

EN BANC

**G.R. No. 184621 – REPUBLIC OF THE PHILIPPINES** Petitioner, v.  
**MARIA FE ESPINOSA CANTOR**, Respondent.

Promulgated:

DECEMBER 10, 2013

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**DISSENTING OPINION**

**LEONEN, J.:**

*“Love cannot endure  
indifference. It needs to be  
wanted. Like a lamp it needs to  
be fed out of the oil of another’s  
heart or its flames burn low.”*

*Henry Ward Beecher*

I dissent.

A wife, abandoned with impunity, also deserves to be happy.

***The Case***

Through this Rule 45 petition for review on *certiorari*, the Office of the Solicitor General for the Republic of the Philippines prays that the decision<sup>1</sup> of the Court of Appeals be reversed and set aside and that a new judgment be entered annulling and setting aside the order<sup>2</sup> of the Regional Trial Court, Branch 25, Koronadal City, South Cotabato.

On May 21, 2002, Maria Fe Espinosa Cantor filed a petition<sup>3</sup> for the declaration of presumptive death of her husband, Jerry F. Cantor.<sup>4</sup> She claimed that she had a well-founded belief that her husband was already dead since four (4) years had lapsed without Jerry making his presence known to her.

<sup>1</sup> This order was dated August 27, 2008 and docketed under CA-G.R. SP. No. 01558-MIN, *rollo*, p. 33.

<sup>2</sup> This order was dated December 15, 2006, *rollo*, p. 42.

<sup>3</sup> *Rollo*, p. 48-50. This petition was docketed as Special Proceeding No. 313-25.

<sup>4</sup> This petition falls under Article 41 of the Family Code.

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Trial began after the Regional Trial Court found Maria Fe's petition sufficient in form and substance.

According to their Certificate of Marriage,<sup>5</sup> Maria Fe and Jerry were married on September 20, 1997 at the Christ the King Cathedral in Koronadal City, South Cotabato. They lived together in their conjugal dwelling in Agan Homes, Koronadal City, South Cotabato.<sup>6</sup>

In her petition, Maria Fe alleges that sometime in January 1998, she and Jerry had a violent quarrel in their house. During the trial, she admitted that the quarrel had to do with her not being able to reach her "climax" whenever she would have sexual intercourse with Jerry. Maria Fe emphasized that she even suggested to him that he consult a doctor, but Jerry brushed aside this suggestion. She also said that during the quarrel, Jerry had expressed animosity toward her father, saying "I will not respect that old man outside."<sup>7</sup>

Jerry left after their quarrel.<sup>8</sup> Since then, Maria Fe had not seen or heard from him. On May 21, 2002 after more than four (4) years without word from Jerry, Maria Fe filed her petition with the Regional Trial Court.

Maria Fe exerted "earnest efforts x x x to locate the whereabouts or actual address of [Jerry]."<sup>9</sup> She inquired from her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends, but no one could tell her where Jerry had gone.<sup>10</sup> Whenever she went to a hospital, she would check the patients' directory, hoping to find Jerry.<sup>11</sup>

On December 15, 2006, the Regional Trial Court issued an order granting her petition declaring Jerry presumptively dead. The Regional Trial Court agreed that she had a well-founded belief that Jerry was dead. It declared that Jerry had not been heard from and his fate uncertain and whereabouts unknown for more than four (4) years at the time Maria Fe's petition was filed. When the Regional Trial Court issued its order, Jerry had been absent for eight (8) years.

The *fallo* of the Regional Trial Court's order<sup>12</sup> reads:

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<sup>5</sup> *Rollo*, p. 51.

<sup>6</sup> *Id.* at 34 and 44.

<sup>7</sup> *Id.* at 45.

<sup>8</sup> *Id.* at 48.

<sup>9</sup> *Id.* at 49.

<sup>10</sup> *Id.* at 34.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 42. This order was dated December 15, 2006.

