

## FIRST DIVISION

[ G.R. No. 214243, March 16, 2016 ]

REPUBLIC OF PHILIPPINES, THE PETITIONER, VS. NILDA B. TAMPUS, RESPONDENT.

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated June 17, 2013 and the Resolution<sup>[3]</sup> dated September 2, 2014 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 04588, which affirmed the Decision<sup>[4]</sup> 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.<sup>[5]</sup> Three days thereafter, or on December 2, 1975, Dante, a member of the Armed Forces of the Philippines (AFP), left respondent, and went to Jolo, Sulu where he was assigned. The couple had no children.<sup>[6]</sup>

Since then, Nilda heard no news from Dante,. She tried everything to locate him, but her efforts proved futile.<sup>[7]</sup> Thus, on April 14, 2009, she filed before the RTC a petition<sup>[8]</sup> 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.<sup>[9]</sup>

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.<sup>[10]</sup>

#### The RTC Ruling

In a Decision<sup>[11]</sup> 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.<sup>[12]</sup>

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

### **The CA Ruling**

In a Decision<sup>[14]</sup> 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, 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.<sup>[15]</sup>

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.<sup>[16]</sup>

The OSG's motion for reconsideration was denied in a Resolution 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 41<sup>[19]</sup> 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 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