



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

**REPUBLIC OF THE
 PHILIPPINES,**

Petitioner,

G.R. No. 237412

Present:

- versus -

PERALTA, C.J., Chairperson,
 CAGUIOA,
 J. REYES, JR.,
 LAZARO-JAVIER, and
 LOPEZ,* JJ.

REMAR A. QUIÑONEZ,
 Respondent.

Promulgated:

JAN 06 2020

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DECISION

CAGUIOA, J.:

The Case

This is a Petition for Review on *Certiorari*¹ (Petition) filed under Rule 45 of the Rules of Court against the Decision² dated June 29, 2017 (assailed Decision) and Resolution³ dated January 31, 2018 (assailed Resolution) in CA-G.R. SP No. 07581-MIN rendered by the Court of Appeals⁴ (CA).

The assailed Decision and Resolution upheld the Judgment⁵ dated April 11, 2016 issued by the Regional Trial Court of Surigao City, Branch 32 (RTC) in Special Proceedings No. 7669, which, in turn, declared Lovelyn Uriarte Quiñonez (Lovelyn) presumptively dead under Article 41 of the Family Code.

The Facts

The facts, as narrated by the CA, are as follows:

* On official leave.

¹ *Rollo*, pp. 51-70.

² *Id.* at 71-78. Penned by Associate Justice Oscar V. Badelles, with the concurrence of Associate Justices Romulo V. Borja and Perpetua T. Atal-Paño.

³ *Id.* at 79-81.

⁴ Twenty-First Division and Former Twenty-First Division, respectively

⁵ *CA rollo*, pp. 14-17. Penned by Acting Presiding Judge Dan R. Calderon.

[Petitioner Remar A. Quiñonez (Remar)] and his wife Lovelyn met in [Gamaon⁶], Mangagoy, Bislig City when Remar was in college [and] staying at his aunt's house. After eight months [of being] in a relationship, they got married on August 16, 1997 at the Saint Vincent de Paul Parish in Mangagoy, Bislig City[. The wedding was] officiated by Rev. Fr. Ivan E. Novo, as shown in their Marriage Certificate.

After their wedding, the couple stayed at the house of Lovelyn's parents and they begot two (2) children [namely], Emar A. Quiñonez born on January 20, 1998 and Diana Love Quiñonez born on December 15, 1999.

To support his family, Remar started working as a security guard at the National Food Authority Warehouse in October 1997, although later on, he transferred to Cebu City for an opportunity to earn a bigger salary.

Sometime in 2001, when Lovelyn's father received his retirement pay, Lovelyn asked her husband's permission to go on a three-month vacation in Manila to visit some relatives. Despite Remar's reluctance, he agreed to his wife's request.

During the first three months[,] Lovelyn constantly communicated with Remar through cellphone. It was also at this time that Remar resigned from his work in Cebu City and transferred to Surigao City, where he worked as a security guard at the Surigao City Hall of Justice.

Remar informed Lovelyn that as soon as she arrive[d] from Manila, they would x x x be living together in Surigao City [with] their two children. Thereafter, the calls and text messages tapered off until the communication between the spouses ceased altogether.

At first, Remar thought that his wife just lost her cellphone, so he inquired about her from their relatives in Bislig City. **Someone informed him that his wife was then already cohabiting with another man and would no longer be coming back out of shame.**

On November 2003, Remar's uncle informed him that Lovelyn was in Bislig City to visit their children. Remar filed for an emergency leave of absence from his work and left for Bislig City only to be told that his wife had already left for Lingig, Surigao del Sur. He went after her in Lingig, yet upon arrival, he was told that Lovelyn stayed only for a day and returned to Bislig. He was then constrained to go back to Surigao City, without seeing his wife.

In the summer of 2004, Remar filed for a leave from work to look for his wife in Manila. [Remar also] went to Batangas along with his aunt, Evelyn Pachico[,] as well as to Cavite with Lovelyn's aunt, Leonora Aguilar, yet they were not able to find her.

