



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

G.R. No. 182760

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE-CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

- versus -

Promulgated:

ROBERT P. NARCEDA,
Respondent.

APR 10 2013

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RESOLUTION

SERENO, *CJ*:

The present case stems from a Petition for Review¹ filed by the Republic of the Philippines (petitioner), praying for the reversal of the Decision² of the Court of Appeals (CA) dated 14 November 2007 and its subsequent Resolution³ dated 29 April 2008. The CA dismissed the appeal of petitioner, because it supposedly lacked jurisdiction to decide the matter. It held that the Decision⁴ of the Regional Trial Court of Balaoan, La Union (RTC) declaring the presumptive death of Marina B. Narceda (Marina) was immediately final and executory, “because by express provision of law, the judgment of the RTC is not appealable.”⁵

¹ *Rollo*, pp. 7-29.

² *Id.* at 32-40; CA-G.R. CV. No. 85704, penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

³ *Id.* at 42-45.

⁴ *Id.* at 50-51; Special Proceeding No. 622, dated 5 May 2005.

⁵ *Id.* at 39.

Robert P. Narceda (respondent) married Marina on 22 July 1987. A reading of the Marriage Contract⁶ he presented will reveal that at the time of their wedding, Marina was only 17 years and 4 months old.

According to respondent, Marina went to Singapore sometime in 1994 and never returned since.⁷ There was never any communication between them. He tried to look for her, but he could not find her. Several years after she left, one of their town mates in Luna, La Union came home from Singapore and told him that the last time she saw his wife, the latter was already living with a Singaporean husband.⁸

In view of her absence and his desire to remarry,⁹ respondent filed with the RTC on 16 May 2002 a Petition for a judicial declaration of the presumptive death and/or absence of Marina.¹⁰

The RTC granted respondent's Petition in a Decision¹¹ dated 5 May 2005, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby renders judgment declaring the PRESUMPTIVE DEATH of MARINA B. NARCEDA for all legal intents and purposes of law as provided for in Rule 131, Sec. 3(w-4), Rules of Court, without prejudice to the effect of re-appearance of the absent spouse.

SO ORDERED.¹²

Petitioner, through the Office of the Solicitor General (OSG), appealed the foregoing Decision to the CA. According to petitioner, respondent failed to conduct a search for his missing wife with the diligence required by law and enough to give rise to a "well-founded" belief that she was dead.¹³

The CA dismissed the appeal ruling that the hearing of a petition for the declaration of presumptive death is a summary proceeding under the Family Code and is thus governed by Title XI thereof.¹⁴ Article 247 of the Family Code provides that the judgment of the trial court in summary

⁶ Id. at 48.

⁷ Id. at 47.

⁸ Id.

⁹ *Rollo*, p. 51.

¹⁰ Id. at 46-49.

¹¹ Id. at 50-51.

¹² Id. at 51.

¹³ Id. at 61-62.

¹⁴ Id. at 36-37.

court proceedings shall be immediately final and executory. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED OUTRIGHT** on the **GROUND OF LACK OF JURISDICTION**, and this Court hereby reiterates the fact that the **RTC Decision is immediately final and executory** because by express provision of law, the **judgment of the RTC is not appealable**.

SO ORDERED.¹⁵

The OSG filed a Motion for Reconsideration, but it was likewise denied through the CA's 29 April 2008 Resolution.¹⁶

Petitioner now comes to this Court, through Rule 45, alleging as follows:

1. The Court of Appeals erred in dismissing the Petition on the ground of lack of jurisdiction.¹⁷
2. Respondent has failed to establish a well-founded belief that his absentee spouse is dead.¹⁸

The OSG insists that the CA had jurisdiction to entertain the Petition, because respondent had failed to establish a well-founded belief that his absentee spouse was dead.¹⁹ The OSG cites *Republic v. CA (Jomoc)*,²⁰ in which this Court ruled:

By the trial court's citation of Article 41 of the Family Code, it is gathered that the petition of Apolinaria Jomoc to have her absent spouse declared presumptively dead *had for its purpose her desire to contract a valid subsequent marriage. Ergo*, the petition for that purpose is a "*summary proceeding*," following above-quoted Art. 41, paragraph 2 of the Family Code.

