

EN BANC

G.R. No. 184621 (*Republic of the Philippines v. Maria Fe Espinosa Cantor*)

Promulgated:

DECEMBER 10, 2013

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CONCURRING OPINION

VELASCO, JR., J.:

I vote for the granting of the petition.

The facts of this case are simple. Sometime in January 1998, Jerry F. Cantor (Jerry) left his wife, Maria Fe Espinosa Cantor (Maria Fe), after a violent quarrel. Since then, Maria had not seen or heard from him.

After more than four (4) years of not seeing or hearing from Jerry, Maria Fe filed a petition for the declaration of presumptive death of her husband with the Regional Trial Court, Branch 25, Koronadal City, South Cotabato (RTC). In sum, Maria Fe alleged that she conducted a diligent search for her husband and exerted earnest efforts to find him. She allegedly inquired from her mother-in-law, brothers-in-law, sisters-in-law, neighbors, and friends but no one could tell her where Jerry was. Whenever she went to a hospital, she made it a point to look through the patients' directory, hoping to find Jerry. On the basis of the foregoing, Maria Fe claimed that she had a well-founded belief that her husband, Jerry, was already dead.

The RTC granted her petition and thus declared Jerry as presumptively dead pursuant to Article 41 of the Family Code. The Court of Appeals affirmed *in toto* the RTC Decision and held that there had been no grave abuse of discretion on the part of the RTC in having declared Jerry presumptively dead. Dissatisfied with the ruling of the Court of Appeals (CA), the Office of the Solicitor General (OSG) filed the present Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure arguing that Maria Fe did not have a well-founded belief that Jerry was dead.

I fully agree that whether or not one has a "well-founded belief" that his or her spouse is dead depends on the unique circumstances of each case and that there is no set standard or procedure in determining the same. It is my opinion that Maria Fe failed to conduct a search with such diligence as to give rise to a "well-founded belief" that her husband is dead. Further, the circumstances of Jerry's departure and Maria Fe's behavior after he left make it difficult to consider her belief a well-founded one.

To reiterate, Maria Fe's alleged "well-founded" belief arose when: (1) Jerry's relatives and friends could not give her any information on his

whereabouts; and (2) she did not find Jerry's name in the patients' directory whenever she went to a hospital. To my mind, Maria Fe's reliance on these alone makes her belief weak and flimsy rather than "well-founded."

Further, it appears that Maria Fe did not actively look for her husband in hospitals and that she searched for Jerry's name in these hospitals' list of patients merely as an afterthought. Moreover, it may be sensed from the given facts that her search was not intentional or planned. This may be noted from the fact that whenever Maria Fe went to a hospital, she made it a point to look through the patients' directory, hoping to find Jerry. Verily, it is as if she searched the patient's directory only when she was in a hospital by coincidence.

Maria Fe's search for Jerry was far from diligent. At the very least, Maria Fe should have looked for Jerry in the places he frequented. Moreover, she should have sought the assistance of the *barangay* or the police in searching for her husband, like what could be reasonably expected of any person with a missing spouse or loved one. These very basic things, she did not do. It may have been advantageous, too, if Maria Fe approached the media for help or posted photos of Jerry in public places with requests for information on his whereabouts. While I agree that We cannot ask the impossible from a spouse who was abandoned, it is not too much to expect the foregoing actions from someone who has lost a spouse.

This Court has been consistent in its strict application of Article 41 of the Family Code. This is clear in the cases cited in the *ponencia* where the Court, notwithstanding the evidence on the efforts of the present spouse to search for the absent spouse, still found that the present spouse's search was not diligent enough and that the said spouse failed to prove that he or she had a well-founded belief that the absent spouse was already dead. I would like to share my observation that compared to Maria Fe, the present spouses in the said cases exerted similar, or if not, even more effort in their searches, and presented similar evidence to prove the same. Yet, the Court found their efforts and evidence wanting.

For instance, in *Republic v. Court of Appeals and Alegro*,<sup>1</sup> respondent Alegro testified that when his wife Lea went missing, he asked Lea's parents as well as their friends if they knew where she was. He stated that he went to Manila to search for her among her friends and would even look for her in malls. Alegro reported Lea's disappearance to the local police station and the National Bureau of Investigation. Despite these efforts, this Court held that Alegro failed to prove that he had a well-founded belief, before he filed his petition in the RTC, that his spouse was already dead. The Court explained:

In this case, the respondent failed to present a witness other than Barangay Captain Juan Magat. The respondent even failed to present Janeth Bautista or Nelson Abaenza or any other person from whom he

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<sup>1</sup> G.R. No. 159614, December 9, 2005, 477 SCRA 277.

allegedly made inquiries about Lea to corroborate his testimony. On the other hand, the respondent admitted that when he returned to the house of his parents-in-law on February 14, 1995, his father-in-law told him that Lea had just been there but that she left without notice.

The respondent declared that Lea left their abode on February 7, 1995 after he chided her for coming home late and for being always out of their house, and told her that it would be better for her to go home to her parents if she enjoyed the life of a single person. Lea, thus, left their conjugal abode and never returned. Neither did she communicate with the respondent after leaving the conjugal abode because of her resentment to the chastisement she received from him barely a month after their marriage. What is so worrisome is that, the respondent failed to make inquiries from his parents-in-law regarding Lea's whereabouts before filing his petition in the RTC. It could have enhanced the credibility of the respondent had he made inquiries from his parents-in-law about Lea's whereabouts considering that Lea's father was the owner of Radio DYMS.

