

ELEVENTH DIVISION

[CA - G.R. CV NO. 61941, August 28, 2006]

**FERDINAND B. FURIO, PETITIONER-APPELLEE, VS. REPUBLIC OF
THE PHILIPPINES, OPPOSITOR-APPELLANT.**

D E C I S I O N

VILLON, J.:

Before Us is an appeal from the August 14, 1998 decision^[1] of Branch 55, Regional Trial Court (RTC) of Irosin, Sorsogon in Spec. Proc. No. 585 entitled "In re: Petition for Declaration of Presumptive Death of an Absentee, Ferdinand B. Furio, petitioner."

The antecedent facts are:

In a petition filed before the RTC on July 7, 1998, petitioner alleged among others, that he and Venus Nocado got married on April 19, 1991 in Matnog Sorsogon; that after the wedding, they established residence at San Roque, Sta. Magdalena, Sorsogon; that before they got married, the couple lived together for almost four (4) years and begot three (3) children; that sometime in October 1991, six months after their wedding, Venus Nocado left their conjugal dwelling without the consent of petitioner; that from then on up to the present, petitioner has not heard from her and her whereabouts are unknown for a period of six (6) years and nine (9) months; that despite diligent efforts exerted by petitioner and his relatives, no news has been received about Venus Nocado; that the absence of Venus Nocado is now a fact and petitioner has a well-founded belief that she is now dead; that petitioner is about to contract marriage; and that petitioner and his absentee wife have no conjugal property.^[2]

After due hearing, the trial court rendered the assailed decision, disposing the case as follows:

"WHEREFORE, pursuant to Article 41 of the Family Code of the Philippines, Venus Nocado is hereby declared presumptively dead."

The Republic of the Philippines, represented by the Office of the Solicitor General (OSG), interposed the present appeal raising the lone error --

APPELLEE FAILED TO ESTABLISH THE PRESENCE OF A WELL FOUNDED
BELIEF THAT HIS ABSENTEE SPOUSE IS DEAD,^[3]

The appeal is meritorious.

During the trial, petitioner testified that his wife left their conjugal abode sometime in October 1991; that she had not been heard of since then; and that he took pains to look for his missing wife but his diligent efforts were all in vain. The testimonial evidence of petitioner, however, is insufficient to establish the presumptive death of

his absentee wife.

Article 41 of the Family Code, upon which the trial court anchored its grant of the petition for the declaration of presumptive death of the absent spouse, reads:

"Article 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 of death 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 proceedings 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."

The Family Code, however, did not define "well-founded belief." In *Republic of the Philippines vs. The Court of Appeals, [4] et al.*, the Supreme Court defined belief as "a state of mind or condition prompting the doing of an overt act. It may be proved by direct evidence or circumstantial evidence which may tend, even in a slight degree, to elucidate the inquiry or assist to a determination probably founded on truth. Any fact or circumstance relating to the character, habits, conditions, attachments, prosperity and objects of life which usually control the conduct of men, and are the motives of their actions, was, so far as it tends to explain or characterize their disappearance or throw light on their intentions, competent evidence on the ultimate question of his death. The belief of the present spouse must be the result of proper and honest to goodness inquiries and efforts to ascertain the whereabouts of the absent spouse and whether the absent spouse is still alive or is already dead. Whether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by present spouse."

In the light of the foregoing pronouncement of the High Court vis a vis the record of this case, petitioner failed to convince Us that his belief, that his absentee wife is already dead, is well-founded for the purpose of contracting subsequent marriage under Rule 41 of the Family Code. Except for his self-serving and sweeping declaration, there was nothing on record to substantiate his claim that he took pains to look for his absentee wife. As correctly pointed out by the OSG, petitioner did not even seek assistance from the police authorities or other government agencies. Petitioner did not even show that he made inquiries from friends and relatives. His testimony that "he took pains in looking for her" is too generic to convince this Court that he made a diligent search for his missing wife and that his alleged well-founded belief of the death of his absentee wife is not merely a suspicion. If indeed petitioner conducted a search for his missing wife, he would have been able to adduce evidence on how he conducted the search and its extent in support of his testimony. Although testimonial evidence may suffice to prove the well-founded