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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

THIRD DIVISION

MAY 22 2018

G. R. NO. 230751: ESTRELLITA TADEO-MATIAS, *petitioner* v.
REPUBLIC OF THE PHILIPPINES, *respondent*

Promulgated:

April 25, 2018

x-----*Wilfredo V. Lapitan*-----x

DISSENTING OPINION

LEONEN, J:

I dissent.

Petitioner is 72 years old. Her husband, Wilfredo N. Matias (Wilfredo), a soldier with the Philippine Constabulary, has been missing since 1979, or for almost 39 years now, after being assigned to Arayat, Pampanga, an area heavy with the presence of the New People's Army. For decades, petitioner single-handedly raised and supported their three (3) children. The case arose for the sole reason that petitioner has, since 1987,¹ sought the benefits due her husband under Presidential Decree No. 1638, in relation to Republic Act No. 6948.

Considering these circumstances, on the basis of equity, I vote to grant the petition.

I

On January 15, 2012, the trial court released two (2) decisions. While the bodies of the decisions are the same, the *fallo* of the first decision stated:

WHEREFORE, in view of the foregoing, the Court hereby declares WILFREDO N. MATIAS absent or presumptively dead under Article 41 of the Family Code of the Philippines for purposes of remarriage.

It is understood that this Decision is without prejudice to the re-appearance of WILFREDO N. MATIAS.

¹ *Rollo*, p. 52.

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SO ORDERED.²

The second one corrected the *fallo* of the first decision as to the purpose of declaring Wilfredo presumptively dead, but still erroneously mentioned Article 41³ as the applicable law:

WHEREFORE, in view of the foregoing, the Court hereby declares WILFREDO N. MATIAS absent or presumptively dead under Article 41 of the Family Code of the Philippines for purposes of claiming financial benefits due to him as former military officer.

It is understood that this Decision is without prejudice to the re-appearance of WILFREDO N. MATIAS.

SO ORDERED.⁴

The bodies of these decisions never mentioned Article 41 of the Family Code. The petition itself never mentioned it. From the start, petitioner was clear that her intention in filing a case for the declaration of presumptive death was to be able to avail of the benefits that Wilfredo had as a member of the Philippine Constabulary. One of the requirements to claim such benefits is proof of death or a declaration of presumptive death by the court.⁵

As no mention of Article 41 of the Family Code was made by petitioner or by the trial court, and petitioner has made it clear that the petition was to claim her husband's financial benefits and not to remarry, to my mind, it is unambiguous that Articles 390⁶ and 391⁷ of the Civil Code are

² Id. at ____.

³ FAMILY CODE, art. 41 provides:

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 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.

⁴ *Rollo*, p. 80.

⁵ Id. at 47.

⁶ CIVIL CODE, art. 390 provides:

Article 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes, except for those of succession.

The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

⁷ CIVIL CODE, art. 391 provides:

Article 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;

applicable. While the general rule is that the *fallo* “prevails over the body of the decision in case of conflict, this rule does not apply where it is clear from the body of the decision that there was a glaring error made in the dispositive portion, in which case the body of the decision will control.”⁸

*Asian Center for Career and Employment v. National Labor Relations Commission*⁹ instructed:

The general rule is that where there is a conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.¹⁰ (Citation omitted)

II

The ponente relies on *In re: Szatraw v. Sors*,¹¹ and *Gue v. Republic*¹² to support the claim that pursuing as a separate action the declaration of presumptive death of a person cannot prosper. I agree, but offer a different appreciation of these cases.

In *In re: Szatraw*,¹³ petitioner was married to a Polish national. Three (3) years into their marriage, petitioner’s husband left their conjugal home with their only son. Upon inquiry from friends, petitioner was told that her husband was in Shanghai. However, Polish citizens who visited Shanghai informed her that her husband and child could not be found in Shanghai. After an absence of seven (7) years, petitioner filed a case to have her husband declared presumptively dead and to preserve her parental authority over their son, should he resurface. This Court denied the petition as the case was neither for the settlement of the estate of the husband, as he had no property with petitioner, nor was it to claim insurance benefits, as his life was not insured.

(2) A person in the armed forces who has taken part in war, and has been missing for four years;
(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.

⁸ *Rosales v. Court of Appeals*, 405 Phil. 638, 655 (2001) [Per J. Ynares-Santiago, First Division].

⁹ 358 Phil. 380 (1998) [Per J. Puno, Second Division].

¹⁰ *Id.* at 386.

¹¹ 81 Phil. 461 (1948) [Per J. Padilla, En Banc].

¹² 107 Phil. 381 (1960) [Per J. Montemayor, En Banc].

¹³ 81 Phil. 461 (1948) [Per J. Padilla, En Banc].

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*Gue v. Republic*¹⁴ involved almost the same circumstances. Petitioner was married to her husband with whom she had two (2) children. After eight (8) years of marriage, her husband left for Shanghai, never to be heard from again. He had not written, called, or communicated with petitioner. Despite petitioner's diligent efforts, she could not locate her husband. They did not have any property together. This Court quoted *In re: Szatraw* at length and ruled that based on the doctrine in that case, the petition for the declaration of presumptive death must be denied.

