

THIRD DIVISION

[G.R. NO. 160258, January 19, 2005]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. GLORIA
BERMUDEZ-LORINO, RESPONDENT.**

D E C I S I O N

GARCIA, J.:

Via this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Republic of the Philippines, represented by the Office of the Solicitor General (OSG), seeks the reversal and setting aside of the decision dated September 23, 2003 of the Court of Appeals in CA-G.R. CV No. 73884, which affirmed on appeal an earlier decision of the Regional Trial Court (RTC) at San Mateo, Rizal in a summary judicial proceeding thereat commenced by the herein respondent Gloria Bermudez-Lorino for the declaration of the presumptive death of her absent spouse, Francisco Lorino, Jr., based on the provisions of Article 41 of the Family Code, for purposes of remarriage.

The facts may be summarized, as follows:

Respondent Gloria Bermudez-Lorino (Gloria for brevity), and her husband were married on June 12, 1987. Out of this marriage, she begot three (3) children, namely: Francis Jenio, Fria Lou and Fatima.

Before they got married in 1987, Gloria was unaware that her husband was a habitual drinker, possessed with violent character/attitude, and had the propensity to go out with friends to the extent of being unable to engage in any gainful work.

Because of her husband's violent character, Gloria found it safer to leave him behind and decided to go back to her parents together with her three (3) children. In order to support the children, Gloria was compelled to work abroad.

From the time of her physical separation from her husband in 1991, Gloria has not heard of him at all. She had absolutely no communications with him, or with any of his relatives.

On August 14, 2000, nine (9) years after she left her husband, Gloria filed a verified petition with the Regional Trial Court (RTC) at San Mateo, Rizal under the rules on *Summary Judicial Proceedings in the Family Law* provided for in the Family Code, which petition was docketed in the same court as Special Proceeding No. 325-00 SM.

On August 28, 2000, the RTC issued an order directing, *inter alia*, the publication of the petition in a newspaper of general circulation, thus:

A verified petition was filed by herein petitioner through counsel alleging that she married Francisco Lorino, Jr. on June 12, 1987 but because of the violent character of his husband, she decided to go back to her parents and lived separately from her husband. After nine (9) years, there was absolutely no news about him and she believes that he is already dead and is now seeking through this petition for a Court declaration that her husband is judicially presumed dead for the purpose of remarriage.

Finding the said petition to be sufficient in form and substance, the same is hereby set for hearing before this Court on September 18, 2000 at 8:30 o'clock in the morning at which place, date and time, any or all persons who may claim any interest thereto may appear and show cause why the same should not be granted.

Let a copy of this Order be published in a newspaper of general circulation in this province once a week for three (3) consecutive weeks and be posted in the bulletin boards of the Hall of Justice and the Municipal Hall, San Mateo, Rizal, all at the expense of the petitioner.

Furnish the Office of the Solicitor General a copy of this Order together with a copy of the petition. Further, send a copy of this Order to the last known address of Francisco Lorino, Jr. at 719 Burgos St., Sta. Elena, Marikina City.

SO ORDERED^[1]

The evidence in support of the summary judicial proceeding are: the order of publication dated August 28, 2000 (Exhibit "A"); affidavit of publication dated September 16, 2000 (Exhibit "B")^[2]; copies of the newspapers where the order appeared (Exhibits "C" to "E-1")^[3]; a deposition dated September 4, 2000 of Gloria taken in Hong Kong (Exhibit "G")^[4]; Gloria's affidavit dated October 21, 1999, also executed in Hong Kong (Exhibit "G-1")^[5]; and a certification by Department of Foreign Affairs Authentication Officer, Catalina C. Gonzalez, dated November 3, 1999, therein certifying that the signature of Vice Consul Adriane Bernie C. Candolada, appearing below the jurat in Gloria's affidavit of October 21, 1999, is authentic (Exhibit "G-2")^[6].

In a decision dated November 7, 2001, the RTC, finding merit in the summary petition, rendered judgment granting the same, to wit:

WHEREFORE, this Court in view of the facts and circumstances obtaining, finds the petition with merit and hereby grants its imprimatur to the petition. Judgment is hereby rendered declaring the presumptive death/absence of Francisco Lorino, Jr. pursuant to Art. 41 of the New Family Code but subject to all restrictions and conditions provided therein.

SO ORDERED.^[7]

Despite the judgment being immediately final and executory under the provisions of Article 247 of the Family Code, thus:

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

the Office of the Solicitor General, for the Republic of the Philippines, nevertheless filed a Notice of Appeal.^[8] Acting thereon, the RTC had the records elevated to the Court of Appeals which docketed the case as CA-G.R. CV No. 73884.

In a decision dated September 23, 2003, the Court of Appeals, treating the case as an ordinary appealed case under Rule 41 of the Revised Rules on Civil Procedure, denied the Republic's appeal and accordingly affirmed the appealed RTC decision:

WHEREFORE, based on the foregoing premises, the instant appeal is **DENIED**. Accordingly, the appealed November 7, 2001 Decision of the Regional Trial Court of San Mateo, Rizal in Spec. Proc. No. 325-00 SM is hereby **AFFIRMED**.

SO ORDERED.^[9]

Without filing any motion for reconsideration, petitioner Republic directly went to this Court via the instant recourse under Rule 45, maintaining that the petition raises a pure question of law that does not require prior filing of a motion for reconsideration.

The foregoing factual antecedents present to this Court the following issues:

WHETHER OR NOT THE COURT OF APPEALS DULY ACQUIRED JURISDICTION OVER THE APPEAL ON A FINAL AND EXECUTORY JUDGMENT OF THE REGIONAL TRIAL COURT; and

WHETHER OR NOT THE FACTUAL AND LEGAL BASES FOR A JUDICIAL DECLARATION OF PRESUMPTIVE DEATH UNDER ARTICLE 41 OF THE FAMILY CODE WERE DULY ESTABLISHED IN THIS CASE.

The Court rules against petitioner Republic.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, sets the tenor for cases covered by these rules, to wit:

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.

Judge Elizabeth Balquin-Reyes of RTC, Branch 75, San Mateo, Rizal duly complied with the above-cited provision by expeditiously rendering judgment within ninety (90) days after the formal offer of evidence by therein petitioner, Gloria Bermudez-Lorino.

The problem came about when the judge gave due course to the Republic's appeal upon the filing of a Notice of Appeal, and had the entire records of the case elevated to the Court of Appeals, stating in her order of December 18, 2001, as follows: