

SECOND DIVISION

[G.R. No. 160172, February 13, 2008]

**REINEL ANTHONY B. DE CASTRO, Petitioner, vs. ANNABELLE
ASSIDAO-DE CASTRO, Respondent.**

D E C I S I O N

TINGA, J.:

This is a petition for review of the Decision^[1] of the Court of Appeals in CA-GR CV. No. 69166,^[2] declaring that (1) Reiana Tricia A. De Castro is the legitimate child of the petitioner; and (2) that the marriage between petitioner and respondent is valid until properly nullified by a competent court in a proceeding instituted for that purpose.

The facts of the case, as culled from the records, follow.

Petitioner and respondent met and became sweethearts in 1991. They planned to get married, thus they applied for a marriage license with the Office of the Civil Registrar of Pasig City in September 1994. They had their first sexual relation sometime in October 1994, and had regularly engaged in sex thereafter. When the couple went back to the Office of the Civil Registrar, the marriage license had already expired. Thus, in order to push through with the plan, in lieu of a marriage license, they executed an affidavit dated 13 March 1995 stating that they had been living together as husband and wife for at least five years. The couple got married on the same date, with Judge Jose C. Bernabe, presiding judge of the Metropolitan Trial Court of Pasig City, administering the civil rites. Nevertheless, after the ceremony, petitioner and respondent went back to their respective homes and did not live together as husband and wife.

On 13 November 1995, respondent gave birth to a child named Reina Tricia A. De Castro. Since the child's birth, respondent has been the one supporting her out of her income as a government dentist and from her private practice.

On 4 June 1998, respondent filed a complaint for support against petitioner before the Regional Trial Court of Pasig City (trial court.^[3] In her complaint, respondent alleged that she is married to petitioner and that the latter has "reneged on his responsibility/obligation to financially support her "as his wife and Reina Tricia as his child."^[4]

Petitioner denied that he is married to respondent, claiming that their marriage is *void ab initio* since the marriage was facilitated by a fake affidavit; and that he was merely prevailed upon by respondent to sign the marriage contract to save her from embarrassment and possible administrative prosecution due to her pregnant state; and that he was not able to get parental advice from his parents before he got married. He also averred that they never lived together as husband and wife and

that he has never seen nor acknowledged the child.

In its Decision dated 16 October 2000,^[5] the trial court ruled that the marriage between petitioner and respondent is not valid because it was solemnized without a marriage license. However, it declared petitioner as the natural father of the child, and thus obliged to give her support. Petitioner elevated the case to the Court of Appeals, arguing that the lower court committed grave abuse of discretion when, on the basis of mere belief and conjecture, it ordered him to provide support to the child when the latter is not, and could not have been, his own child.

The Court of Appeals denied the appeal. Prompted by the rule that a marriage is presumed to be subsisting until a judicial declaration of nullity has been made, the appellate court declared that the child was born during the subsistence and validity of the parties' marriage. In addition, the Court of Appeals frowned upon petitioner's refusal to undergo DNA testing to prove the paternity and filiation, as well as his refusal to state with certainty the last time he had carnal knowledge with respondent, saying that petitioner's "forgetfulness should not be used as a vehicle to relieve him of his obligation and reward him of his being irresponsible."^[6] Moreover, the Court of Appeals noted the affidavit dated 7 April 1998 executed by petitioner, wherein he voluntarily admitted that he is the legitimate father of the child.

The appellate court also ruled that since this case is an action for support, it was improper for the trial court to declare the marriage of petitioner and respondent as null and void in the very same case. There was no participation of the State, through the prosecuting attorney or fiscal, to see to it that there is no collusion between the parties, as required by the Family Code in actions for declaration of nullity of a marriage. The burden of proof to show that the marriage is void rests upon petitioner, but it is a matter that can be raised in an action for declaration of nullity, and not in the instant proceedings. The proceedings before the trial court should have been limited to the obligation of petitioner to support the child and his wife on the basis of the marriage apparently and voluntarily entered into by petitioner and respondent.^[7] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Decision dated 16 October 2000, of the Regional Trial Court of Pasig City, National Capital Judicial Region, Branch 70, in JDRC No. 4626, is **AFFIRMED** with the **MODIFICATIONS** (1) declaring Reiana Tricia A. De Castro, as the legitimate child of the appellant and the appellee and (2) declaring the marriage on 13 March 1995 between the appellant and the appellee valid until properly annulled by a competent court in a proceeding instituted for that purpose. Costs against the appellant.^[8]

Petitioner filed a motion for reconsideration, but the motion was denied by the Court of Appeals.^[9] Hence this petition.

Before us, petitioner contends that the trial court properly annulled his marriage with respondent because as shown by the evidence and admissions of the parties, the marriage was celebrated without a marriage license. He stresses that the affidavit they executed, in lieu of a marriage license, contained a false narration of facts, the truth being that he and respondent never lived together as husband and wife. The false affidavit should never be allowed or admitted as a substitute to fill

the absence of a marriage license.^[10] Petitioner additionally argues that there was no need for the appearance of a prosecuting attorney in this case because it is only an ordinary action for support and not an action for annulment or declaration of absolute nullity of marriage. In any case, petitioner argues that the trial court had jurisdiction to determine the invalidity of their marriage since it was validly invoked as an affirmative defense in the instant action for support. Citing several authorities,^[11] petitioner claims that a void marriage can be the subject of a collateral attack. Thus, there is no necessity to institute another independent proceeding for the declaration of nullity of the marriage between the parties. The refiling of another case for declaration of nullity where the same evidence and parties would be presented would entail enormous expenses and anxieties, would be time-consuming for the parties, and would increase the burden of the courts.^[12] Finally, petitioner claims that in view of the nullity of his marriage with respondent and his vigorous denial of the child's paternity and filiation, the Court of Appeals gravely erred in declaring the child as his legitimate child.

In a resolution dated 16 February 2004, the Court required respondent and the Office of the Solicitor General (OSG) to file their respective comments on the petition.^[13]

In her Comment,^[14] respondent claims that the instant petition is a mere dilatory tactic to thwart the finality of the decision of the Court of Appeals. Echoing the findings and rulings of the appellate court, she argues that the legitimacy of their marriage cannot be attacked collaterally, but can only be repudiated or contested in a direct suit specifically brought for that purpose. With regard to the filiation of her child, she pointed out that compared to her candid and straightforward testimony, petitioner was uncertain, if not evasive in answering questions about their sexual encounters. Moreover, she adds that despite the challenge from her and from the trial court, petitioner strongly objected to being subjected to DNA testing to prove paternity and filiation.^[15]

For its part, the OSG avers that the Court of Appeals erred in holding that it was improper for the trial court to declare null and void the marriage of petitioner and respondent in the action for support. Citing the case of *Niñal v. Bayadog*,^[16] it states that courts may pass upon the validity of a marriage in an action for support, since the right to support from petitioner hinges on the existence of a valid marriage. Moreover, the evidence presented during the proceedings in the trial court showed that the marriage between petitioner and respondent was solemnized without a marriage license, and that their affidavit (of a man and woman who have lived together and exclusively with each other as husband and wife for at least five years) was false. Thus, it concludes the trial court correctly held that the marriage between petitioner and respondent is not valid.^[17] In addition, the OSG agrees with the findings of the trial court that the child is an illegitimate child of petitioner and thus entitled to support.^[18]

Two key issues are presented before us. First, whether the trial court had the jurisdiction to determine the validity of the marriage between petitioner and respondent in an action for support and second, whether the child is the daughter of petitioner.