WHEREFORE, the Court hereby declares, as it hereby declared [sic] that respondent Jerry F. Cantor is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice to the effect of the reappearance of the absent spouse Jerry F. Cantor.<sup>13</sup>

Not satisfied with the Regional Trial Court's order, the Republic of the Philippines through the Office of the Solicitor General filed a petition for *certiorari* with the Court of Appeals.

In a decision dated August 27, 2008, the Court of Appeals affirmed *in toto* the Regional Trial Court's order dated December 15, 2006. The Court of Appeals held that there was no grave abuse of discretion on the part of the Regional Trial Court in having declared Jerry presumptively dead. The Court of Appeals also emphasized "that by express mandate of Article 247 of the Family Code, all judgments rendered in summary judicial proceedings in Family Law are 'immediately final and executory' upon notice to the parties; hence, no longer appealable."<sup>14</sup>

Still dissatisfied with the ruling of the Court of Appeals, the Office of the Solicitor General filed the present petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure.

The Office of the Solicitor General argued that a petition for *certiorari* lies to challenge decisions, judgments or final orders of trial courts in petitions for the declaration of presumptive death of a missing or absent spouse. The Office of the Solicitor General agreed that under Article 247 of the Family Code, decisions and final orders of trial courts in petitions for the declaration of the presumptive death of a missing or absent spouse are immediately final and executory, and therefore, cannot be appealed. However, the Office of the Solicitor General disagreed with the assertion that judgments or decisions in these cases can no longer be reviewed by the higher courts. It maintained that even though judgments or final orders in summary judicial proceedings such as presumptive death cases are no longer appealable, they may still be reviewed by the Court of Appeals, and, ultimately, by this court.<sup>15</sup>

The Office of the Solicitor General pointed out that "appeal" and "*certiorari*" are not synonymous remedies. By filing a petition for *certiorari* before the Court of Appeals, it could not be considered to have "appealed" the challenged order of the Regional Trial Court. A petition for *certiorari* under Rule 65 is not, in its strict sense, an appeal. It is an original action and a mode of review under which the Court of Appeals may re-examine the challenged order to determine whether it was rendered in accordance with

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<sup>13</sup> Id. at 47.

<sup>14</sup> Id. at 35.

<sup>15</sup> Id. at 16.

law and established jurisprudence. Hence, judgments of trial courts in presumptive death cases are not immutable because such decisions may be reviewed by higher courts. The only possible recourse of a losing party in summary judicial proceedings is a petition for *certiorari* under Rule 65.<sup>16</sup>

The Office of the Solicitor General likewise argued that Maria Fe did not have a well-founded belief that Jerry was dead. It claimed that she failed to conduct a diligent search for her missing husband. Its theory was that Jerry consciously chose not to return to their conjugal home and that he chose not to communicate with Maria Fe. The Office of the Solicitor General claimed that it was possible that Jerry did not want to be found and that he chose to live in a place where even his family and friends could not reach him. From the perspective of the Office of the Solicitor General, it was Jerry's choice to disappear; thus, in all likelihood, he was not dead.

The Office of the Solicitor General claimed that Article 41 of the Family Code requires more than the absence of the missing spouse for him or her to be declared presumptively dead. There must be events, circumstances, and reasons sufficient in themselves to at least support the proposition that the absentee spouse is already dead. Absence *per se* is not enough.

The Office of the Solicitor General capitalized on the failure of Maria Fe to give the names of relatives and friends she had approached when she testified. It asserted that she failed to present them at the witness stand.<sup>17</sup> Moreover, the Office of the Solicitor General assailed the description of her husband as "not really healthy" when he left the conjugal dwelling. It characterized this description as being "too vague to even support the speculation that Jerry is already dead."<sup>18</sup>

On June 26, 2009, Maria Fe filed her comment on the Office of the Solicitor General's petition. She argued that there was no factual or legal basis for the Office of the Solicitor General to seek a reversal of the Court of Appeal's decision. She asserted that the declaration of Jerry's death was in order as it was in accord or consistent with established facts, as well as with law and jurisprudence on the matter.

This court is asked to decide on the following issues:

1. Whether *certiorari* lies to challenge decisions, judgments or final orders of trial courts in petitions for the declaration of presumptive death of a missing person or absent spouse; and

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<sup>16</sup> Id. at 17-19.

