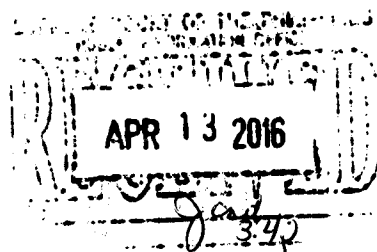




Republic of the Philippines
 Supreme Court
 Manila



FIRST DIVISION

REPUBLIC OF THE PHILIPPINES, G.R. No. 214243

Petitioner, Present:

- versus -

NILDA B. TAMPUS,

Respondent.

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

Promulgated:

MAR 16 2016

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated June 17, 2013 and the Resolution³ dated September 2, 2014 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 04588, which affirmed the Decision⁴ dated July 29, 2009 of the Regional Trial Court of Lapu-Lapu City, Branch 54 (RTC) declaring respondent's spouse, Dante L. Del Mundo, as presumptively dead.

The Facts

Respondent Nilda B. Tampus (Nilda) was married to Dante L. Del Mundo (Dante) on November 29, 1975 in Cordova, Cebu. The marriage ceremony was solemnized by Municipal Judge Julian B. Pogoy of Cordova, Cebu.⁵ Three days thereafter, or on December 2, 1975, Dante, a member of

¹ *Rollo*, pp. 9-22.

² *Id.* at 24-29. Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

³ *Id.* at 31-33. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Ramon Paul L. Hernando and Marilyn B. Lagura-Yap concurring.

⁴ *Id.* at 61-63. Penned by Presiding Judge Victor Teves, Sr.

⁵ *Id.* at 25 and 59.

the Armed Forces of the Philippines (AFP), left respondent, and went to Jolo, Sulu where he was assigned. The couple had no children.⁶

Since then, Nilda heard no news from Dante. She tried everything to locate him, but her efforts proved futile.⁷ Thus, on April 14, 2009, she filed before the RTC a petition⁸ to declare Dante as presumptively dead for the purpose of remarriage, alleging that after the lapse of thirty-three (33) years without any kind of communication from him, she firmly believes that he is already dead.⁹

Due to the absence of any oppositor, Nilda was allowed to present her evidence *ex parte*. She testified on the allegations in her petition, affirming that she exerted efforts to find Dante by inquiring from his parents, relatives, and neighbors, who, unfortunately, were also not aware of his whereabouts. She averred that she intends to remarry and move on with her life.¹⁰

The RTC Ruling

In a Decision¹¹ dated July 29, 2009, the RTC granted Nilda's petition and declared Dante as presumptively dead for all legal purposes, without prejudice to the effect of his reappearance. It found that Dante left the conjugal dwelling sometime in 1975 and from then on, Nilda never heard from him again despite diligent efforts to locate him. In this light, she believes that he had passed away especially since his last assignment was a combat mission. Moreover, the RTC found that the absence of thirty-three (33) years was sufficient to give rise to the presumption of death.¹²

Dissatisfied, the Office of the Solicitor General (OSG), on behalf of petitioner Republic of the Philippines (Republic), filed a petition for *certiorari*¹³ before the CA assailing the RTC Decision.

The CA Ruling

In a Decision¹⁴ dated June 17, 2013, the CA denied the OSG's petition and affirmed the RTC Decision declaring Dante as presumptively dead. The CA gave credence to the RTC's findings that Nilda had exerted efforts to find her husband by inquiring from his parents, relatives, and neighbors,

⁶ Id. at 25.

⁷ Id.

⁸ Id. at 56-57.

⁹ Id.

¹⁰ Id. at 62.

¹¹ Id. at 61-63.

¹² Id. at 62-63.

¹³ Id. at 39-55.

¹⁴ Id. at 24-29.

who likewise had no knowledge of his whereabouts. Further, the lapse of thirty-three (33) years, coupled with the fact that Dante had been sent on a combat mission to Jolo, Sulu, gave rise to Nilda's well-founded belief that her husband is already dead.¹⁵

Moreover, the CA opined that if Dante were still alive after many years, it would have been easy for him to communicate with Nilda, taking into consideration the fact that Dante was only 25 years old when he left and, therefore, would have been still physically able to get in touch with his wife. However, because neither Nilda nor his own family has heard from him for several years, it can be reasonably concluded that Dante is already dead.¹⁶

The OSG's motion for reconsideration¹⁷ was denied in a Resolution¹⁸ dated September 2, 2014; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in upholding the RTC Decision declaring Dante as presumptively dead.

