

**FIRST DIVISION**

**REPUBLIC OF THE PHILIPPINES,**      **G.R. No. 154380**  
Petitioner,

- versus -

Present:

Davide, Jr., *C.J.*,  
(Chairman),  
Quisumbing,  
Ynares-Santiago,  
Carpio, and  
Azcuna, *JJ.*

**CIPRIANO ORBECIDO III,**  
Respondent.

Promulgated:

October 5, 2005

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**DECISION**

***QUISUMBING, J.:***

Given a valid marriage between two Filipino citizens, where one party is later naturalized as a foreign citizen and obtains a valid divorce decree capacitating him or her to remarry, can the Filipino spouse likewise remarry under Philippine law?

Before us is a case of first impression that behooves the Court to make a definite ruling on this apparently novel question, presented as a pure question of law.

In this petition for review, the Solicitor General assails the **Decision**<sup>[1]</sup> dated May 15, 2002, of the Regional Trial Court of Molave, Zamboanga del Sur, Branch 23 and its **Resolution**<sup>[2]</sup> dated July 4, 2002 denying the motion for reconsideration. The court *a quo* had declared that herein respondent Cipriano Orbecido III is capacitated to remarry. The *fallo* of the impugned Decision reads:

WHEREFORE, by virtue of the provision of the second paragraph of Art. 26 of the Family Code and by reason of the divorce decree obtained against him by his American wife, the petitioner is given the capacity to remarry under the Philippine Law.

IT IS SO ORDERED.<sup>[3]</sup>

The factual antecedents, as narrated by the trial court, are as follows.

On May 24, 1981, Cipriano Orbecido III married Lady Myros M. Villanueva at the United Church of Christ in the Philippines in Lam-an, Ozamis City. Their marriage was blessed with a son and a daughter, Kristoffer Simbortriz V. Orbecido and Lady Kimberly V. Orbecido.

In 1986, Cipriano's wife left for the United States bringing along their son Kristoffer. A few years later, Cipriano discovered that his wife had been naturalized as an American citizen.

Sometime in 2000, Cipriano learned from his son that his wife had obtained a divorce decree and then married a certain Innocent Stanley. She, Stanley and her child by him currently live at 5566 A. Walnut Grove Avenue, San Gabriel, California.

Cipriano thereafter filed with the trial court a petition for authority to remarry invoking Paragraph 2 of Article 26 of the Family Code. No opposition was filed. Finding

merit in the petition, the court granted the same. The Republic, herein petitioner, through the Office of the Solicitor General (OSG), sought reconsideration but it was denied.

In this petition, the OSG raises a pure question of law:

WHETHER OR NOT RESPONDENT CAN REMARRY UNDER ARTICLE 26 OF THE FAMILY CODE<sup>[4]</sup>

The OSG contends that Paragraph 2 of Article 26 of the Family Code is not applicable to the instant case because it only applies to a valid mixed marriage; that is, a marriage celebrated between a Filipino citizen and an alien. The proper remedy, according to the OSG, is to file a petition for annulment or for legal separation.<sup>[5]</sup> Furthermore, the OSG argues there is no law that governs respondent's situation. The OSG posits that this is a matter of legislation and not of judicial determination.<sup>[6]</sup>

For his part, respondent admits that Article 26 is not directly applicable to his case but insists that when his naturalized alien wife obtained a divorce decree which capacitated her to remarry, he is likewise capacitated by operation of law pursuant to Section 12, Article II of the Constitution.<sup>[7]</sup>

At the outset, we note that the petition for authority to remarry filed before the trial court actually constituted a petition for declaratory relief. In this connection, Section 1, Rule 63 of the Rules of Court provides:

RULE 63  
DECLARATORY RELIEF AND SIMILAR REMEDIES

Section 1. *Who may file petition*—Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or other governmental regulation may, before breach or violation thereof,

bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

...

