

SECOND DIVISION

[G.R. NO. 159614, December 09, 2005]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS (TENTH DIVISION) AND ALAN
B. ALEGRO, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

On March 29, 2001, Alan B. Alegro filed a petition in the Regional Trial Court (RTC) of Catbalogan, Samar, Branch 27, for the declaration of presumptive death of his wife, Rosalia (Lea) A. Julaton.

In an Order^[1] dated April 16, 2001, the court set the petition for hearing on May 30, 2001 at 8:30 a.m. and directed that a copy of the said order be published once a week for three (3) consecutive weeks in the *Samar Reporter*, a newspaper of general circulation in the Province of Samar, and that a copy be posted in the court's bulletin board for at least three weeks before the next scheduled hearing. The court also directed that copies of the order be served on the Solicitor General, the Provincial Prosecutor of Samar, and Alan, through counsel, and that copies be sent to Lea by registered mail. Alan complied with all the foregoing jurisdictional requirements.^[2]

On May 28, 2001, the Republic of the Philippines, through the Office of the Solicitor General (OSG), filed a Motion to Dismiss^[3] the petition, which was, however, denied by the court for failure to comply with Rule 15 of the Rules of Court.^[4]

At the hearing, Alan adduced evidence that he and Lea were married on January 20, 1995 in Catbalogan, Samar.^[5] He testified that, on February 6, 1995, Lea arrived home late in the evening and he berated her for being always out of their house. He told her that if she enjoyed the life of a single person, it would be better for her to go back to her parents.^[6] Lea did not reply. Alan narrated that, when he reported for work the following day, Lea was still in the house, but when he arrived home later in the day, Lea was nowhere to be found.^[7] Alan thought that Lea merely went to her parents' house in Bliss, Sto. Niño, Catbalogan, Samar.^[8] However, Lea did not return to their house anymore.

Alan further testified that, on February 14, 1995, after his work, he went to the house of Lea's parents to see if she was there, but he was told that she was not there. He also went to the house of Lea's friend, Janeth Bautista, at *Barangay Canlapwas*, but he was informed by Janette's brother-in-law, Nelson Abaenza, that Janeth had left for Manila.^[9] When Alan went back to the house of his parents-in-law, he learned from his father-in-law that Lea had been to their house but that she

left without notice.^[10] Alan sought the help of *Barangay* Captain Juan Magat, who promised to help him locate his wife. He also inquired from his friends of Lea's whereabouts but to no avail.^[11]

Sometime in June 1995, he decided to go to Manila to look for Lea, but his mother asked him to leave after the town fiesta of Catbalogan, hoping that Lea may come home for the fiesta. Alan agreed.^[12] However, Lea did not show up. Alan then left for Manila on August 27, 1995. He went to a house in Navotas where Janeth, Lea's friend, was staying. When asked where Lea was, Janeth told him that she had not seen her.^[13] He failed to find out Lea's whereabouts despite his repeated talks with Janeth. Alan decided to work as a part-time taxi driver. On his free time, he would look for Lea in the malls but still to no avail. He returned to Catbalogan in 1997 and again looked for his wife but failed.^[14]

On June 20, 2001, Alan reported Lea's disappearance to the local police station.^[15] The police authorities issued an Alarm Notice on July 4, 2001.^[16] Alan also reported Lea's disappearance to the National Bureau of Investigation (NBI) on July 9, 2001.^[17]

Barangay Captain Juan Magat corroborated the testimony of Alan. He declared that on February 14, 1995, at 2:00 p.m., Alan inquired from him if Lea passed by his house and he told Alan that she did not. Alan also told him that Lea had disappeared. He had not seen Lea in the *barangay* ever since.^[18] Lea's father, who was his *compadre* and the owner of Radio DYMS, told him that he did not know where Lea was.^[19]

After Alan rested his case, neither the Office of the Provincial Prosecutor nor the Solicitor General adduced evidence in opposition to the petition.

On January 8, 2002, the court rendered judgment granting the petition. The *fallo* of the decision reads:

WHEREFORE, and in view of all the foregoing, petitioner's absent spouse ROSALIA JULATON is hereby declared PRESUMPTIVELY DEAD for the purpose of the petitioner's subsequent marriage under Article 41 of the Family Code of the Philippines, without prejudice to the effect of reappearance of the said absent spouse.

SO ORDERED.^[20]

The OSG appealed the decision to the Court of Appeals (CA) which rendered judgment on August 4, 2003, affirming the decision of the RTC.^[21] The CA cited the ruling of this Court in *Republic v. Nolasco*.^[22]

The OSG filed a petition for review on *certiorari* of the CA's decision alleging that respondent Alan B. Alegro failed to prove that he had a well-founded belief that Lea was already dead.^[23] It averred that the respondent failed to exercise reasonable and diligent efforts to locate his wife. The respondent even admitted that Lea's father told him on February 14, 1995 that Lea had been to their house but left without notice. The OSG pointed out that the respondent reported his wife's

disappearance to the local police and also to the NBI only after the petitioner filed a motion to dismiss the petition. The petitioner avers that, as gleaned from the evidence, the respondent did not really want to find and locate Lea. Finally, the petitioner averred:

In view of the summary nature of proceedings under Article 41 of the Family Code for the declaration of presumptive death of one's spouse, the degree of due diligence set by this Honorable Court in the above-mentioned cases in locating the whereabouts of a missing spouse must be strictly complied with. There have been times when Article 41 of the Family Code had been resorted to by parties wishing to remarry knowing fully well that their alleged missing spouses are alive and well. It is even possible that those who cannot have their marriages x x x declared *null* and *void* under Article 36 of the Family Code resort to Article 41 of the Family Code for relief because of the x x x summary nature of its proceedings.

It is the policy of the State to protect and strengthen the family as a basic social institution. Marriage is the foundation of the family. Since marriage is an inviolable social institution that the 1987 Constitution seeks to protect from dissolution at the whim of the parties. For respondent's failure to prove that he had a well-founded belief that his wife is already dead and that he exerted the required amount of diligence in searching for his missing wife, the petition for declaration of presumptive death should have been denied by the trial court and the Honorable Court of Appeals.^[24]

The petition is meritorious.

Article 41 of the Family Code of the Philippines reads:

Art. 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 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.^[25]

The spouse present is, thus, burdened to prove that his spouse has been absent and that he has a well-founded belief that the absent spouse is already dead before the present spouse may contract a subsequent marriage. The law does not define what is meant by a well-grounded belief. Cuello Callon writes that "*es menester que su creencia sea firme se funde en motivos racionales.*"^[26]