons, from whom she allegedly made inquiries, were not even named; and that there was no other corroborative evidence to support her claim that she conducted a diligent search. In the Court's view, the wife merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. She, thus, failed to conduct a diligent search. Her claimed efforts were insufficient to form a well-founded belief that her husband was already dead.

In this case, Edna claimed to have done the following to determine the whereabouts and the status of her husband:

1. She took a vacation/leave of absence from her work and returned to the Philippines to look for her husband.

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<sup>20</sup> Supra note 14.

2. She inquired from her parents-in-law in Iligan City and from their common friends in the same city and in Valencia City.
3. She went as far as the birthplace of her husband in Escalante, Negros Oriental, so she could inquire from her husband's relatives.

Despite her efforts, she averred that she received negative responses from them because none of them had knowledge of the existence of her husband who had been missing for 15 years.

Applying the standard set forth by the Court in the previously cited cases, particularly *Cantor*, Edna's efforts failed to satisfy the required well-founded belief of her absent husband's death.

Her claim of making diligent search and inquiries remained unfounded as it merely consisted of bare assertions without any corroborative evidence on record. She also failed to present any person from whom she inquired about the whereabouts of her husband. She did not even present her children from whom she learned the disappearance of her husband. In fact, she was the lone witness. Following the basic rule that mere allegation is not evidence and is not equivalent to proof,<sup>21</sup> the Court cannot give credence to her claims that she indeed exerted diligent efforts to locate her husband.

Moreover, no document was submitted to corroborate the allegation that her husband had been missing for at least fifteen (15) years already. As the OSG observed, there was not even any attempt to seek the aid of the authorities at the time her husband disappeared. In *Cantor*, the present spouse claimed to have sought the aid of the authorities or, at the very least, reported his absence to the police.<sup>22</sup> Yet, the Court denied her pleas.

Verily, it makes sense to conclude that her efforts were not diligent and serious enough to give meaning to her well-founded belief that Romeo was already dead. Suffice it to state that her petition should have been denied at the first instance. The RTC, however, granted it, reasoning

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<sup>21</sup> *Republic v. Cantor*, supra note 14, citing *Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012, 666 SCRA 119, 131.

<sup>22</sup> Supra note 14.

xxx that it was in 1993 when the petitioner while abroad heard the news from her children that her husband left their conjugal home xxx without informing the children nor communicating with the herein petitioner as to the reasons why he left their family abode nor giving them any information as to his whereabouts; that herein petitioner took vacation/leave of absence from her work and return to the Philippines, in order to look for her husband and made some inquiries with her parents-in-law in Iligan City, from their common friends in Iligan City and in Valencia City, and even went as far as the birthplace of her husband, particularly at Escalante, Negros Oriental, inquiring from her husband's relatives, but she only got negative response from them since none of them have any knowledge as to the present existence of her husband that since the year 1993 up to the present, a period of about fifteen [15] years have elapsed, the person and the body of petitioner's husband could not be found, located nor traced as there is no any information as to his existence or whereabouts.<sup>23</sup>

Worse, the CA affirmed the RTC decision when it dismissed the petition for *certiorari* filed by the OSG. The CA should have realized the glaring and patent disregard by the RTC of the rulings in similar situations where petitions for declaration of presumptive death have been denied by this Court. By declaring Romeo presumptively dead, the CA clearly ignored this Court's categorical pronouncements.

**WHEREFORE**, the petition is **GRANTED**. Accordingly, the October 18, 2013 Decision and the January 8, 2014 Resolution of the Court of Appeals are hereby **REVERSED** and **SET ASIDE**. The petition of respondent Edna Orcelino-Villanueva to have her husband declared presumptively dead is **DENIED**.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

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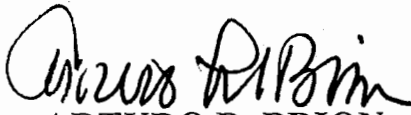
<sup>23</sup> *Rollo*, pp. 48-49.



**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ARTURO D. BRION**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

*See dissenting opinion*



**MARVIC M.V.F. LEONEN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Acting Chief Justice

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