The Court's Ruling

The petition has merit.

Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a *well-founded belief* that the prior spouse was already dead. Under Article 41¹⁹ of the Family Code of the Philippines (Family Code), there are four (4) essential requisites for the declaration of presumptive death: (1) that the absent spouse has been missing for four (4) consecutive years, or two (2) consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down

¹⁵ Id. at 27-28.

¹⁶ Id. at 28.

¹⁷ See motion for reconsideration dated July 15, 2013; id. at 34-38.

¹⁸ Id. at 31-33.

¹⁹ Article 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 had 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.

in Article 391 of the Civil Code; (2) that the present spouse wishes to remarry; (3) that the present spouse has a well-founded belief that the absentee is dead; and (4) that the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.²⁰

The burden of proof rests on the present spouse to show that all the foregoing requisites under Article 41 of the Family Code exist. Since it is the present spouse who, for purposes of declaration of presumptive death, substantially asserts the affirmative of the issue, it stands to reason that the burden of proof lies with him/her. He who alleges a fact has the burden of proving it and mere allegation is not evidence.²¹

The “well-founded belief” in the absentee’s death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort, not a passive one. As such, the mere absence of the spouse for such periods prescribed under the law, lack of any news that such absentee spouse is still alive, failure to communicate, or general presumption of absence under the Civil Code would not suffice.²² The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of “well-founded belief” which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse’s whereabouts, but more importantly, whether the latter is still alive or is already dead.²³

In this case, Nilda testified that after Dante’s disappearance, she tried to locate him by making inquiries with his parents, relatives, and neighbors as to his whereabouts, but unfortunately, they also did not know where to find him. Other than making said inquiries, however, Nilda made no further efforts to find her husband. She could have called or proceeded to the AFP headquarters to request information about her husband, but failed to do so. She did not even seek the help of the authorities or the AFP itself in finding him. Considering her own pronouncement that Dante was sent by the AFP on a combat mission to Jolo, Sulu at the time of his disappearance, she could have inquired from the AFP on the status of the said mission, or from the members of the AFP who were assigned thereto. To the Court’s mind, therefore, Nilda failed to actively look for her missing husband, and her purported earnest efforts to find him by asking Dante’s parents, relatives, and friends did not satisfy the strict standard and degree of diligence required to create a “well-founded belief” of his death.

²⁰ *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 18.

²¹ *Id.* at 18-19.

²² *See id.* at 20.

²³ *Id.* at 20, citing *Republic of the Philippines v. CA*, 513 Phil. 391, 397-398 (2005).


Furthermore, Nilda did not present Dante's family, relatives, or neighbors as witnesses who could have corroborated her asseverations that she earnestly looked for Dante. These resource persons were not even named. In *Republic v. Nolasco*,²⁴ it was held that the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts was found insufficient as the names of said friends were not identified in the testimony nor presented as witnesses.²⁵

Finally, other than Nilda's bare testimony, no other corroborative evidence had been offered to support her allegation that she exerted efforts to find him but was unsuccessful. What appears from the facts as established in this case was that Nilda simply allowed the passage of time without actively and diligently searching for her husband, which the Court cannot accept as constituting a "well-founded belief" that her husband is dead. Whether or not the spouse present acted on a well-founded belief of death of the absent spouse 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 the present spouse.²⁶


In fine, having fallen short of the stringent standard and degree of due diligence required by jurisprudence to support her claim of a "well-founded belief" that her husband Dante is already dead, the instant petition must be granted.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated June 17, 2013 and the Resolution dated September 2, 2014 rendered by the Court of Appeals in CA-G.R. SP No. 04588 are hereby **REVERSED** and **SET ASIDE**. The petition of respondent Nilda B. Tampus to have her husband, Dante L. Del Mundo, declared presumptively dead is **DENIED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

²⁴ G.R. No. 94053, March 17, 1993, 220 SCRA 20.

²⁵ Id. at 28.

²⁶ *Republic of the Philippines v. CA*, supra note 23, at 398.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision 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
MARIA LOURDES P. A. SERENO
Chief Justice