



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

REPUBLIC
PHILIPPINES,

OF THE
Petitioner,

G.R. No. 219185

Present:

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS,* and
ROSARIO, J.J.

versus

JOSEPHINE PONCE-PILAPIL,**
Respondents.

Promulgated:
November 25, 2020

~~Mis-PDC-Sub~~

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DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*¹ assails the May 31, 2012 Decision² and the June 26, 2015 Resolution³ of the Court of Appeals (CA) in CA-G.R. CEB SP No. 02719.

The Antecedents:

Josephine Ponce-Pilapil (Josephine) sought to declare her husband, Agapito S. Pilapil, Jr. (Agapito), presumptively dead in a petition filed before

* On official leave.

** Hon. Marilyn Lagura-Yap, Presiding Judge of the Regional Trial Court, Branch 55, Mandaue City was dropped as party-respondent pursuant to Section 4, Rule 45 of the Rules of Court.

¹ *Rollo*, pp. 10-24.

² Id. at 26-36; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Gabriel T. Ingles and Victoria Isabel A. Paredes.

³ Id. at 38-40; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi.

the Regional Trial Court, Branch 55 of Mandaue City (RTC).⁴

The RTC set the case for initial hearing and ordered the publication of the petition in a newspaper of general circulation in the cities and province of Cebu. At the initial hearing, petitioner established the jurisdictional facts of the petition, and no opposition thereto was registered. Trial ensued. The RTC summed up the testimonies as follows:

In support of the petition, [Josephine] testified that: She is 44 years old, married, housewife and a resident of Yati, Lilo-an, Cebu. She and [Agapito] got married in Mandaue City on June 5, 2000. Out of the union was born Juan Miguel Pilapil x x x. A few months after the marriage, which was sometime in November 2000, [Agapito] left without information where he was going. She knows of no reason why Agapito would leave her as they did not even quarrel prior to that. Insofar as she knows, her husband had a cyst in his right jaw which was getting bigger.

Before their marriage, [Josephine] was introduced to Agapito by a neighbor. Agapito was from Ormoc City and came to live in Lilo-an, Cebu, only because he worked there. She knows that [Agapito's] parents are all deceased, having died from a calamity which hit Ormoc City sometime in the 1990's. With this predicament, [Josephine], after [Agapito's] disappearance, tried to look for him from [Agapito's only surviving relative], Lydia Bueno Pilapil. The latter told [Josephine] that she does not have any knowledge or idea where Agapito was, in response to her letter. She also inquired from their friends if they saw or heard from Agapito, but all answered in the negative. She honestly believes that her husband Agapito is already dead considering that more than six (6) years have lapsed without any information on his whereabouts. She filed the instant petition for purposes of declaring her husband Agapito presumptively dead so that she can remarry.

As second witness, Marites Longakit Toong, was presented and testified that: She is 44 years old, married, a public school teacher and a resident of Yati, Lilo-an, Cebu. She knows [Josephine], being a childhood friend and a neighbor. She also knows [Agapito]. Being neighbors, she knew that Agapito left or disappeared sometime in November 2000. She tried to help [Josephine] look for Agapito but, up to the present, they do not have any knowledge on his whereabouts. She even hand-carried a letter from [Josephine] addressed to Agapito's sister-in-law, Lydia Bueno Pilapil, in Ormoc City. She [met] Lydia Bueno Pilapil in Ormoc City, who also told her that she does not know where Agapito was. She also handcarried the letter-response of Lydia to [Josephine].⁵

Ruling of the Regional Trial Court:

On the basis of the evidence presented by Josephine, the RTC declared Agapito as presumptively dead, pursuant to Article 41 of the Family Code, in relation to Article 253 of the Civil Code. Josephine was found to have

⁴ CA *rollo*, p. 22.

⁵ Id. at 23.

established the fact that Agapito has been absent for six years with his whereabouts unknown. In its February 27, 2007 Order,⁶ the RTC decreed in the following manner:

WHEREFORE, premises considered, the petition is **GRANTED**. **AGAPITO S. PILAPIL, JR.**, is hereby declared presumptively dead.

Petitioner is directed to register a copy of this Order with the Local Civil Registrar of Mandaue City.

Furnish all parties concerned with a copy of this Order.

SO ORDERED.⁷

The Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), elevated its cause to the appellate court through a Petition for *Certiorari*⁸ under Rule 65 of the Rules of Court.

Proceedings before the Court of Appeals:

The CA ruled against the Republic. While the CA afforded procedural lenience to the OSG when the latter dispensed with the filing of a motion for reconsideration of the RTC Order, it found no grave abuse of discretion on the part of the trial court. In arguing that the Order was not in accord with established jurisprudence, the Republic essentially sought to weigh and evaluate the merits of the trial court's decision to grant the petition for declaration of presumptive death. Such, according to the CA, was an improper subject of a petition for *certiorari* under Rule 65 of the Rules of Court. The CA so decreed in its assailed May 31, 2012 Decision,⁹ as follows:

IN LIGHT OF ALL THE FOREGOING, the Petition for *Certiorari* under Rule 65 of the Rules of Civil Procedure assailing the February 27, 2007 Order of the Regional Trial Court, Branch 55, Mandaue City ordering the presumptive death of Agapito S. Pilapil, Jr., is DISMISSED.