<sup>17</sup> Id. at 24.

<sup>18</sup> Id. at 23.

2. Whether Maria Fe has a well-founded belief that Jerry is already dead.

***Certiorari* lies as a remedy to annul the judgment of a trial court in summary proceedings for the declaration of presumptive death of an absent spouse**

I agree that *certiorari* lies as a remedy to annul a judgment in proceedings for the declaration of presumptive death of an absent spouse where grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Regional Trial Court is clearly and convincingly shown.

A petition for the declaration of presumptive death of an absent spouse for the purpose of contracting a subsequent marriage is a summary proceeding. Article 41 of the Family Code is clear on this point:

Art. 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.

Articles 238, 247, and 252 of Title XI of the Family Code (Summary Judicial Proceedings in the Family Law) provide:

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.

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

Art. 252. The rules in Chapter 2 hereof shall also govern summary

proceedings under this Chapter insofar as they are applicable. (n)

From these provisions, it is clear that a petition for the declaration of presumptive death of an absent spouse is a summary proceeding; more so, judgments of a trial court relating to such petitions shall be considered immediately final and executory.

However, while a trial court's judgment relating to a petition for the declaration of presumptive death of an absent spouse is considered immediately final and executory, the Office of the Solicitor General is not entirely without remedy to assail the propriety of a trial court's judgment. Where the judgment is attended by grave abuse of discretion amounting to lack or excess of jurisdiction, the Office of the Solicitor General may file with the Court of Appeals a petition for *certiorari* under Rule 65 and have the judgment annulled. Should the Court of Appeals still render an adverse decision, the Office of the Solicitor General may then file a petition for review on *certiorari* under Rule 45 with this court. This is what the Office of the Solicitor General did in this case.

Any doubt on this matter was settled in *Republic v. Granada*:<sup>19</sup>

At any rate, four years after *Jomoc*, this Court settled the rule regarding appeal of judgments rendered in summary proceedings under the Family Code when it ruled in *Republic v. Tango*:

“This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

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.

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

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<sup>19</sup> G.R. No. 187512, June 13, 2012, 672 SCRA 432. [Second Division, per Sereno, J.]

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. (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

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

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 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.”

In sum, under Article 41 of the Family Code, the losing party in a summary proceeding for the declaration of presumptive death may file a petition for *certiorari* with the CA on the ground that, in rendering judgment thereon, the trial court committed grave abuse of discretion amounting to lack of jurisdiction. From the decision of the CA, the aggrieved party may elevate the matter to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court.<sup>20</sup>

**Strict standards should not be imposed upon the present spouse in evaluating his or her efforts to search for the absent spouse**

However, I disagree with the position that “well-founded belief”

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<sup>20</sup> Id. at 440-441.

should be interpreted as an imposition of stringent standards in evaluating the efforts and inquiries made by the present spouse in ascertaining the absent spouse's status and whereabouts. "Well-founded belief" should be based on the circumstances of each case. It should not be based on a prior limited enumeration of what acts indicate a "well-founded belief."

In cases for declaration of presumptive death under Article 41 of the Family Code, we cannot ask the impossible from a spouse who was abandoned. In interpreting this provision, we must keep in mind that both spouses are under many obligations in the Family Code,<sup>21</sup> all of which require their presence.

Article 41 of the Family Code provides:

Art. 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.

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<sup>21</sup> Title III

Rights and Obligations Between Husband and Wife

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Art. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

Art. 71. The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

Art. 72. When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief.

Art. 73. Either spouse may exercise any legitimate profession, occupation, business or activity without the consent of the other. The latter may object only on valid, serious, and moral grounds.

In case of disagreement, the court shall decide whether or not:

(1) The objection is proper, and

(2) Benefit has occurred to the family prior to the objection or thereafter. If the benefit accrued prior to the objection, the resulting obligation shall be enforced against the separate property of the spouse who has not obtained consent.

The foregoing provisions shall not prejudice the rights of creditors who acted in good faith.