The doctrine in these two (2) cases is not applicable to the present case as petitioner did not institute the case independently, in a vacuum. *She did so because she needed a document, an official declaration of her husband's death in order to claim benefits.* I am certain that this Court is aware of petitioner's long-standing effort to claim from the Philippine Veteran's Affairs Office. She failed precisely because the mere insistence that no case has to be filed for the presumption of death under Articles 390 and 391 of the Civil Code was insufficient.

Nowhere in the rules and jurisprudence does it state that a case for presumptive death may only be filed for purposes of remarriage or succession. While Article 41 of the Family Code is specific to remarriage, Articles 390 and 391 of the Civil Code are silent on the scope of its application. I submit that it can also be to claim government and insurance benefits, as in this case, where money, a means of support, and even the preservation of property, are at stake. What jurisprudence guards against is the blanket remedy of having a person declared presumptively dead without specifying this declaration's purpose because then, it becomes susceptible to unscrupulous use.

Moreover, while it is true that filing a case for the declaration of presumptive death may not have been necessary, still no damage will result in granting the petition.

Under the October 12, 2005 Philippine Veteran's Affairs Office Memorandum on the Guidelines on Disposition of Posthumous Pensions, a certified true copy of the death certificate of the member is required to claim benefits.¹⁵ In the Philippine Veteran's Affairs Office website, the same

¹⁴ 107 Phil. 381 (1960) [Per J. Montemayor, En Banc].

¹⁵ PVAO Memorandum on Guidelines on Disposition of Posthumous Pensions (2005).

1. Entitlement — Pursuant to the DOJ Opinion No. 23, Series of 2001, old age, disability and death pensions under the provisions of Republic Act No. 6948 as amended by Republic Act No. 7696 and its implementing rules and regulations, due the estate of a deceased veteran or his/her widow shall be claimed in due form by his/her legal heirs by PVAO in cases only where the veteran or his/her widow/er has duly approved application for such pension benefit.

2. Basic Requirements — In all cases and regardless of the amount of the accrued/uncollected/posthumous pension, the following documents shall be submitted:

requirement appears with the additional requirement of a “court declaration”:

Effectivity of pension:

Death of the veteran or 09 April 1990 whichever is later.

1. Surviving spouse (death result of service connected disability)
 - 1.1 Last re-rating from [Disability Ratings Board]
 - 1.2 Death certificate of veteran from [Local Civil Registrar] with registry number/casualty report
 - 1.3 Marriage contract certificates from [Local Civil Registrar] with registry number
 - 1.4 AGO form 23
 - 1.5 Marriage contract

....

All documents must be either or (sic) authenticated by the office which issued the same. We do not honor photocopies. The claimant must personally file.

Note:

1. Burial permit
2. Death certificate of veteran issued b[y] the parish church
3. Late registration of court declaration¹⁶

It would be a most unjust outcome for this Court to deny this petition *when the only reason the case was filed was because petitioner was instructed that she needed a court order that establishes her husband as presumptively dead.* She has long suffered in wait before the Philippine Veteran’s Affairs Office where the most definitive declaration she obtained was that Wilfredo “was declared missing since 1979 and up to present.”¹⁷ This declaration, under the Philippine Veteran’s Affairs Office rules, is inadequate to claim benefits. In this case, court action clearly had to be pursued.

Though it can be argued that the Philippine Veteran’s Affairs Office must change its rules, or that it was incumbent upon the office to honor this Court’s previous pronouncements to act on the presumption as it was merely disputable and evidentiary in nature, without prejudice to the deceased’s reappearance, the discourse will not serve the ends of justice. Petitioner will languish further in uncertainty, not knowing if and when the Philippine

a.) Certified True Copy of the Death Certificate of the deceased pensioner — veteran/surviving spouse pensioner or with approved claim duly issued by the NSO with corresponding Official Receipt of payment;

b.) Evidence of filiation/relationship of the person/s claiming the accrued/uncollected/posthumous pension, e.g., birth certificate/s, marriage certificate, certified true copies thereof issued by NSO with Official Receipts of payments; AND

c.) Application form duly accomplished and filed by qualified claimant to the posthumous pension, marked as PVAO PP Form A.

¹⁶ Philippines Veterans Affairs Office, *Death Pension* <<http://server.pvao.mil.ph/Death-Pension.aspx>> (last visited on April 23, 2018).

¹⁷ *Rollo*, p. 51.

Veteran's Affairs Office will release Wilfredo's benefits to her. We are here to breathe life into law, and not to stifle the outcome it seeks to achieve. If relief can be obtained more swiftly by petitioner, then we must, in good conscience, give it.

Another argument can be made in that petitioner should have just filed a case for the settlement of Wilfredo's estate, and then pleaded that he be declared presumptively dead in those proceedings. Again, I am of the opinion that petitioner should not be made to suffer when she only followed, as best she could, the requirements of the Philippine Veteran's Affairs Office. Even amongst us there is much discourse on how to proceed with Wilfredo's disappearance. It is unfair to expect petitioner to expertly navigate the nuanced jurisprudence on cases involving the declaration of presumptive death.