SO ORDERED.¹⁰

The CA denied¹¹ the Republic's Motion for Reconsideration. Thus, this Petition for Review on *Certiorari* by the Republic before this Court.

⁶ Id. at 22-24.

⁷ Id. at 24.

⁸ Id. at 2-21.

⁹ *Rollo*, pp. 26-36.

¹⁰ Id. at 36.

¹¹ Id. at 38-40.

Petitioner's Arguments:

The Republic maintains that Josephine failed to prove that she had a well-founded belief that Agapito was already dead, and that she exerted the required amount of diligence in searching for her missing husband. Despite this and over prevailing jurisprudence on the matter, the RTC granted Josephine's petition for declaration of presumptive death. This was allegedly indicative of caprice and arbitrariness on the part of the trial court which, the OSG claims, the CA should have reversed on *certiorari*.¹²

Respondent's Position:

In her Comment,¹³ Josephine asserts the lack of sufficient showing that the RTC exercised its discretion whimsically or arbitrarily by reason of passion, prejudice, or personal hostility for it to be reversed by the CA. She also posits that the CA was correct in dismissing the OSG's Petition for *Certiorari*, which called for a review of the trial court's appreciation of the evidence and advanced mere errors of judgment which are beyond the ambit of *certiorari* proceedings.

Issue:

The Republic, through the OSG, raises the issue of whether the CA erred in finding no grave abuse of discretion on the part of the RTC and in affirming the RTC Order that granted Josephine's petition for declaration of presumptive death of Agapito, her husband.

Our Ruling

The appeal is meritorious.

***Certiorari* answers only questions of jurisdiction:**

Of-repeated is the principle that petitions for *certiorari* under Rule 65 of the Rules of Court are confined solely to questions of jurisdiction.¹⁴ These ask whether a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.¹⁵ Unless the circumstances of a case qualify under established exceptions,¹⁶ questions of

¹² *Rollo*, p. 14-18.

¹³ *Id.* at 89-96.

¹⁴ *Century Iron Works, Inc. v. Banas*, 711 Phil. 576, 584-586 (2013).

¹⁵ *Id.* at 586.

¹⁶ In *New City Builders, Inc. v. National Labor Relations Commission*, 499 Phil. 207, 212-213 (2005), the Supreme Court recognized several such exceptions: (1) when the findings are grounded entirely on

law or fact pertain to a remedy other than *certiorari*.

In assailing the appreciation of the evidence by the RTC and its application of jurisprudence, the OSG, in its petition for *certiorari* before the CA, was in effect seeking a review of the RTC's findings and conclusions. The OSG has not offered the CA any exceptional circumstance that would allow a factual review in a *certiorari* proceeding.

Likewise, the propriety and soundness of a tribunal's decision is beyond the scope of *certiorari*. Nonetheless, the RTC acted within the bounds of its jurisdiction when it decided in favor of Josephine's petition. The CA thus correctly found no reason to strike down the trial court's judgment with a grant of *certiorari*.

Even so, the courts below should not have declared Agapito presumptively dead.

Respondent failed to demonstrate full compliance with Article 41 of the Family Code.

Pivotal to the resolution of this case is the application of Article 41 of the Family Code:

Article 41. A marriage contracted by any person during 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.

speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Also cited in *Century Iron Works, Inc. v. Banas*, *supra*, at 585.

Jurisprudence sets out four requisites for a grant of a petition for declaration of presumptive death under Article 41 of the Family Code: *first*, 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 of the Civil Code; *second*, the present spouse wishes to remarry; *third*, the present spouse has a well-founded belief that the absentee is dead; and *fourth*, the present spouse files for a summary proceeding for the declaration of presumptive death of the absentee.¹⁷

The third requirement of a “well-founded belief” proves most difficult to establish in seeking to declare an absent spouse presumptively dead. While this term enjoys flexible meanings and depends heavily on the circumstances unique to each particular case,¹⁸ the Court in *Republic v. Orcelino-Villanueva (Orcelino-Villanueva)*¹⁹ has highlighted the exercise of “diligent efforts” in determining whether the present spouse’s belief that the absent spouse is already dead was well-founded or not:

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.** 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.²⁰ (Emphasis supplied and citations omitted.)

Jurisprudential precedents demonstrate the following efforts expended by the petitioning parties therein:

In *Republic v. Catubag*,²¹ the present spouse, who was working abroad, received news that his wife left their house and never returned. Worried for his wife and children, the present spouse flew back to the Philippines on an emergency vacation. The present spouse claimed to have inquired about the absent spouse’s whereabouts with friends and relatives and in places where they had lived and where the absent spouse was born. The present spouse also

¹⁷ *Republic v. Catubag*, G.R. No. 210580, April 18, 2018; *Republic v. Sareñogon*, 780 Phil. 738 (2016); *Republic v. Cantor*, 723 Phil. 114 (2013).