The respondent did report and seek the help of the local police authorities and the NBI to locate Lea, but it was only an afterthought. He did so only after the OSG filed its notice to dismiss his petition in the RTC.<sup>2</sup>

Similarly, in *Republic v. Nolasco*,<sup>3</sup> this Court ruled in favor of the Republic and agreed with the position of the OSG that the respondent therein failed to establish that he had a well-founded belief that his absent wife was dead. In this case, Nolasco, who was a seaman, went back home to Antique upon learning that his wife left their conjugal abode. He testified that no one among their friends could tell him where his wife was. He claimed that his efforts to look for her whenever his ship docked in England proved fruitless and also stated that all the letters he had sent to his missing spouse at an address in Liverpool, England, the address of the bar where they met, were all returned to him. This Court believed that Nolasco 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. In the said case, it was held:

In the case at bar, the Court considers that the investigation allegedly conducted by respondent in his attempt to ascertain Janet Monica Parker's whereabouts is too sketchy to form the basis of a reasonable or well-founded belief that she was already dead. When he arrived in San Jose, Antique after learning of Janet Monica's departure, instead of seeking the help of local authorities or of the British Embassy, he secured another seaman's contract and went to London, a vast city of many millions of inhabitants, to look for her there.

"Q: After arriving here in San Jose, Antique, did you exert efforts to inquire the whereabouts of your wife:

A: Yes, Sir.

Court:

How did you do that?

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<sup>2</sup> Id. at 284-285.

<sup>3</sup> G.R. No. 94053, March 17, 1993, 220 SCRA 20.

A: I secured another contract with the ship and we had a trip to London and I went to London to look for her I could not find her (sic).”

Respondent’s testimony, however, showed that he confused London for Liverpool and this casts doubt on his supposed efforts to locate his wife in England. The Court of Appeals’ justification of the mistake, to wit:

“... Well, while the cognoscente (sic) would readily know the geographical difference between London and Liverpool, for a humble seaman like Gregorio the two places could mean one — place in England, the port where his ship docked and where he found Janet. Our own provincial folks, every time they leave home to visit relatives in Pasay City, Kalookan City. or Parañaque, would announce to friends and relatives, ‘We’re going to Manila.’ This apparent error in naming of places of destination does not appear to be fatal,”

is not well taken. There is no analogy between Manila and its neighboring cities, on one hand, and London and Liverpool, on the other, which, as pointed out by the Solicitor-General, are around three hundred fifty (350) kilometers apart. We do not consider that walking into a major city like Liverpool or London with a simple hope of somehow bumping into one particular person there — which is in effect what Nolasco says he did — can be regarded as a reasonably diligent search.

The Court also views respondent’s claim that Janet Monica declined to give any information as to her personal background even after she had married respondent too convenient an excuse to justify his failure to locate her. The same can be said of the loss of the alleged letters respondent had sent to his wife which respondent claims were all returned to him. Respondent said he had lost these returned letters, under unspecified circumstances.

Neither can this Court give much credence to respondent’s bare assertion that he had inquired from their friends of her whereabouts, considering that respondent did not identify those friends in his testimony. The Court of Appeals ruled that since the prosecutor failed to rebut this evidence during trial, it is good evidence. But this kind of evidence cannot, by its nature, be rebutted. In any case, admissibility is not synonymous with credibility. As noted before, there are serious doubts to respondent’s credibility. Moreover, even if admitted as evidence, said testimony merely tended to show that the missing spouse had chosen not to communicate with their common acquaintances, and not that she was dead.

Also, in *Republic v. Granada*,<sup>4</sup> while the Court denied the petition of the OSG on procedural grounds and consequently upheld the declaration of presumptive death of the missing husband, this Court agreed with the OSG’s assertion that the respondent therein was not diligent in her search for her husband when she, just like Maria Fe in this case, merely inquired about the whereabouts of his spouse from the latter’s relatives and failed to seek

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<sup>4</sup> G.R. No. 187512, June 13, 2012, 672 SCRA 432.

information and assistance from government agencies and the mass media. The Court held:


Applying the foregoing standards to the present case, petitioner points out that respondent Yolanda did not initiate a diligent search to locate her absent husband. While her brother Diosdado Cadacio testified to having inquired about the whereabouts of Cyrus from the latter's relatives, these relatives were not presented to corroborate Diosdado's testimony. In short, respondent was allegedly not diligent in her search for her husband. Petitioner argues that if she were, she would have sought information from the Taiwanese Consular Office or assistance from other government agencies in Taiwan or the Philippines. She could have also utilized mass media for this end, but she did not. Worse, she failed to explain these omissions.

The Republic's arguments are well-taken. Nevertheless, we are constrained to deny the Petition.

The RTC ruling on the issue of whether respondent was able to prove her "well-founded belief" that her absent spouse was already dead prior to her filing of the Petition to declare him presumptively dead is already final and can no longer be modified or reversed. Indeed, "[n]othing is more settled in law than that when a judgment becomes final and executory, it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law."<sup>5</sup>

Were it not for the finality of the RTC ruling, the declaration of presumptive death should have been recalled and set aside for utter lack of factual basis.

It is the policy of the State to protect and preserve marriage. Courts should be ever mindful of this policy and, hence, must exercise prudence in evaluating petitions for declaration of presumptive death of an absent spouse. Otherwise, spouses may easily circumvent the policy of the laws on marriage by simply agreeing that one of them leave the conjugal abode and never return again.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice

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<sup>5</sup> Id. at 445.