On February 27, 2013, after almost ten (10) years of trying to know about the whereabouts of his wife from their relatives proved futile, x x x [Remar filed a] Petition for Declaration of Presumptive Death before the RTC. x x x⁷ (Emphasis supplied)

⁶ Also appears as "Garmaon" and "Ganaon" in some parts of the records.

⁷ Rollo, pp. 72-73.

RTC Proceedings

After compliance with the jurisdictional requirements of publication and posting, and with no objection having been filed, the RTC issued a Judgment (RTC Judgment) in Remar's favor. The dispositive portion of said Judgment reads:

WHEREFORE, judgment is hereby rendered declaring that **absentee spouse[, Lovelyn,] is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice** to the effect of the reappearance of the said absentee spouse.

SO ORDERED.⁸

According to the RTC, Remar was able to show that he had exerted diligent efforts to locate his wife, considering that he spent his meager resources to look for her in Surigao del Sur, Metro Manila, Batangas and Cavite — places where he was told his wife had been seen.⁹ In addition, Remar consistently communicated with Lovelyn's relatives in Bislig City to ascertain whether they had any information regarding the latter's whereabouts. In sum, the RTC found Remar's efforts sufficient for purposes of declaring Lovelyn presumptively dead.¹⁰

The RTC Judgment, being rendered in summary proceedings, became immediately final and executory in accordance with Article 247, in relation to Article 238 of the Family Code.¹¹

CA Proceedings

Subsequently, the Republic of the Philippines¹² (Republic) filed a Petition for *Certiorari*¹³ before the CA seeking to annul the RTC Judgment for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Therein, the Republic argued that Remar failed to establish that he "exerted proper and honest to goodness inquiries and efforts to ascertain Lovelyn's whereabouts and whether or not she is still alive."¹⁴

⁸ CA *rollo*, p. 17.

⁹ *Id.* at 16.

¹⁰ See *id.* at 16-17.

¹¹ In reference to summary judicial proceedings under the Family Code, Articles 238 and 247 state:

ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.

x x x x

ART. 247. The judgment of the court shall be immediately final and executory.

¹² Through the Office of the Solicitor General.

¹³ *Rollo*, pp. 93-103.

¹⁴ *Id.* at 96.

Citing *Republic v. Cantor*¹⁵ (*Cantor*), the Republic characterized Remar's search as passive in nature.¹⁶ In particular, the Republic averred that while Remar claimed to have looked for Lovelyn in several places, he failed to explain the nature and extent of his efforts and inquiries. As well, the Republic claimed that Remar failed to present proof that Lovelyn's relatives and friends had no information regarding her whereabouts. Too, the Republic questioned Remar's failure to report Lovelyn's disappearance to the authorities.¹⁷

The Republic also prayed for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction to restrain the execution of the RTC Judgment.¹⁸

The CA resolved to deny the Petition for *Certiorari* through the assailed Decision, the dispositive portion of which reads:

ALL TOLD, the [P]etition for *Certiorari* is DENIED. The [RTC Judgment] in Special Proceedings No. 7669 for Declaration of Presumptive Death under Article 41 of the Family Code of Lovelyn Uriarte Quiñonez is hereby AFFIRMED.

SO ORDERED.¹⁹

Foremost, the CA held that while the Republic resorted to the correct remedy of *certiorari* under Rule 65, its Petition for *Certiorari* warranted outright dismissal for failure to file a prior motion for reconsideration before the RTC — a prerequisite to the filing of a petition for *certiorari* with the CA.²⁰

In any case, the CA ruled that the Petition for *Certiorari* fails even on the merits, since the RTC Judgment is sufficiently supported by the evidence on record.²¹ The CA observed that what the Republic puts in issue is the RTC's appreciation of the facts and evidence which are not the proper subjects of *certiorari* under Rule 65.²²

The Republic filed a motion for reconsideration which the CA also denied through the assailed Resolution.²³

The Republic received a copy of the assailed Resolution on February 20, 2018.²⁴

¹⁵ 723 Phil. 114 (2013).