The requisites of a petition for declaratory relief are: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) that the party seeking the relief has a legal interest in the controversy; and (4) that the issue is ripe for judicial determination. [\[8\]](#)

This case concerns the applicability of Paragraph 2 of Article 26 to a marriage between two Filipino citizens where one later acquired alien citizenship, obtained a divorce decree, and remarried while in the U.S.A. The interests of the parties are also adverse, as petitioner representing the State asserts its duty to protect the institution of marriage while respondent, a private citizen, insists on a declaration of his capacity to remarry. Respondent, praying for relief, has legal interest in the controversy. The issue raised is also ripe for judicial determination inasmuch as when respondent remarries, litigation ensues and puts into question the validity of his second marriage.

Coming now to the substantive issue, does Paragraph 2 of Article 26 of the Family Code apply to the case of respondent? Necessarily, we must dwell on how this provision had come about in the first place, and what was the intent of the legislators in its enactment?

### **Brief Historical Background**

On July 6, 1987, then President Corazon Aquino signed into law Executive Order No. 209, otherwise known as the “Family Code,” which took effect on August 3, 1988.

Article 26 thereof states:

All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35, 37, and 38.

On July 17, 1987, shortly after the signing of the original Family Code, Executive Order No. 227 was likewise signed into law, amending Articles 26, 36, and 39 of the Family Code. A second paragraph was added to Article 26. As so amended, it now provides:

ART. 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

*Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.* (Emphasis supplied)

On its face, the foregoing provision does not appear to govern the situation presented by the case at hand. It seems to apply only to cases where at the time of the celebration of the marriage, the parties are a Filipino citizen and a foreigner. The instant case is one where at the time the marriage was solemnized, the parties were two Filipino citizens, but later on, the wife was naturalized as an American citizen and subsequently obtained a divorce granting her capacity to remarry, and indeed she remarried an American citizen while residing in the U.S.A.

Noteworthy, in the Report of the Public Hearings <sup>[9]</sup> on the Family Code, the Catholic Bishops' Conference of the Philippines (CBCP) registered the following objections to Paragraph 2 of Article 26:

1. *The rule is discriminatory. It discriminates against those whose spouses are Filipinos who divorce them abroad. These spouses who are divorced will not be*

*able to re-marry, while the spouses of foreigners who validly divorce them abroad can.*

2. This is the beginning of the recognition of the validity of divorce even for Filipino citizens. For those whose foreign spouses validly divorce them abroad will also be considered to be validly divorced here and can re-marry. We propose that this be deleted and made into law only after more widespread consultation. (Emphasis supplied.)

### **Legislative Intent**

Records of the proceedings of the Family Code deliberations showed that the intent of Paragraph 2 of Article 26, according to Judge Alicia Sempio-Diy, a member of the Civil Code Revision Committee, is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.

Interestingly, Paragraph 2 of Article 26 traces its origin to the 1985 case of *Van Dorn v. Romillo, Jr.* <sup>[10]</sup> The *Van Dorn* case involved a marriage between a Filipino citizen and a foreigner. The Court held therein that a divorce decree validly obtained by the alien spouse is valid in the Philippines, and consequently, the Filipino spouse is capacitated to remarry under Philippine law.

Does the same principle apply to a case where at the time of the celebration of the marriage, the parties were Filipino citizens, but later on, one of them obtains a foreign citizenship by naturalization?

The jurisprudential answer lies latent in the 1998 case of *Quita v. Court of Appeals*. <sup>[11]</sup> In *Quita*, the parties were, as in this case, Filipino citizens when they got married. The wife became a naturalized American citizen in 1954 and obtained a divorce in the same year. The Court therein hinted, by way of *obiter dictum*, that a Filipino divorced

by his naturalized foreign spouse is no longer married under Philippine law and can thus remarry.

Thus, taking into consideration the legislative intent and applying the rule of reason, we hold that Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent. [\[12\]](#)

If we are to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce is no longer married to the Filipino spouse, then the instant case must be deemed as coming within the contemplation of Paragraph 2 of Article 26.

In view of the foregoing, we state the twin elements for the application of Paragraph 2 of Article 26 as follows:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and
2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.

The reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship *at the time a valid divorce is obtained abroad* by the alien spouse capacitating the latter to remarry.

In this case, when Cipriano's wife was naturalized as an American citizen, there was still a valid marriage that has been celebrated between her and Cipriano. As fate would have it, the naturalized alien wife subsequently obtained a valid divorce capacitating her to remarry. Clearly, the twin requisites for the application of Paragraph 2 of Article 26 are both present in this case. Thus Cipriano, the "divorced" Filipino spouse, should be allowed to remarry.

We are also unable to sustain the OSG's theory that the proper remedy of the Filipino spouse is to file either a petition for annulment or a petition for legal separation. Annulment would be a long and tedious process, and in this particular case, not even feasible, considering that the marriage of the parties appears to have all the badges of validity. On the other hand, legal separation would not be a sufficient remedy for it would not sever the marriage tie; hence, the legally separated Filipino spouse would still remain married to the naturalized alien spouse.

However, we note that the records are bereft of competent evidence duly submitted by respondent concerning the divorce decree and the naturalization of respondent's wife. It is settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence. [\[13\]](#)

Accordingly, for his plea to prosper, respondent herein must prove his allegation that his wife was naturalized as an American citizen. Likewise, before a foreign divorce

decree can be recognized by our own courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. <sup>[14]</sup> Such foreign law must also be proved as our courts cannot take judicial notice of foreign laws. Like any other fact, such laws must be alleged and proved. <sup>[15]</sup> Furthermore, respondent must also show that the divorce decree allows his former wife to remarry as specifically required in Article 26. Otherwise, there would be no evidence sufficient to declare that he is capacitated to enter into another marriage.

Nevertheless, we are unanimous in our holding that Paragraph 2 of Article 26 of the Family Code (E.O. No. 209, as amended by E.O. No. 227), should be interpreted to allow a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry. However, considering that in the present petition there is no sufficient evidence submitted and on record, we are unable to declare, based on respondent's bare allegations that his wife, who was naturalized as an American citizen, had obtained a divorce decree and had remarried an American, that respondent is now capacitated to remarry. Such declaration could only be made properly upon respondent's submission of the aforementioned evidence in his favor.

**ACCORDINGLY**, the petition by the Republic of the Philippines is **GRANTED**. The assailed Decision dated May 15, 2002, and Resolution dated July 4, 2002, of the Regional Trial Court of Molave, Zamboanga del Sur, Branch 23, are hereby **SET ASIDE**.

No pronouncement as to costs.

**SO ORDERED.**

**LEONARDO A. QUISUMBING**  
Associate Justice

WE CONCUR:

**HILARIO G. DAVIDE, JR.**  
Chief Justice  
Chairman

**CONSUELO YNARES-SANTIAGO**  
Associate Justice

**ANTONIO T. CARPIO**  
Associate Justice

**ADOLFO S. AZCUNA**  
Associate Justice

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**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**HILARIO G. DAVIDE, JR.**  
Chief Justice

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[\[1\]](#) Rollo, pp. 20-22.

[\[2\]](#) *Id.* at 27-29.

[3] *Id.* at 21-22.

[4] *Id.* at 105.

[5] *Id.* at 106-110.

[6] *Id.* at 110.

[7] Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

[8] Office of the Ombudsman v. Ibay, G.R. No. 137538, 3 September 2001, 364 SCRA 281, 286, *citing* Galarosa v. Valencia, G.R. No. 109455, 11 November 1993, 227 SCRA 729, 737.

[9] Held on January 27 and 28, 1988 and February 3, 1988.

[10] No. L-68470, 8 October 1985, 139 SCRA 139.

[11] G.R. No. 124862, 22 December 1998, 300 SCRA 406.

[12] Lopez & Sons, Inc. v. Court of Tax Appeals, No. L-9274, 1 February 1957, 100 Phil. 850, 855.

[13] Cortes v. Court of Appeals, G.R. No. 121772, 13 January 2003, 395 SCRA 33, 38.

[14] Garcia v. Recio, G.R. No. 138322, 2 October 2001, 366 SCRA 437, 447.

[15] *Id.* at 451.