From the text of Article 41, there are two substantive requirements and two procedural requirements for a spouse to be declared presumptively dead for the purpose of remarriage.

The two substantive requirements are the following: first, the absent spouse has been missing for four (4) consecutive years or two (2) consecutive years if the disappearance occurred under circumstances where there is danger of death per Article 391 of the Civil Code; second, the present spouse has a well-founded belief that the absent spouse is dead.

The two procedural requirements are the following: first, the present spouse files a summary proceeding for the declaration of presumptive death of the absent spouse; second, there is the underlying intent of the present spouse to remarry.

In this case, it is necessary to interpret what is meant by “well-founded belief.”

We said in *Republic of the Philippines v. Court of Appeals and Alegro*:<sup>22</sup>

The spouse present is, thus, burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The law does not define what is meant by a well-grounded belief. Cuello Callon writes that “*es menester que su creencia sea firme se funde en motivos racionales.*”

Belief is a state of the mind or condition prompting the doing of an overt act. It may be proved by direct evidence or circumstantial evidence which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded in truth. Any fact or circumstance relating to the character, habits, conditions, attachments, prosperity and objects of life which usually control the conduct of men, and are the motives of their actions, was, so far as it tends to explain or characterize their disappearance or throw light on their intentions, competence evidence on the ultimate question of his death.

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 death of the absent spouse

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<sup>22</sup> 513 Phil. 391 (2005).

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 present spouse.<sup>23</sup>

Applying its construction of what constitutes a “well-founded belief” in *Republic v. Nolasco*,<sup>24</sup> this court reversed the Regional Trial Court and Court of Appeals decisions which declared an absent spouse presumptively dead as the present spouse was deemed to have “failed to conduct a search for his missing wife with such diligence as to give rise to a ‘well-founded belief’ that she is dead.”<sup>25</sup> In 2005, *Republic of the Philippines v. Court of Appeals and Alegro*,<sup>26</sup> which relied heavily on *Nolasco*, likewise held that “the respondent failed to prove that he had a well-founded belief x x x that his spouse x x x was already dead.”<sup>27</sup> In the 2012 case of *Republic v. Granada*,<sup>28</sup> while this court denied the Office of the Solicitor General’s petition on procedural grounds, this court nevertheless favorably considered the Office of the Solicitor General’s assertions that “respondent was allegedly not diligent in her search for her husband.”<sup>29</sup>

Belief is a state of mind and can only be ascertained in reference to a person’s overt acts. In making such an evaluation, one must evaluate a case on the basis of its own merits – cognizant of its unique facts, context, and other nuances – rather than be compelled to satisfy a pre-conceived determination of what acts are sufficiently indicative of the belief being ascertained.

A belief is well-founded when a person has reasonable basis for holding on to such belief. It is to say that such belief is not arbitrary and whimsical. Such belief must, thus, be evaluated on the basic and uncomplicated standard of rationality.

In declaring a person presumptively dead, a court is called upon to sustain a *presumption*. It is not called upon to conclude on verity or to establish actuality. In so doing, a court infers despite an acknowledged uncertainty. Thus, to insist on such demanding and extracting evidence as to practically require enough *proof* of a well-founded belief, as the Office of the Solicitor General suggests, is to insist on an inordinate, intemperate, and non-rational standard.

Maria Fe testified in court that months after their wedding, she and

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<sup>23</sup> Id. at 397-398.

<sup>24</sup> G.R. No. 94053, March 17, 1993, 220 SCRA 20. [Third Division, per Feliciano, J.]

<sup>25</sup> Id. at 26.

<sup>26</sup> *Republic of the Philippines v. Court of Appeals and Alegro*, supra.

<sup>27</sup> Id. at 399.

<sup>28</sup> G.R. No. 187512, June 13, 2012, 672 SCRA 432. [Second Division, per Sereno, J.]

<sup>29</sup> Id. at 445.

her husband had a violent quarrel, and he had left after the fight. She noted the two (2) causes of the quarrel: first, she could not “climax” every time they would have sexual intercourse; second, Jerry disrespected her father every time he would visit them. She likewise stated that she went to see her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends to ask about her husband’s whereabouts. She said that every time she would go to a hospital, she would check its directory to find out anything about her husband, but her efforts proved futile.

