SECOND DIVISION

G.R. No. 199194 – REPUBLIC OF THE PHILIPPINES, Petitioner, **v. JOSE B. SAREÑOGON,** Respondent.

Promulgated:
10 FEB 2016

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

A petition praying for the declaration of presumptive death of an absent spouse should be resolved on its own merits, not on the basis of preconceived notions of acts that the present spouse ought to have done. Approaching such cases with an a priori disapproving stance, which may be trumped only by compliance with an idealized "to-do list," is unreasonable. It not only prevents courts from appreciating the present spouse's efforts for their inherent merits; it also casts aside the more basic—and statutorily imposed[1]—duty of each spouse to be present: "to live together, observe mutual love, respect and fidelity, and render mutual help and support."[2]

Respondent Jose B. Sareñogon (Jose) was an overseas Filipino worker. Harsh realities, such as the lack of economic opportunities at home compounded with the need to provide for a fledgling family, compelled him to work abroad as a seafarer. However, because of Jose's dire situation, not only he but also his wife Netchie S. Sareñogon (Netchie) was compelled to go abroad in search of greener pastures. Within a month of being married, Jose and Netchie had to endure the bitterness of being separated in foreign lands just to make ends meet.[3]

As things would turn out, it was not only their deliberate, self-imposed separation that Jose would have to endure. Three months after leaving home for employment overseas, Jose received no communication from Netchie.[4] Even his inquiries with Netchie's parents proved futile as they were not to be found in their residence in Clarin, Misamis Occidental.[5] Undaunted, Jose personally searched for Netchie as soon as his means

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1 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."

2 FAMILY CODE, art. 68.

3 *Rollo*, p. 43

4 Id.

5 Id. at 43–44.

allowed him—that is, as soon as his contract as a seafarer expired—approaching her relatives and friends, all to no avail.[6] It was only after all these that Jose resigned himself to Netchie's loss and pursued appropriate legal action through the Petition we now resolve.[7]

The majority is of the opinion that Jose's Petition for declaration of Netchie's presumptive death must be denied. It concludes that Jose failed to show that he acted out of the well-founded belief that Netchie was already dead and asserts that Jose's efforts did not show "honest-to-goodness efforts"[8] to ascertain whether Netchie was still alive. In doing so, the majority relies chiefly on *Republic of the Philippines v. Cantor*,[9] where a "strict standard"[10] was imposed on petitions for declaration of presumptive death of absent spouses.

I registered my Dissent in *Cantor*; I do so again here.

As in *Cantor*,[11] I maintain that such a strict standard cannot be the basis for appreciating the efforts made by a spouse in ascertaining the status and whereabouts of his or her absent spouse. This strict standard makes it apparent that marital obligations remain incumbent only upon the present spouse. It unduly reduces the mutual duty of presence to the sole and exclusive obligation of the spouse compelled to embark on a search. It turns a blind eye to how the absent spouse has failed to live up to his or her own duty to be present. As I emphasized in my Dissent in the similar case of *Republic of the Philippines v. Orcelino-Villanueva*:[12]

> 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.[13]

Petitions for declaration of presumptive death of an absent spouse are specifically provided for in Article 41 of the Family Code, which reads:

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6 Id.
7 Id.
8 Ponencia, p. 7.
9 G.R. No. 184621, December 10, 2013, 712 SCRA 1 [Per J. Brion, En Banc].
10 Ponencia, p. 10.
11 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].
12 J. Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf > [Per J. Mendoza, Second Division].
13 Id. at 2.

> 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.
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> 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 permits a spouse to seek judicial relief, *not* on the basis of antecedent occurrences that have actually transpired, but on the mere basis of a "belief." Article 41 petitions are, thus, unique in that they may be initiated and prosper *not* based on something concrete, but based on something that can be considered an abstraction: a spouse's state of mind.[14] Because this abstraction cannot otherwise be factually established, it becomes necessary to inquire into how the petitioning spouse actually conducted himself or herself, that is, his or her overt acts.

Article 41 imposes a qualitative standard for the availing of relief. Not only must there be a belief, this belief must be "well-grounded." To say that this belief is well-grounded is to say that there is "*reasonable basis* for holding to such belief."[15] Therefore, what Article 41 requires is the satisfaction of a basic and plain test: rationality.[16]

What is rational or reasonable to a person is a matter that cannot be dealt with in absolute terms. Context is imperative. In appreciating reasonableness, cut-and-dried a priori standards cannot control. Reliance on such standards erroneously presupposes similarity, if not complete uniformity, of human experience:

> 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.[17]

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

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

16 Id.

17 J. Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf > 3 [Per J. Mendoza, Second Division].

As vital as the point ***from which*** Article 41 petitions proceed (i.e., reasonable belief) is the point ***to which*** they intend to proceed, that is, sustaining a mere presumption. As crucial as the starting point of a well-founded belief is the intended endpoint of a mere presumption:

> [A]ll 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:
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> > 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.[18]

The figurative bookends—the root and the cusp—of Article 41 petitions delineate the boundaries of judicial inquiry. A strict standard grounded on idealized standards, on "what should have been," is misplaced.

The dearth of resources at Jose's disposal is manifest. It was for the precise reason of his modest status that both he and his wife found themselves having to leave the Philippines for employment within only a month of being married.

What remains clear is that Jose exerted efforts *as best as he could*. Even as his circumstances prevented him from returning to the Philippines, he searched for Netchie through her parents. However, even Netchie's parents could not be found. As soon as he was able to return to the Philippines, that is, as soon as his contract as a seafarer expired, he personally launched a search for Netchie. Undaunted by the absence of Netchie's own parents, Jose asked Netchie's other relatives and friends for her whereabouts. Even this, however, proved futile.

The circumstances of Netchie's absence are attested to not only by Jose's own testimony but also by those of Netchie's own aunt and Jose's brother.[19]

Jose may not have been a man of disconsolate or utterly miserable

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[18] Id., *citing* J. Leonen, Dissenting Opinion in *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 48 [Per J. Brion, En Banc].

[19] *Rollo*, p. 44.

means, but he was certainly one who had to contend with his modest and limited capacities. It is in light of this that his efforts must be appreciated. It may be conceded that Jose could have engaged in other, ostensibly more painstaking efforts, such as seeking the aid of police officers, filing a formal missing-person report, and announcing Netchie's absence in radio or television programs. However, insisting on these other, idyllic acts that Jose could have done compels him to comply with illusory objectives that may just have been beyond his means. As I emphasized in my Dissent in *Orcelino-Villanueva*:

> 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.'[20]

The majority characterizes Jose's search as a mere "passive search"[21] and notes that Jose failed to satisfy the standards supposedly set by *Cantor*.[22] I caution against the use of such dismissive descriptions as "passive" in the face of seeming non-compliance with *Cantor's* requirements. Even more, I caution against a continuing and indiscriminate reliance on *Cantor*'s stringent requirements. Doing so proceeds from a misplaced presumption that the factual moorings of all Article 41 petitions are alike and that the standards that suffice for one case are the only ones that will suffice for all others.

Spouses are fundamentally called "to live together, observe mutual love, respect and fidelity, and render mutual help and support."[23] Presence is integral to marital relations. As I explained in my Dissent in *Cantor:*

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

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20 J. Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf > [Per J. Mendoza, Second Division].

21 Ponencia, p. 9.

22 Id. As the ponencia summarizes: "[T]he degree of diligence and reasonable search required by law is not met (1) when there is failure to present the persons from whom the present spouse allegedly made inquiries especially the absent spouse's relatives or neighbors and friends, (2) when there is failure to report the missing spouse's purported disappearance or death to the police or mass media, and (3) when the present spouse's evidence might or would only show that the absent spouse chose not to communicate, but not necessarily that the latter was indeed dead."

23 FAMILY CODE, art. 68.

> 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.
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> 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-grounded) 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" such 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.[24] (Emphasis in the original)

Focusing on the supposed inadequacies of Jose's efforts makes it seem as though the burden of presence is his alone to bear, when it is Netchie who is missing. It is she who has proven herself no longer capable of performing her marital obligations. As she has been absent for the statutorily prescribed period despite her obligations as Jose's spouse, Netchie must be considered presumptively dead.

The majority heavily quotes from *Cantor* and cites the supposed rationale for imposing a strict standard: that is, to ensure that Article 41 petitions are not used as shortcuts to undermine the indissolubility of marriage. I addressed this matter in my Dissent in *Orcelino-Villanueva*:

> While this is a valid concern, the majority goes to unnecessary lengths to discharge this burden. Article 41 of the Family Code itself 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.
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> 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:

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[24] 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), *in turn 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.

> 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 initio.
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> 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*, 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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> . . . .
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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.[25] (Citations omitted)

As with *Cantor* and *Orcelino-Villanueva*, "[t]he majority is gripped with the apprehension that a petition for declaration of presumptive death may be availed of as a dangerous expedient."[26] As also with these cases, however, nothing here sustains and justifies fear. Inordinate anxiety is all that there is. What is manifest is that Jose has established facts that warrant the declaration that Netchie is presumptively dead. Thus, the present Petition must be denied.

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[25] J. Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf > 5–6 [Per J. Mendoza, Second Division].

[26] Id. at 6.

ACCORDINGLY, I vote to **DENY** the Petition. The Decision of the Court of Appeals in CA-G.R. SP No. 04158-MIN affirming the January 31, 2011 Decision of Branch 15 of the Regional Trial Court, Ozamis City, declaring Netchie S. Sareñogon presumptively dead, pursuant to Article 41 of the Family Code, must be affirmed.

MARVIC M.V.F. LEONEN
Associate Justice