¹⁶ *Rollo*, p. 98.

¹⁷ *Id.* at 97.

¹⁸ See *id.* at 100-101.

¹⁹ *Id.* at 77.

²⁰ *Id.* at 74.

²¹ *Id.* at 75.

²² *Id.* at 76.

²³ *Id.* at 79-81.

²⁴ *Id.* at 52.



On March 2, 2018, the Republic filed a Motion for Extension,²⁵ praying for an additional period of thirty (30) days from March 7, 2018, or until April 6, 2018, to file a petition for review on *certiorari*.

This Petition was filed on April 5, 2018.

In compliance with the Court's June 27, 2018 Resolution,²⁶ Remar filed his Comment²⁷ to the Petition on September 14, 2018.

The Republic filed its Reply²⁸ on April 5, 2019. Thereafter, the case was deemed submitted for resolution.

Here, the Republic insists that Remar's efforts in locating his wife Lovelyn were insufficient to give rise to a "well-founded belief" that she is dead. On this basis, the Republic maintains that Remar's petition to declare Lovelyn presumptively dead should have been dismissed.

The Issue

The sole issue for the Court's resolution is whether the CA erred when it found sufficient legal basis to uphold the declaration of Lovelyn's presumptive death.

The Court's Ruling

The Petition is granted.

The Petition raises a pure question of law

Before delving into the singular substantive issue, the Court first resolves the procedural issues.

The CA held that the Republic's Petition for *Certiorari* was procedurally infirm for two reasons — *first*, the Petition for *Certiorari* was filed with the CA without a prior motion for reconsideration; and *second*, said petition raised questions of fact and evidence which are not cognizable under a Rule 65 petition.

The Court disagrees.

²⁵ Id. at 3-8.

²⁶ Id. at 150-151.

²⁷ Id. at 165-172.

²⁸ Id. at 181-189.



A petition for *certiorari* under Rule 65 “is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law.”²⁹

As a general rule, a motion for reconsideration must first be filed with the lower court before the extraordinary remedy of *certiorari* is resorted to, since a motion for reconsideration is considered a plain, speedy and adequate remedy in the ordinary course of law. Nevertheless, this general rule admits of well-established exceptions, one of which is when the issue raised is a pure question of law.³⁰

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.³¹

Here, the Republic does not dispute the truthfulness of Remar’s allegations, particularly, the specific acts he claims to have done to locate Lovelyn. What the Republic does question is the sufficiency of these acts, that is, whether they are sufficient to merit a legal declaration of Lovelyn’s presumptive death.

Clearly, the Republic’s Petition for *Certiorari* raised a pure legal question. Hence, direct resort to the CA *via* Rule 65, without filing with the RTC a prior motion for reconsideration, was proper.

The requisites for declaration of presumptive death under the Family Code

Article 41 of the Family Code provides the requirements for a declaration of presumptive death, thus:

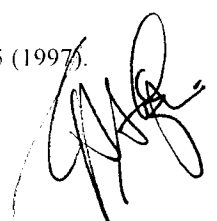
ART. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, **the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead.** In case of disappearance where there is danger of death under the circumstances set forth in the 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

²⁹ *Genpact Services, Inc. v. Santos-Falceso*, 814 Phil. 1091, 1099 (2017).

³⁰ *Id.* at 1099-1100.

³¹ See generally *Parañaque Kings Enterprises, Inc. v. Court of Appeals*, 335 Phil. 1184, 1195 (1997).



presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (Emphasis supplied)

Culled from this provision, the essential requisites for a declaration of presumptive death for the purpose of remarriage are:

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 death under the circumstances laid down in Article 391, Civil Code;
2. That the present spouse wishes to remarry;
3. **That the present spouse has a well-founded belief that the absentee is dead;** and
4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.³² (Emphasis in the original)

The Petition is anchored on Remar's alleged failure to prove compliance with the third requisite. Thus, a closer examination of this requirement is necessary.