The Office of the Solicitor General faulted her for “fall[ing] short of the degree of diligence required for the search of a missing spouse.”<sup>30</sup> In effect, the Office of the Solicitor General insinuated that she should have exerted more painstaking efforts to *ascertain* her husband’s whereabouts.

The majority agrees with the Office of the Solicitor General. The majority views Maria Fe’s efforts as a mere “passive search” that is short of the diligent search required to form a well-founded belief that her husband was already dead.<sup>31</sup>

Maria Fe exerted the best efforts to ascertain the location of her husband but to no avail. She bore the indignity of being left behind. She suffered the indifference of her husband. Such indifference was not momentary. She anguished through years of never hearing from him. The absence of a few days between spouses may be tolerable, required by necessity. The absence of months may test one’s patience. But the absence of years of someone who made the solemn promise to stand by his partner in sickness and in health, for richer or poorer, is intolerable. The waiting is as painful to the spirit as the endless search for a person that probably did not want to be found or could no longer be found.

To require more from Maria Fe who did what she could, given the resources available to her, is to assert the oppressiveness of our laws. It is to tell her that she has to suffer from causes which she cannot understand for more years to come. It should be in the public interest to assume that Jerry, or any husband for that matter, as a matter of moral and legal obligation, would get in touch with Maria Fe even if only to tell her that he is alive.

It behooves this court not to have pre-conceived expectations of a standard operating procedure for spouses who are abandoned. Instead, it should, with the public interest in mind and human sensitivity at heart, understand the domestic situation.

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<sup>30</sup> *Rollo*, p. 24.

<sup>31</sup> Majority opinion, p. 12.

A review of the cases that the Office of the Solicitor General cited reveals this same conclusion.

*Republic of the Philippines v. Court of Appeals and Alegro*<sup>32</sup> acknowledges that “testimonial evidence may suffice to prove the well-founded belief of the present spouse that the absent spouse is already dead x x x.”<sup>33</sup>

In another case cited by the Office of the Solicitor General, *Republic v. Nolasco*,<sup>34</sup> which similarly considered the matter of whether respondent therein was able to establish a well-founded belief of the death of his absent spouse, this court cited the 1913 case of *United States v. Biasbas*,<sup>35</sup> finding it to be “instructive as to degree [sic] of diligence required in searching for a missing spouse.”<sup>36</sup> In *Biasbas*, defendant Biasbas’ defense of a good faith belief that his wife was already dead was not sustained, and his conviction for bigamy was affirmed. Speaking on Biasbas’ lack of due diligence, this court said:

While the defendant testified that he had made inquiries concerning the whereabouts of his wife, he fails to state of whom he made such inquiries. He did not even write to the parents of his first wife, who lived in the Province of Pampanga, for the purpose of securing information concerning her or her whereabouts. He admits that he had a suspicion only that his first wife was dead. He admits that the only basis of his suspicion was the fact that she had been absent.<sup>37</sup> (Emphasis supplied)

What was involved in *Biasbas* was a mere suspicion – totally bereft of any other rational basis. Moreover, the defendant himself *admitted* that all he had was a mere suspicion.

What is involved in this case is not a mere suspicion. In *Biasbas*, the defendant could be faulted for failing to even write the parents of his wife. Here, Maria Fe testified to her having *visited and personally inquired* with her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends. Moreover, Maria Fe repeatedly checked hospital entries to check if her husband was admitted or otherwise was pronounced deceased.

While it may be true that it would have been *ideal* for Maria Fe to have exerted more exceptional efforts in locating her husband, the hypothetical issue of what else she could have done or ought to have done

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<sup>32</sup> *Republic of the Philippines v. Court of Appeals and Alegro*, supra note 22.

<sup>33</sup> Id. at 398.

<sup>34</sup> *Republic v. Nolasco*, supra note 24.

<sup>35</sup> 25 Phil. 71 (1913).