¹⁸ *Id.*

¹⁹ 765 Phil. 324 (2015).

²⁰ *Id.* at 329-330.

²¹ *Supra*, note 21.

availed of the assistance of *Bombo Radyo Philippines*, a well-known radio broadcast network in the country, to publicize the disappearance of the missing spouse. He likewise sought information from various hospitals and funeral parlors, but still failed to locate his missing wife.

In *Republic v. Sareñogon*,²² the spouses were both overseas Filipino workers. Only months into their marriage but away from each other, the husband lost all communication with his wife. He also failed to contact his wife's parents, who had allegedly left their residence that was last known to the husband. When his contract expired, he returned home. His ensuing inquiries as to his wife's whereabouts from his wife's relatives and friends, however, yielded negative results.

In *Republic v. Cantor*,²³ the husband left the conjugal home after a violent quarrel with the wife, and such was allegedly the last time the latter had heard anything from the former. During the four years that the husband had been missing, the wife had asked her husband's family, neighbors, and friends, who all offered only their lack of knowledge concerning his whereabouts. The wife also claimed that she had made sure to check patients' directories in the hospitals she went to, under the hope of finding her husband.

Also in *Orcelino-Villanueva*,²⁴ the present spouse therein returned to the Philippines from working overseas to search for her husband who allegedly had been missing for 15 years. She inquired with her husband's relatives and their common friends, who all gave her negative responses regarding her missing husband's whereabouts.²⁵

All these aforecited efforts, however, had been stamped by the Court as merely passive and unexacting of the jurisprudential standards that would qualify such efforts as diligent. The particular circumstances of the present case, unfortunately, pale in comparison to and prove no better than those of the foregoing. Josephine's efforts to search for Agapito only consisted of inquiries not even done personally but by mere letter-correspondence facilitated by another person.

Moreover, Josephine's pursuit of Agapito is evidently lackadaisical based on the following circumstances:

First, her personal knowledge of a growing cyst on Agapito's jaw does not produce an inevitable conclusion that the latter was already suffering from some terminal illness prior to his disappearance. No medical document or expert testimony on Agapito's physical ailment was submitted by Josephine

²² Id.

²³ Id.

²⁴ *Supra*, note 19.

²⁵ Id.

for the courts' assessment to prove such circumstance.

Second, while Josephine attempted to find Agapito, her supposed informers and their information were unreliable. The "friends" whom Josephine allegedly contacted were unnamed. The letters written by Josephine and Agapito's sister, Lydia Bueno Pilapil (Lydia), were never presented as evidence before the court. Lydia did not even take the witness stand to testify to the veracity of the contents of her purported letter as alleged by Josephine. Marites Longakit Toong (Marites), Josephine's letter-courier to Lydia, did appear as a witness before the trial court; however, the truth behind Marites' statements that Lydia had told her of Agapito's absence remain hearsay and unconfirmed.

Third, Josephine could have resorted to police assistance in seeking out her husband. While the act of seeking investigative aid from authorities will not automatically secure a positive conclusion of a "diligent search,"²⁶ official documents could still have been procured to attest that she had assiduously investigated the disappearance of Agapito. Josephine never did so. This further weakened the seriousness of her efforts to find her missing husband and blurred the possibility of the latter's death.


Withal, the pieces of evidence on record were too bare and self-serving. Mere allegation is not proof. Moreover, Josephine's acts fail to convince the Court that she indeed went out of her way to locate Agapito, and her search for Agapito's whereabouts cannot be said to have been diligently and exhaustively conducted. In all, Josephine's efforts were just too flimsy to serve as concrete basis of a well-founded belief that Agapito is indeed dead.

A declaration of presumptive death must be predicated upon a well-founded fact of *death*. The fact that the absent spouse is *merely missing*, no matter how certain and undisputed, will never yield a judicial presumption of the absent spouse's death. Josephine in this case only successfully established that the whereabouts of Agapito are indeterminable. As circumstances that definitely suggest Agapito's death remain to be seen, the Court cannot consider Josephine's civil status as that of a widow.

WHEREFORE, the Petition is **GRANTED**. The May 31, 2012 Decision and the June 26, 2015 Resolution of the Court of Appeals affirming the February 27, 2007 Order of the Regional Trial Court, Branch 55 of Mandaue City are **REVERSED and SET ASIDE**. Josephine Ponce-Pilapil's petition to declare Agapito S. Pilapil, Jr. as presumptively dead is **DISMISSED**.

²⁶ See *Republic v. Cantor*, supra, note 17.

SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:



MARVIC M. V. F. LEONEN
Associate Justice
Chairperson



HENRI JEAN PAUL B. INTING
Associate Justice

On official leave
EDGARDO L. DELOS SANTOS
Associate Justice



RICARDO R. ROSARIO
Associate Justice

ATTESTATION

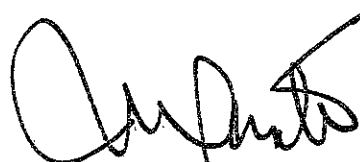
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice