

SECOND DIVISION

[G.R. No. 142820, June 20, 2003]

WOLFGANG O. ROEHR, PETITIONER, VS. MARIA CARMEN D. RODRIGUEZ, HON. JUDGE JOSEFINA GUEVARA-SALONGA, PRESIDING JUDGE OF MAKATI RTC, BRANCH 149, RESPONDENTS.

DECISION

QUISUMBING, J.:

At the core of the present controversy are issues of (a) grave abuse of discretion allegedly committed by public respondent and (b) lack of jurisdiction of the regional trial court, in matters that spring from a divorce decree obtained abroad by petitioner.

In this special civil action for certiorari, petitioner assails (a) the order^[1] dated September 30, 1999 of public respondent Judge Josefina Guevara-Salonga, Presiding Judge of Makati Regional Trial Court,^[2] Branch 149, in Civil Case No. 96-1389 for declaration of nullity of marriage, and (b) the order^[3] dated March 31, 2000 denying his motion for reconsideration. The assailed orders partially set aside the trial court's order dismissing Civil Case No. 96-1389, for the purpose of resolving issues relating to the property settlement of the spouses and the custody of their children.

Petitioner Wolfgang O. Roehr, a German citizen and resident of Germany, married private respondent Carmen Rodriguez, a Filipina, on December 11, 1980 in Hamburg, Germany. Their marriage was subsequently ratified on February 14, 1981 in Tayasan, Negros Oriental.^[4] Out of their union were born Carolynne and Alexandra Kristine on November 18, 1981 and October 25, 1987, respectively.

On August 28, 1996, private respondent filed a petition^[5] for declaration of nullity of marriage before the Regional Trial Court (RTC) of Makati City. On February 6, 1997, petitioner filed a motion to dismiss,^[6] but it was denied by the trial court in its order^[7] dated May 28, 1997.

On June 5, 1997, petitioner filed a motion for reconsideration, but was also denied in an order^[8] dated August 13, 1997. On September 5, 1997, petitioner filed a petition for certiorari with the Court of Appeals. On November 27, 1998, the appellate court denied the petition and remanded the case to the RTC.

Meanwhile, petitioner obtained a decree of divorce from the Court of First Instance of Hamburg-Blankenese, promulgated on December 16, 1997. The decree provides in part:

[T]he Court of First Instance, Hamburg-Blankenese, Branch 513, has ruled through Judge van Buiren of the Court of First Instance on the basis of the oral proceedings held on 4 Nov. 1997:

The marriage of the Parties contracted on 11 December 1980 before the Civil Registrar of Hamburg-Altona is hereby dissolved.

The parental custody for the children

Carolynne Roehr, born 18 November 1981

Alexandra Kristine Roehr, born on 25 October 1987

is granted to the father.

The litigation expenses shall be assumed by the Parties.^[9]

In view of said decree, petitioner filed a Second Motion to Dismiss on May 20, 1999 on the ground that the trial court had no jurisdiction over the subject matter of the action or suit as a decree of divorce had already been promulgated dissolving the marriage of petitioner and private respondent.

On July 14, 1999, Judge Guevara-Salonga issued an order granting petitioner's motion to dismiss. Private respondent filed a Motion for Partial Reconsideration, with a prayer that the case proceed for the purpose of determining the issues of custody of children and the distribution of the properties between petitioner and private respondent.

On August 18, 1999, an Opposition to the Motion for Partial Reconsideration was filed by the petitioner on the ground that there is nothing to be done anymore in the instant case as the marital tie between petitioner Wolfgang Roehr and respondent Ma. Carmen D. Rodriguez had already been severed by the decree of divorce promulgated by the Court of First Instance of Hamburg, Germany on December 16, 1997 and in view of the fact that said decree of divorce had already been recognized by the RTC in its order of July 14, 1999, through the implementation of the mandate of Article 26 of the Family Code,^[10] endowing the petitioner with the capacity to remarry under the Philippine law.

On September 30, 1999, respondent judge issued the assailed order partially setting aside her order dated July 14, 1999 for the purpose of tackling the issues of property relations of the spouses as well as support and custody of their children. The pertinent portion of said order provides:

Acting on the Motion for Partial Reconsideration of the Order dated July 14, 1999 filed by petitioner thru counsel which was opposed by respondent and considering that the second paragraph of Article 26 of the Family Code was included as an amendment thru Executive Order 227, to avoid the absurd situation of a Filipino as being still married to his or her alien spouse though the latter is no longer married to the Filipino spouse because he/she had obtained a divorce abroad which is recognized by his/her national law, and considering further *the effects of the termination of the marriage under Article 43 in relation to Article 50*

and 52 of the same Code, which include the dissolution of the property relations of the spouses, and the support and custody of their children, the Order dismissing this case is partially set aside with respect to these matters which may be ventilated in this Court.