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there is no doubt that the petition of Apolinaria Jomoc required, and is, therefore, a summary proceeding under the Family Code, *not* a special proceeding under the Revised Rules of Court appeal for which calls for

¹⁵ Id. at 39.

¹⁶ Id. at 42-45.

¹⁷ Id. at 13.

¹⁸ Id. at 18.

¹⁹ Id. at 12.

²⁰ 497 Phil. 528 (2005).

the filing of a Record on Appeal. It being a summary ordinary proceeding, the filing of a Notice of Appeal from the trial court's order sufficed. (Emphasis in the original)²¹

The CA points out, however, that because the resolution of a petition for the declaration of presumptive death requires a summary proceeding, the procedural rules to be followed are those enumerated in Title XI of the Family Code. Articles 238, 247, and 253 thereof read:

Art. 238. Until modified by the Supreme Court, the procedural rules provided for in this Title shall apply as regards separation in fact between husband and wife, abandonment by one of the other, and incidents involving parental authority.

x x x x

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

x x x x

ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable.

The appellate court argues that there is no reglementary period within which to perfect an appeal in summary judicial proceedings under the Family Code, because the judgments rendered thereunder, by express provision of Article 247, are immediately final and executory upon notice to the parties.²² In support of its stance, it cited *Republic v. Bermudez-Lorino (Bermudez-Lorino)*,²³ in which this Court held:

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, *supra*, 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

²¹ Id. at 533-534.

²² *Rollo*, p. 38.

²³ 489 Phil. 761 (2005).

“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, 2001.²⁴

We agree with the CA.

Article 41 of the Family Code provides:

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 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.

This Court has already declared in *Republic v. Granda*²⁵ that *Jomoc* cannot be interpreted as having superseded our pronouncements in *Bermudez-Lorino*, because *Jomoc* does not expound on the characteristics of a summary proceeding under the Family Code; *Bermudez-Lorino*, however, squarely touches upon the impropriety of an ordinary appeal as a vehicle for questioning a trial court’s decision in a summary proceeding for the declaration of presumptive death under Article 41 of the Family Code.²⁶

As explained in *Republic v. Tango*,²⁷ the remedy of a losing party in a summary proceeding is not an ordinary appeal, but a petition for *certiorari*, to wit:

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court’s judgment in a summary proceeding for the declaration of presumptive death of an

²⁴ Id. at 767.

²⁵ G.R. No. 187512, 13 June 2012.

²⁶ Supra.

²⁷ G.R. No. 161062, 31 July 2009, 594 SCRA 560, 566-567.


absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for *certiorari* to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of *certiorari* is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. From the decision of the Court of Appeals, the losing party may then file a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court. This is because the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.

When the OSG filed its notice of appeal under Rule 42, it availed itself of the wrong remedy. As a result, the running of the period for filing of a Petition for *Certiorari* continued to run and was not tolled. Upon lapse of that period, the Decision of the RTC could no longer be questioned. Consequently, petitioner's contention that respondent has failed to establish a well-founded belief that his absentee spouse is dead²⁸ may no longer be entertained by this Court.

WHEREFORE, the instant Petition is **DENIED**. The 14 November 2007 Decision of the Court Appeals and its subsequent 29 April 2008 Resolution in CA-G.R. CV No. 85704, dismissing the appeal of the Republic of the Philippines are **AFFIRMED**.


The Decision of the Regional Trial Court of Balaoan, La Union in Special Proceeding No. 622 dated 5 May 2005 declaring the presumptive death of Marina B. Narceda is hereby declared **FINAL** and **EXECUTORY**.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

²⁸ *Rollo*, p. 18.

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

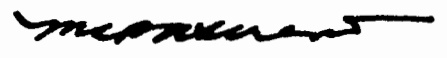

LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice