

**SECOND DIVISION**

**G.R. No. 210929 – REPUBLIC OF THE PHILIPPINES, *Petitioner*, v.  
EDNA ORCELINO-VILLANUEVA, *Respondent*.**

**Promulgated:  
29 JUL 2015**



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**DISSENTING OPINION**

**LEONEN, J.:**

Edna Orcelino-Villanueva (Edna) was a domestic helper based in Singapore. In 1993, she came home immediately after she heard news from her children that her husband, Romeo L. Villanueva (Romeo), left their conjugal dwelling. She came home, leaving her work, for the purpose of looking for her husband and taking care of her children. She had limited resources for her search.

For 15 or 16 years, she endured the absence of her husband. Within those long years, whether in good times or bad, she never heard from him. He did not discharge any of his duties as husband.

In ruling against her and concluding that she did not search hard enough for Romeo, the majority fails to appreciate several crucial facts:

First, Edna turned away from her livelihood, her modest means of subsistence, just to search for Romeo.

Second, Edna did not only embark on a token search. She did not limit herself to her parents-in-law and to common friends in Iligan City, the place where she and Romeo were married. Edna went all the way to Romeo's birthplace, which was Escalante, Negros Oriental. There, she inquired from Romeo's relatives as to his whereabouts.

Third, 15 or 16 years had passed since Edna was told that Romeo had gone missing when she filed her Petition to declare Romeo presumptively dead. If Edna merely intended to use a petition for declaration of presumptive death as a convenient means for circumventing laws that protect the institution of marriage, it is astounding that she would await the inconvenience of 15 or 16 years.

Edna established a well-founded belief that her husband, Romeo, is



already dead.

I vote to sustain the assailed October 18, 2013 Decision<sup>1</sup> and January 8, 2014 Resolution<sup>2</sup> of the Court of Appeals in CA-G.R. SP No. 03768-MIN, affirming the October 8, 2009 Judgment<sup>3</sup> of the Regional Trial Court, Branch 10, Malaybalay City, Bukidnon, declaring Romeo presumptively dead pursuant to Article 41 of the Family Code.

I reiterate the position I articulated in my dissent to *Republic of the Philippines v. Cantor*.<sup>4</sup> I maintain that a strict standard should not be used in evaluating the efforts made by a spouse to ascertain the status and whereabouts of an absent spouse. The marital obligations provided for by the Family Code require the continuing presence of each spouse. A spouse is well to suppose that this shall be resolutely fulfilled by the other spouse. Failure to do so for the period established by law gives rise to the presumption that the absent spouse is dead, thereby enabling the spouse present to remarry.

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.

Article 41's requirement of a "well-grounded belief" calls for an inquiry into a spouse's state of mind.<sup>5</sup> Otherwise abstract, one's state of mind can only be ascertained through overt acts.

Article 41 requires this belief to be "well-grounded." It therefore requires nothing more than for a spouse to have a "*reasonable basis* for

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<sup>1</sup> *Rollo*, pp. 27–35. The Decision was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justice Edgardo T. Lloren and Associate Justice Marie Christine Azcarraga Jacob.

<sup>2</sup> *Id.* at 36–37.

<sup>3</sup> *Id.* at 48–49. The Judgment was penned by Judge Josefina Centiles Bacal.

<sup>4</sup> J. Leonen, Dissenting Opinion in *Republic of the Philippines v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 35–53 [Per J. Brion, En Banc].

<sup>5</sup> *Republic v. Court of Appeals and Alegro*, 513 Phil. 391 (2005) [Per J. Callejo, Sr., Second Division].

holding to such belief.”<sup>6</sup> Article 41 relies on a basic and plain test: rationality.<sup>7</sup>

What is rational in each case depends on context. Rationality is not determined by the blanket imposition of pre-conceived standards. Rather, it is better determined by an appreciation of a person’s unique circumstances.<sup>8</sup>

Moreover, all that Article 41 calls to sustain is a presumption. By definition, there is no need for absolute certainty. A presumption is, by nature, favorable to a party and dispenses with the burden of proving. Consequently, neither is there a need for conduct that establishes such a high degree of cognizance that what is established is proof, and no longer a presumption:

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 to “show enough *proof* of a well-founded belief”, is to insist on an inordinate and intemperate standard.<sup>9</sup>

It is improper for the majority to insist upon the same “strict standard approach”<sup>10</sup> that was relied on in *Cantor* and conclude that Edna’s efforts “were not diligent and serious enough.”<sup>11</sup> The majority fails to appreciate several crucial facts in this case that define the limits of her situation.

Edna’s lack of resources appears in the records. She only had the ability to present herself as witness.

Concededly, Edna could have engaged in other efforts—asking for the help of police officers, filing a formal missing-person report, announcing Romeo’s absence in radio or television programs—as would show how painstakingly she endeavored to search for Romeo. Insisting on Edna to have also made these efforts, however, is to insist that she act in an ideal manner. It takes her away from her own reality and requires her to fulfill pre-conceived notions of what satisfies notice. It fails to appreciate the merit of the lengths she *actually* went through to search for Romeo.

Unless Edna had the ability to gain access to radio or television

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<sup>6</sup> J. Leonen, Dissenting Opinion in *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 48 [Per J. Brion, En Banc].

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

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

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

<sup>10</sup> Ponencia, p. 5.