In *Cantor*, the Court *en banc* clarified the meaning of well-founded belief by comparing the language of Article 41 to its Civil Code counterpart. The Court held:

Notably, Article 41 of the Family Code, compared to the old provision of the Civil Code which it superseded, imposes a stricter standard. It requires a "well-founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted. We have had occasion to make the same observation in *Republic v. Nolasco*, where we noted the crucial differences between Article 41 of the Family Code and Article 83 of the Civil Code, to wit:

Under Article 41, the time required for the presumption to arise has been shortened to four (4) years; however, there is need for a judicial declaration of presumptive death to enable the spouse present to remarry. Also, Article 41 of the Family Code imposes a stricter standard than the Civil Code: Article 83 of the Civil Code merely requires either that there be no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so by the spouse present, or is presumed dead under Articles 390 and 391 of the Civil Code. The Family Code, upon the other hand, prescribes as "well founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted.

Thus, mere absence of the spouse (even for such period required by the law), lack of any news that such absentee is still alive, failure to communicate or general presumption of absence under the

³² *Republic v. Cantor*, supra note 15, at 127-128.

Civil Code would not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more 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, that the absent spouse is still alive or is already dead.

The Requirement of Well-Founded Belief

The law did not define what is meant by “well-founded belief.” It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. **To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of diligent and reasonable efforts and inquiries 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 requires exertion of active effort (not a mere passive one).³³ (Emphasis and underscoring supplied; emphasis and italics in the original omitted)

Based on these parameters, the Court held that the efforts exerted by respondent therein fell short of the degree of diligence required by law and jurisprudence:

In the case at bar, the respondent’s “well-founded belief” was anchored on her alleged “earnest efforts” to locate [her husband,] Jerry, which consisted of the following:

- (1) She made inquiries about Jerry’s whereabouts from her in-laws, neighbors and friends; and
- (2) Whenever she went to a hospital, she saw to it that she looked through the patients’ directory, hoping to find Jerry.

These efforts, however, fell short of the “stringent standard” and degree of diligence required by jurisprudence for the following reasons:

First, the respondent did not actively look for her missing husband. It can be inferred from the records that her hospital visits and her consequent checking of the patients’ directory therein were unintentional. She did not purposely undertake a diligent search for her husband as her hospital visits were not planned nor primarily directed to look for him. This Court thus considers these attempts insufficient to engender a belief that her husband is dead.

Second, she did not report Jerry’s absence to the police nor did she seek the aid of the authorities to look for him. While a finding of well-founded belief varies with the nature of the situation in which the present spouse is placed, under present conditions, we find it proper and prudent for a present spouse, whose spouse had been missing, to

³³ Id. at 128-129.

seek the aid of the authorities or, at the very least, report his/her absence to the police.

Third, she did not present as witnesses Jerry's relatives or their neighbors and friends, who can corroborate her efforts to locate Jerry. **Worse, these persons, from whom she allegedly made inquiries, were not even named.** As held in *Nolasco*, the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts is insufficient as the names of the friends from whom he made inquiries were not identified in the testimony nor presented as witnesses.

Lastly, there was **no other corroborative evidence to support the respondent's claim that she conducted a diligent search.** Neither was there supporting evidence proving that she had a well-founded belief other than her bare claims that she inquired from her friends and in-laws about her husband's whereabouts.

In sum, the Court is of the view that the respondent merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. She failed to conduct a diligent search because her alleged efforts are insufficient to form a well-founded belief that her husband was already dead. As held in *Republic of the Philippines v. Court of Appeals (Tenth Div.)*, "[w]hether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by [the] present spouse."³⁴ (Emphasis and underscoring supplied; emphasis in the original omitted)

Citing *Cantor*, the Republic asserts that the standard of "well-founded belief" is exacting; it presupposes that the present spouse had exerted diligent and reasonable efforts to locate the absent spouse.³⁵ According to the Republic, Remar's efforts fall short of this requirement.³⁶

The Court agrees.