III

Another matter I would like to raise that was no longer discussed in the Resolution is the seemingly settled doctrine that a petition for certiorari is the proper mode of elevating matters to the Court of Appeals in all presumptive death cases, whether under Article 41 of the Family Code or under Articles 390 and 391 of the Civil Code.

This generalization must be clarified.

Article 41 of the Family Code explicitly states that the Rules on Summary Procedure shall apply if the declaration for presumptive death is sought for purposes of remarriage. The Rules on Summary Procedure prohibit the filing of a motion for reconsideration to expedite the resolution of cases.¹⁸ Since the decision will be final and executory, no motion for reconsideration is needed. The Office of the Solicitor General must file a petition for certiorari under Rule 65 of the Rules of Court before the Court of Appeals.¹⁹

I submit, however, that the Rules on Summary Procedure is not applicable in cases where a declaration for presumptive death is sought to settle the estate of the deceased, or as in this case, to claim benefits.

¹⁸ REV. SUMMARY PROC. RULE, sec. 19(c) provides:
Section 19. Prohibited pleadings and motions. — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

.....
(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial[.]

¹⁹ See *Republic v. Granada*, 687 Phil. 403 (2012) [Per J. Sereno, Second Division].

Rule 72 of the Rules of Court enumerates the instances where the rules on special proceedings should apply:

Section 1. Subject matter of special proceedings. — Rules of special proceedings are provided for in the following cases:

- (a) Settlement of estate of deceased persons;
- (b) Escheat;
- (c) Guardianship and custody of children;
- (d) Trustees;
- (e) Adoption;
- (f) Rescission and revocation of adoption;
- (g) Hospitalization of insane persons;
- (h) Habeas corpus;
- (i) Change of name;
- (j) Voluntary dissolution of corporations;
- (k) Judicial approval of voluntary recognition of minor natural children;
- (l) Constitution of family home;
- (m) *Declaration of absence and death*;
- (n) Cancellation or correction of entries in the civil registry.


Section 2. Applicability of rules of civil actions. — *In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.* (Emphasis supplied)

The provision on the settlement of a presumptively deceased person's estate appears in Rule 73 of the Rules of Court:

Section 4. Presumption of death. — For purposes of settlement of his estate, a person shall be presumed dead if absent and unheard from for the periods fixed in the Civil Code. But if such person proves to be alive, he shall be entitled to the balance of his estate after payment of all his debts. The balance may be recovered by motion in the same proceeding.

Rule 109 of the Rules of Court outlines cases where appeals may be made in special proceedings:

Section 1. Orders or judgments from which appeals may be taken. — An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

- (a) Allows or disallows a will;
 - (b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;
 - (c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;
 - (d) Settles the account of an executor, administrator, trustee or guardian;
 - (e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final
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determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration. (Emphasis supplied).

According to Rule 40 of the Rules of Court, the manner of appeal in special proceedings is through a record on appeal.²⁰

From these provisions, it is apparent that in an action for the declaration of death of a person under Articles 390 and 391 of the Civil Code, whether it is to settle his estate or for other reasons apart from remarriage, the appeal must be made through record on appeal. No exception to the application of these rules is present. The Republic therefore availed of the wrong remedy to question the decision of the trial court.

On substantial grounds, even assuming that a petition for certiorari was the correct mode of elevating the case to the Court of Appeals, the Republic was still required to file a motion for reconsideration. Generally, a motion for reconsideration must be filed before the filing of a petition for certiorari.²¹ Exceptions to this requirement are:

(a) when it is necessary to prevent irreparable damages and injury to a party; *(b)* where the trial judge capriciously and whimsically exercised his judgment; *(c)* where there may be danger of a failure of justice; *(d)* where an appeal would be slow, inadequate, and insufficient; *(e)* where the issue raised is one purely of law; *(f)* where public interest is involved; and *(g)* in case of urgency.²²

None of these exceptions are present in this case. Again, it is my position that no damage will be caused in granting the petition—there is no conflict with settled jurisprudence, and relief is finally afforded to petitioner who has taken decades chasing after it.

²⁰ RULES OF COURT, Rule 40, sec. 3 provides:

Section 3. How to appeal. — The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal.

A record on appeal shall be required only in special proceedings and in other cases of multiple or separate appeals.

The form and contents of the record on appeal shall be as provided in section 6, Rule 41.

Copies of the notice of appeal, and the record on appeal where required, shall be served on the adverse party.

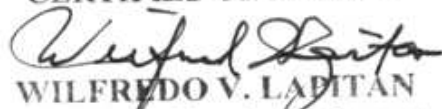
²¹ See *Castro v. Guevarra*, 686 Phil. 1125 (2012) [Per J. Mendoza, Third Division].

²² *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 338 (2011) [Per J. Bersamin, First Division], citing *Francisco Motors v. Court of Appeals*, 535 Phil. 736 (2006) [Per J. Velasco, Jr., Third Division].

ACCORDINGLY, I vote to GRANT the petition in order to release the benefits due to petitioner with dispatch.



MARVIC M.V.F. LEONEN
Associate Justice

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