

FIRST DIVISION

[G.R. No. 132529, February 02, 2001]

**SUSAN NICDAO CARIÑO, PETITIONER, VS. SUSAN YEE CARIÑO,
RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

The issue for resolution in the case at bar hinges on the validity of the two marriages contracted by the deceased SPO4 Santiago S. Cariño, whose "death benefits" is now the subject of the controversy between the two Susans whom he married.

Before this Court is a petition for review on *certiorari* seeking to set aside the decision^[1] of the Court of Appeals in CA-G.R. CV No. 51263, which affirmed *in toto* the decision^[2] of the Regional Trial Court of Quezon City, Branch 87, in Civil Case No. Q-93-18632.

During the lifetime of the late SPO4 Santiago S. Cariño, he contracted two marriages, the first was on June 20, 1969, with petitioner Susan Nicdao Cariño (hereafter referred to as Susan Nicdao), with whom he had two offsprings, namely, Sahlee and Sandee Cariño; and the second was on November 10, 1992, with respondent Susan Yee Cariño (hereafter referred to as Susan Yee), with whom he had no children in their almost ten year cohabitation starting way back in 1982.

In 1988, SPO4 Santiago S. Cariño became ill and bedridden due to diabetes complicated by pulmonary tuberculosis. He passed away on November 23, 1992, under the care of Susan Yee, who spent for his medical and burial expenses. Both petitioner and respondent filed claims for monetary benefits and financial assistance pertaining to the deceased from various government agencies. Petitioner Susan Nicdao was able to collect a total of P146,000.00 from "MBAI, PCCUI, Commutation, NAPOLCOM, [and] Pag-ibig,"^[3] while respondent Susan Yee received a total of P21,000.00 from "GSIS Life, Burial (GSIS) and burial (SSS)."^[4]

On December 14, 1993, respondent Susan Yee filed the instant case for collection of sum of money against petitioner Susan Nicdao praying, *inter alia*, that petitioner be ordered to return to her at least one-half of the one hundred forty-six thousand pesos (P146,000.00) collectively denominated as "death benefits" which she (petitioner) received from "MBAI, PCCUI, Commutation, NAPOLCOM, [and] Pag-ibig." Despite service of summons, petitioner failed to file her answer, prompting the trial court to declare her in default.

Respondent Susan Yee admitted that her marriage to the deceased took place during the subsistence of, and without first obtaining a judicial declaration of nullity of, the marriage between petitioner and the deceased. She, however, claimed that

she had no knowledge of the previous marriage and that she became aware of it only at the funeral of the deceased, where she met petitioner who introduced herself as the wife of the deceased. To bolster her action for collection of sum of money, respondent contended that the marriage of petitioner and the deceased is void *ab initio* because the same was solemnized without the required marriage license. In support thereof, respondent presented: 1) the marriage certificate of the deceased and the petitioner which bears no marriage license number;^[5] and 2) a certification dated March 9, 1994, from the Local Civil Registrar of San Juan, Metro Manila, which reads -

This is to certify that this Office has no record of marriage license of the spouses SANTIAGO CARINO (sic) and SUSAN NICDAO, who are married in this municipality on June 20, 1969. Hence, we cannot issue as requested a true copy or transcription of Marriage License number from the records of this archives.

This certification is issued upon the request of Mrs. Susan Yee Cariño for whatever legal purpose it may serve.^[6]

On August 28, 1995, the trial court ruled in favor of respondent, Susan Yee, holding as follows:

WHEREFORE, the defendant is hereby ordered to pay the plaintiff the sum of P73,000.00, half of the amount which was paid to her in the form of death benefits arising from the death of SPO4 Santiago S. Cariño, plus attorney's fees in the amount of P5,000.00, and costs of suit.

IT IS SO ORDERED.^[7]

On appeal by petitioner to the Court of Appeals, the latter affirmed *in toto* the decision of the trial court. Hence, the instant petition, contending that:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE FINDINGS OF THE LOWER COURT THAT VDA. DE CONSUEGRA VS. GSIS IS APPLICABLE TO THE CASE AT BAR.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPLYING EQUITY IN THE INSTANT CASE INSTEAD OF THE CLEAR AND UNEQUIVOCAL MANDATE OF THE FAMILY CODE.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THE CASE OF VDA. DE CONSUEGRA VS GSIS TO HAVE BEEN MODIFIED, AMENDED AND EVEN ABANDONED BY THE ENACTMENT OF THE FAMILY CODE.^[8]

Under Article 40 of the Family Code, the absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment

declaring such previous marriage void. Meaning, where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring the previous marriage void.^[9] However, for purposes other than remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to the determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto, and even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case.^[10] In such instances, evidence must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void.^[11]

It is clear therefore that the Court is clothed with sufficient authority to pass upon the validity of the two marriages in this case, as the same is essential to the determination of who is rightfully entitled to the subject "death benefits" of the deceased.