To recall, Remar's efforts to locate Lovelyn are marked by the following acts:

1. Remar travelled to several places where his wife had been reportedly seen particularly, Bislig City and the Municipality of Lingig in the province of Surigao del Sur, Metro Manila, Batangas and Cavite; and
2. Remar constantly communicated with Lovelyn's relatives for a period of ten (10) years in order to ascertain Lovelyn's whereabouts.

Unfortunately, Remar failed to allege, much less prove, the extent of the search he had conducted in the places where he claims to have gone. This leaves the Court with no way to ascertain the extent of Remar's search.

³⁴ Id. at 132-133.

³⁵ See *rollo*, p. 56.

³⁶ Id. at 60.

Remar also failed to identify which of Lovelyn's relatives he had communicated with, and disclose what he learned from these communications. Again, this leaves the Court with no basis to determine whether the information Remar learned is sufficient to engender a well-founded belief that Lovelyn is dead.

Moreover, much like the respondent in *Cantor*, Remar never sought the help of the authorities to locate Lovelyn in the course of her ten (10)-year disappearance. Remar was given ample opportunity to explain his failure to report Lovelyn's disappearance, considering that the Republic first noted such failure when it filed its Petition for *Certiorari* with the CA. Curiously, however, Remar chose not to address the matter.

Finally, the allegations in Remar's Petition for Declaration of Presumptive Death³⁷ suggest that he is aware of the true cause of Lovelyn's disappearance, thus:

In the first three (3) months that his wife was in Manila[,] [there] was x x x constant communication through cellphone calls and [texts]. [Remar] relayed to [Lovelyn] that he is x x x working in Surigao City as a security guard in the Hall of Justice. x x x

Then the calls and [texts] got fewer and fewer until [they] stopped. He thought that the cellphone of his wife was just lost so he started inquiries from his and her relatives in [Bislig] City. One confess[ed] that his wife is now [cohabiting] with another man and will not be going home because of shame. He could not believe and refuse[d] to believe the devastating news.³⁸

The Court commiserates with Remar's plight. Nevertheless, the Court cannot uphold the issuance of a declaration of presumptive death for the purpose of remarriage where there appears to be no well-founded belief of the absentee spouse's death, but only the likelihood that the absentee spouse does not want to be found.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision and Resolution respectively dated June 29, 2017 and January 31, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 07581-MIN are **REVERSED and SET ASIDE**.

Necessarily, the Judgment dated April 11, 2016 issued by the Regional Trial Court of Surigao City, Branch 32, in Special Proceedings No. 7669 is also **REVERSED and SET ASIDE**. Consequently, the petition of respondent Remar A. Quiñonez to have his wife, Lovelyn Uriarte Quiñonez declared presumptively dead for the purpose of remarriage is **DENIED**.

³⁷ Denominated as "In the Matter for the Declaration of Presumptive Death of Lovelyn Uriarte Quiñonez for Purposes of Remarriage Under Article 41 of the Family Code of the Philippines," *rollo*, pp. 82-85.

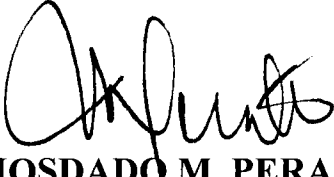
³⁸ *Rollo*, p. 109.

SO ORDERED.

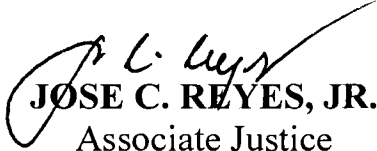


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

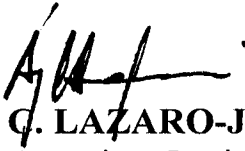
WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



JOSE C. REYES, JR.
Associate Justice

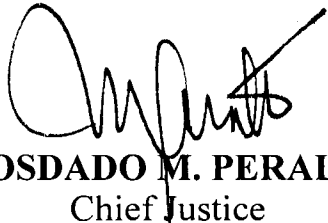


AMY C. LAZARO-JAVIER
Associate Justice

(On official leave)
MARIO V. LOPEZ
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.



DIOSDADO M. PERALTA
Chief Justice