SO ORDERED.^[11] (Emphasis supplied.)

Petitioner filed a timely motion for reconsideration on October 19, 1999, which was denied by respondent judge in an order dated March 31, 2000.^[12]

Petitioner ascribes lack of jurisdiction of the trial court and grave abuse of discretion on the part of respondent judge. He cites as grounds for his petition the following:

1. Partially setting aside the order dated July 14, 1999 dismissing the instant case is not allowed by 1997 Rules of Civil Procedure.^[13]
2. Respondent Maria Carmen Rodriguez by her motion for Partial Reconsideration had recognized and admitted the Divorce Decision obtained by her ex-husband in Hamburg, Germany.^[14]
3. There is nothing left to be tackled by the Honorable Court as there are no conjugal assets alleged in the Petition for Annulment of Marriage and in the Divorce petition, and the custody of the children had already been awarded to Petitioner Wolfgang Roehr.^[15]

Pertinent in this case before us are the following issues:

1. Whether or not respondent judge gravely abused her discretion in issuing her order dated September 30, 1999, which partially modified her order dated July 14, 1999; and
2. Whether or not respondent judge gravely abused her discretion when she assumed and retained jurisdiction over the present case despite the fact that petitioner has already obtained a divorce decree from a German court.

On the *first issue*, petitioner asserts that the assailed order of respondent judge is completely inconsistent with her previous order and is contrary to Section 3, Rule 16, Rules of Civil Procedure, which provides:

Sec. 3. Resolution of motion — After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.

In every case, the resolution shall state clearly and distinctly the reasons therefor. (Emphasis supplied.)

Petitioner avers that a court's action on a motion is limited to dismissing the action or claim, denying the motion, or ordering the amendment of the pleading.

Private respondent, on her part, argues that the RTC can validly reconsider its order dated July 14, 1999 because it had not yet attained finality, given the timely filing of respondent's motion for reconsideration.

Pertinent to this issue is Section 3 in relation to Section 7, Rule 37 of the 1997 Rules of Civil Procedure, which provides:

Sec. 3. Action upon motion for new trial or reconsideration.—The trial court may set aside the judgment or final order and grant a new trial, upon such terms as may be just, or may deny the motion. If the court finds that excessive damages have been awarded *or that the judgment or final order is contrary to the evidence or law, it may amend such judgment or final order accordingly.*

Sec. 7. Partial new trial or reconsideration.—If the grounds for a motion under this Rule appear to the court to affect the issues as to only a part, or less than all of the matters in controversy, or only one, or less than all, of the parties to it, *the court may order a new trial or grant reconsideration as to such issues if severable without interfering with the judgment or final order upon the rest.* (Emphasis supplied.)

It is clear from the foregoing rules that a judge can order a partial reconsideration of a case that has not yet attained finality. Considering that private respondent filed a motion for reconsideration within the reglementary period, the trial court's decision of July 14, 1999 can still be modified. Moreover, in *Sañado v. Court of Appeals*,^[16] we held that the court could modify or alter a judgment even after the same has become executory whenever circumstances transpire rendering its decision unjust and inequitable, as where certain facts and circumstances justifying or requiring such modification or alteration transpired after the judgment has become final and executory^[17] and when it becomes imperative in the higher interest of justice or when supervening events warrant it.^[18] In our view, there are even more compelling reasons to do so when, as in this case, judgment has not yet attained finality.

Anent the *second issue*, petitioner claims that respondent judge committed grave abuse of discretion when she partially set aside her order dated July 14, 1999, despite the fact that petitioner has already obtained a divorce decree from the Court of First Instance of Hamburg, Germany.

In *Garcia v. Recio*,^[19] *Van Dorn v. Romillo, Jr.*,^[20] and *Llorente v. Court of Appeals*,^[21] we consistently held that a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. Relevant to the present case is *Pilapil v. Ibay-Somera*,^[22] where this Court specifically recognized the validity of a divorce obtained by a German citizen in his country, the Federal Republic of Germany. We held in *Pilapil* that a foreign divorce and its legal effects may be recognized in the Philippines insofar as respondent is concerned in view of the nationality principle in our civil law on the status of persons.

In this case, the divorce decree issued by the German court dated December 16, 1997 has not been challenged by either of the parties. In fact, save for the issue of