Under the Civil Code, which was the law in force when the marriage of petitioner Susan Nicdao and the deceased was solemnized in 1969, a valid marriage license is a requisite of marriage,^[12] and the absence thereof, subject to certain exceptions,^[13] renders the marriage void *ab initio*.^[14]

In the case at bar, there is no question that the marriage of petitioner and the deceased does not fall within the marriages exempt from the license requirement. A marriage license, therefore, was indispensable to the validity of their marriage. This notwithstanding, the records reveal that the marriage contract of petitioner and the deceased bears no marriage license number and, as certified by the Local Civil Registrar of San Juan, Metro Manila, their office has no record of such marriage license. In *Republic v. Court of Appeals*,^[15] the Court held that such a certification is adequate to prove the non-issuance of a marriage license. Absent any circumstance of suspicion, as in the present case, the certification issued by the local civil registrar enjoys probative value, he being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license.

Such being the case, the presumed validity of the marriage of petitioner and the deceased has been sufficiently overcome. It then became the burden of petitioner to prove that their marriage is valid and that they secured the required marriage license. Although she was declared in default before the trial court, petitioner could have squarely met the issue and explained the absence of a marriage license in her pleadings before the Court of Appeals and this Court. But petitioner conveniently avoided the issue and chose to refrain from pursuing an argument that will put her case in jeopardy. Hence, the presumed validity of their marriage cannot stand.

It is beyond cavil, therefore, that the marriage between petitioner Susan Nicdao and the deceased, having been solemnized without the necessary marriage license, and not being one of the marriages exempt from the marriage license requirement, is undoubtedly void *ab initio*.

It does not follow from the foregoing disquisition, however, that since the marriage of petitioner and the deceased is declared void *ab initio*, the "death benefits" under scrutiny would now be awarded to respondent Susan Yee. To reiterate, under Article 40 of the Family Code, for purposes of remarriage, there must first be a prior judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage, otherwise, the second marriage would also be void.

Accordingly, the declaration in the instant case of nullity of the previous marriage of the deceased and petitioner Susan Nicdao does not validate the second marriage of the deceased with respondent Susan Yee. The fact remains that their marriage was solemnized without first obtaining a judicial decree declaring the marriage of petitioner Susan Nicdao and the deceased void. Hence, the marriage of respondent Susan Yee and the deceased is, likewise, void *ab initio*.

One of the effects of the declaration of nullity of marriage is the separation of the property of the spouses according to the applicable property regime.^[16] Considering that the two marriages are void *ab initio*, the applicable property regime would not be absolute community or conjugal partnership of property, but rather, be governed by the provisions of Articles 147 and 148 of the Family Code on "Property Regime of Unions Without Marriage."

Under Article 148 of the Family Code, which refers to the property regime of bigamous marriages, adulterous relationships, relationships in a state of concubine, relationships where both man and woman are married to other persons, multiple alliances of the same married man,^[17] -

"... [O]nly the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions ..."

In this property regime, the properties acquired by the parties through their **actual joint contribution** shall belong to the co-ownership. Wages and salaries earned by each party belong to him or her exclusively. Then too, contributions in the form of care of the home, children and household, or spiritual or moral inspiration, are excluded in this regime.^[18]

Considering that the marriage of respondent Susan Yee and the deceased is a bigamous marriage, having been solemnized during the subsistence of a previous marriage then presumed to be valid (between petitioner and the deceased), the application of Article 148 is therefore in order.

The disputed P146,000.00 from MBAI [AFP Mutual Benefit Association, Inc.], NAPOLCOM, Commutation, Pag-ibig, and PCCUI, are clearly remunerations, incentives and benefits from governmental agencies earned by the deceased as a police officer. Unless respondent Susan Yee presents proof to the contrary, it could not be said that she contributed money, property or industry in the acquisition of these monetary benefits. Hence, they are not owned in common by respondent and the deceased, but belong to the deceased alone and respondent has no right whatsoever to claim the same. By intestate succession, the said "death benefits" of the deceased shall pass to his legal heirs. And, respondent, not being the legal wife