<sup>11</sup> *Id.* at 7.

programs with nationwide coverage or ensure that her notices were posted in all precincts, then requiring this type of search would have been futile and economically wasteful. If we are to lend truth to the concept of social justice, we have to make judgments based on her context. To reiterate, she is one of the millions who had to go abroad to earn a more prosperous life for herself and her children. She had to cut short her employment to come home and make an honest search for her husband. To require her to squander more time and money to reach media and the police would have been economically expensive for her. The law should be interpreted in the context of reality—and ours is different from Edna's.

Edna was an abandoned wife whose husband was missing for 15 or 16 years. Her search for Romeo began more than two decades ago in a province in Mindanao, far removed from this nation's capital. She was an overseas Filipino worker, a domestic helper, who was compelled to return to the Philippines to tend to a missing husband. Twenty-two years ago, when she embarked on her search, she could not have been aided by the convenience of ready access to communication networks. To go to her husband's birthplace and inquire from his relatives, she could not have merely boarded an hour-long flight; she must have endured hours, even days at sea. It is in light of these human realities that Edna's efforts must be appreciated.

This court must realize that insisting upon an ideal will never yield satisfactory results. A stringent evaluation of a party's efforts made out of context will always reveal means through which a spouse could have 'done more' or walked the proverbial extra mile to ascertain his or her spouse's whereabouts. A reason could always be conceived for concluding that a spouse did not try 'hard enough.'

So, too, insisting on Edna's perceived shortcomings unjustly puts the blame on her and undermines the shortcoming that Romeo himself committed. All marital obligations recognized in the Family Code are predicated upon each spouse's presence. The primordial marital obligation is "to live together, observe mutual love, respect and fidelity, and render mutual help and support."<sup>12</sup> As I explained in my dissent in *Cantor*:

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

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<sup>12</sup> FAMILY CODE, art. 68.

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.

Precisely, it is a deserting spouse's failure to comply with what is reasonably expected of him/her and to fulfil the responsibilities that are all but normal to a spouse which makes reasonable (*i.e.*, well-grounded) the belief that should he/she fail to manifest his/her presence within a statutorily determined reasonable period, he/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" such that it is not the business of the law to assume any other circumstance than that a spouse is deceased in case he/she becomes absent.<sup>13</sup>

It is Romeo who has been absent. In so doing, he is rightly considered to be no longer in a position to perform his marital obligations to Edna. Having been absent for the statutorily prescribed period despite his legal obligations as a married spouse, Romeo should be rightly considered presumptively dead.

The majority burdened itself with ensuring that petitions for declaration of presumptive death are not used as procedural shortcuts that undermine the institution of marriage. While this is a valid concern, the majority goes to unnecessary lengths to discharge this burden. Article 41 of the Family Code concedes that there is a degree of risk in presuming a spouse to be dead, as the absent spouse may, in fact, be alive and well. Thus, Article 41 provides that declarations of presumptive death are "without prejudice to the reappearance of the absent spouse." The state is thus not bereft of remedies.

Consistent with this, Article 42 of the Family Code provides for the automatic termination of the subsequent marriage entered into by the present spouse should the absent spouse reappear:

Art. 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab

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<sup>13</sup> J. Leonen, Dissenting Opinion in *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 51–52 [Per J. Brion, En Banc], citing 1 ARTURO M. TOLENTINO, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 281–282 (1990), citing *People v. Glab*, 13 App. (2d) 528, 57 Pac. (2d) 588 and *Harrington Estate*, 140 Cal. 244, 73 Pac. 1000; and FAMILY CODE, art. 68.

initio.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

Moreover, in *Santos v. Santos*,<sup>14</sup> we recognized that in cases where a declaration of presumptive death was fraudulently obtained, the subsequent marriage shall not only be terminated, but all other effects of the declaration nullified by a successful petition for annulment of judgment:

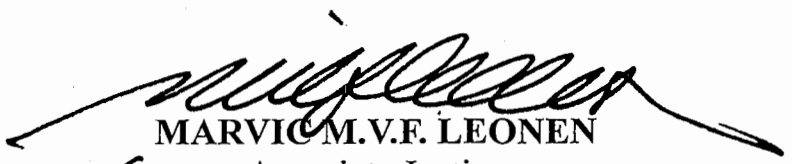
The proper remedy for a judicial declaration of presumptive death obtained by extrinsic fraud is an action to annul the judgment. An affidavit of reappearance is not the proper remedy when the person declared presumptively dead has never been absent.

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Therefore, for the purpose of not only terminating the subsequent marriage but also of nullifying the effects of the declaration of presumptive death and the subsequent marriage, mere filing of an affidavit of reappearance would not suffice.<sup>15</sup>

The majority is gripped with the apprehension that a petition for declaration of presumptive death may be availed of as a dangerous expedient. Nothing, in this case, sustains fear. A misplaced anxiety is all that there is. As things stand, Edna has shown facts that warrant a declaration that Romeo is presumptively dead. Proceeding from these merits, this Petition must be denied.

ACCORDINGLY, I vote to **DENY** the Petition. The Decision of the Court of Appeals in CA-G.R. SP No. 03768-MIN, affirming the October 8, 2009 Judgment of the Regional Trial Court, Branch 10, Malaybalay City, Bukidnon, declaring Romeo L. Villanueva presumptively dead pursuant to Article 41 of the Family Code, must be affirmed.

  
MARVIC M. V. F. LEONEN  
Associate Justice

<sup>14</sup> G.R. No. 187061, October 8, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/187061.pdf> [Per J. Leonen, Second Division].

<sup>15</sup> Id. at 1-10.