<sup>36</sup> *Republic v. Nolasco*, supra note 24, at 26.

<sup>37</sup> *United States v. Biasbas*, supra at 73.

should not diminish the import of her efforts. It is for Maria Fe to resort to the courses of action permitted to her given her stature and means. We are called upon to make an appreciation of the *reasonable*, not of the *exceptional*. In adjudicating this case, this court must ground itself on what is *real*, not dwell on a projected *ideal*.

In the case of Maria Fe, she did what, in her circumstances, are to be considered as an efficient search. Again, she got in touch with her husband's relatives and searched hospitals. More importantly, she waited for more than four (4) long years for her husband to get in touch with her.

Also, the insistence on the need for Maria Fe to ascertain the whereabouts of her deserting husband undermines the significance and weight of her husband's own duty. In the normal course of things, a spouse is well in a position to expect that the other spouse will return to their common dwelling. Article 68 of the Family Code obliges the husband and the wife "to live together, observe mutual love, respect and fidelity, and render mutual help and support."

The opinions of a recognized authority in civil law, Arturo M. Tolentino, are particularly enlightening:

**Meaning of "Absent" Spouse.** – The provisions of this article are of American origin, and must be construed in the light of American jurisprudence. An identical provision (except for the period) exists in the California civil code (section 61); California jurisprudence should, therefore, prove enlightening. It has been held in that jurisdiction that, as respects the validity of a husband's subsequent marriage, a presumption as to the death of his first wife cannot be predicated upon an absence resulting from his leaving or deserting her, as it is his duty to keep her advised as to his whereabouts. The spouse who has been left or deserted is the one who is considered as the "spouse present"; such spouse is not required to ascertain the whereabouts of the deserting spouse, and after the required number of years of absence of the latter, the former may validly remarry.<sup>38</sup> (Underscoring supplied)

Precisely, it is a deserting spouse's failure to comply with what is reasonably expected of him or her and to fulfill the responsibilities that are all but normal to a spouse which makes reasonable (i.e., well-founded) the belief that should he or she fail to manifest his or her presence within a statutorily determined reasonable period, he or she must have been deceased. The law is of the confidence that spouses will in fact "live together, observe mutual love, respect and fidelity, and render mutual help and support"<sup>39</sup> such

<sup>38</sup> A.M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 281-282 (Vol. I, 1990) citing *People v. Glab*, 13 App. (2d) 528, 57 Pac. (2d) 588 and *Harrington Estate*, 140 Cal. 244, 73 Pac. 1000.

<sup>39</sup> FAMILY CODE, Art. 68.

that it is not the business of the law to assume any other circumstance than that a spouse is deceased in case he or she becomes absent.

It is unfortunate that the majority fails to appreciate Maria Fe's predicament and instead places upon her the burden to prove good faith in her painstaking efforts.

To be present in any human relationship especially that of marriage is a complex affair. There are interests to be compromised for each other, temperaments to be adjusted, evolving personalities to be understood in the crucible of common experiences. The moments of bliss are paid for by the many moments of inevitable discomfort as couples adjust their many standpoints, attitudes, and values for each other. It is a journey that takes time and in that time, presence.

This case does not present that kind of complexity. It is simple enough. Maria Fe was left behind. She looked for Jerry, in good faith. Jerry could not be found. He did not leave word. He did not make the slightest effort to get in touch with Maria Fe. His absence did not make the difficult compromises possible. There were no adjustments in their temperaments, no opportunities to further understand each other, no journey together. His absence was palpable: not moments, not days, not months, but years. Maria Fe deserves more. The law, in Article 41, allows her succor.

Given the circumstances, Maria Fe acted adequately. Her actions were sufficient to form the well-founded belief that her husband passed away. It was proper that he be declared presumptively dead. In the far possibility that he reappears and is not dead, the law provides remedies for him. In the meantime, the Court of Appeals committed no reversible error in affirming the Regional Trial Court's declaration.

WHEREFORE, I vote to **DENY** the petition.

  
MARVIC MARIO VICTOR F. LEONEN  
Associate Justice