

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

[G.R. No. 37048. March 7, 1933.]

MANUELA BARRETTO GONZALEZ, *Plaintiff-Appellee*, v. AUGUSTO C. GONZALEZ, *Defendant-Appellant*. AUGUSTO C. GONZALEZ, JR., ET AL., *intervenors-appellees*.

Quintin Paredes and Barrera & Reyes, for *Appellant*.

DeWitt, Perkins & Brady, for *Plaintiff-Appellee*.

Camus & Delgado, for *intervenors-appellees*.

SYLLABUS

1. MARRIAGE AND DIVORCE; DIVORCE LAWS OF THE PHILIPPINES. — The hardships of the existing divorce laws of the Philippine Islands are well known to the members of the Legislature. It is the duty of the courts to enforce the laws of divorce as written by the Legislature if they are constitutional. Courts have no right to say that such laws are too strict or too liberal.

2. ID.; ID.; EFFECT OF FOREIGN DIVORCE IN THE PHILIPPINES. — Litigants can not compel the courts to approve of their own actions or permit the personal relations of the citizens of these Islands to be affected by decrees of divorce of foreign courts in a manner which our Government believes is contrary to public order and good morals.

DECISION

HULL, J.:

Plaintiff and defendant are citizens of the Philippine Islands and at present residents of the City of Manila. They were married in the City of Manila on January 19, 1919, and lived together as man and wife in the Philippine Islands until the Spring of 1926. They voluntarily separated and since that time have not lived together as man and wife. Of this union four children were born who are now 11, 10, 8, and 6 years of age. Negotiations between the parties, both being represented by attorneys, continued for several months, whereupon it was mutually agreed to allow the plaintiff for her support and that of her children, five hundred pesos (P500) monthly; this amount to be increased in case of illness or necessity, and the title of certain properties to be put in her name. Shortly after this agreement the husband left the Islands, betook himself to Reno, Nevada, and secured in that jurisdiction an absolute divorce on the ground of desertion, which decree was dated November 28, 1927. Shortly thereafter the defendant moved to California and returned to these Islands in August 1928, where he has since remained. On the same date that he secured the divorce in Nevada he went through the forms of marriage with another citizen of these Islands and now has three children as a result of that marriage. Defendant, after his departure from these Islands, reduced the amount he had agreed to pay monthly for the support of his wife and four minor children and has not made the payments fixed in the Reno divorce as alimony.

Shortly after his return his wife brought action in the Court of First Instance of Manila requesting that the courts of the Philippine Islands confirm and ratify the decree of divorce issued by the courts of the State of Nevada; that section 9 of Act No. 2710, which reads as follows: ___

"The decree of divorce shall dissolve the community of property as soon as such decree becomes final, but shall not dissolve the bonds of matrimony until one year thereafter.

"The bonds of matrimony shall not be considered as dissolved with regard to the spouse who, having legitimate children has not delivered to each of them or to the guardian appointed by the court, within said period of one year, the equivalent of what would have been due to them as their legal portion if said spouse had died intestate immediately after the dissolution of the community of property." ___

be enforced, and that she and the defendant deliver to the guardian ad litem the equivalent of what would have been due to their children as their legal portion from the respective estates had their parents died intestate on November 28, 1927. It is also prayed that the community existing between plaintiff and defendant be declared dissolved and the defendant be ordered to render an accounting and to deliver to the plaintiff her share of the community property, that the defendant be ordered to pay the plaintiff alimony at the rate of five hundred pesos (P500) per month, that the defendant be ordered to pay the plaintiff, as counsel fees, the sum of five thousand pesos (P5,000), and that the defendant be ordered to pay plaintiff the expenses incurred in educating the three minor sons.

A guardian ad litem was appointed for the minor children, and they appear as intervenors and join their mother in these proceedings. The Court of First Instance, after hearing, found against the defendant and granted judgment as prayed for by plaintiff and intervenors, with the exception of reducing attorneys fees to three thousand and also granted costs of the action against the defendant. From this judgment defendant appeals and makes the following assignment of errors: ___

"I. The lower court erred in not declaring that paragraph 2 of section 9 of the Philippine Divorce Law, is unconstitutional, null and void.

"II. The lower court erred in holding that section 9 of Act No. 2710 (Divorce Law) applies to the Nevada decree of divorce issued in favor of appellant Augusto C. Gonzalez, said decree being entitled to confirmation and recognition.

"III. The lower court erred in not dismissing the complaint in intervention for lack of cause of action against appellant and appellee.

"IV. The lower court erred in not declaring the notice of lis pendens filed by intervenors to be null and void.

"V. The trial court erred in ordering the appellant to pay the sum of P500 per month for the support not only of his children but also of his ex-wife, appellee herein, Manuela Barretto.

"VI. The trial court erred in not holding that plaintiff- appellee, Manuela Barretto, is not entitled to support from her ex- husband, herein appellant, over and beyond the alimony fixed by the divorce decree Exhibit A.

"VII. The trial court erred in condemning defendant-appellant to pay to plaintiff-appellee P3,000 attorney's fees.

"VIII. The lower court erred in denying appellant's motion for new trial." ___

While the parties in this action are in dispute over financial matters they are in unity in trying to secure the courts of this jurisdiction to recognize and approve of the Reno divorce. On the record here presented this can not be done. The public policy in this jurisdiction on the question of divorce is

clearly set forth in Act No. 2710, and the decisions of this court: *Goitia v. Campos Rueda* (35 Phil., 252); *Garcia Valdez v. Soteraña Tuason* (40 Phil., 943-952); *Ramirez v. Gmur* (42 Phil., 855); *Chereau v. Fuentebella* (43 Phil., 216); *Fernandez v. De Castro* (48 Phil., 123); *Gorayeb v. Hashim* (50 Phil., 22); *Francisco v. Tayao* (50 Phil., 42); *Alkuino Lim Pang v. Uy Pian Ng Shun and Lim Tingco* (52 Phil., 571); and the late case of *Cousins Hix v. Fluemer*, decided March 21, 1931, and reported in 55 Phil., 851.

The entire conduct of the parties from the time of their separation until the case was submitted to this court, in which they all prayed that the Reno divorce be ratified and confirmed, clearly indicates a purpose to circumvent the laws of the Philippine Islands regarding divorce and to secure for themselves a change of status for reasons and under conditions not authorized by our law. At all times the matrimonial domicile of this couple has been within the Philippine Islands and the residence acquired in the State of Nevada by the husband for the purpose of securing a divorce was not a bona fide residence and did not confer jurisdiction upon the court of that State to dissolve the bonds of matrimony in which he had entered in 1919. While the decisions of this court heretofore in refusing to recognize the validity of foreign divorce has usually been expressed in the negative and have been based upon lack of matrimonial domicile or fraud or collusion, we have not overlooked the provisions of the Civil Code now in force in these Islands. Article 9 thereof reads as follows:—

"The laws relating to family rights and duties, or to the status, condition, and legal capacity of persons, are binding upon Spaniards even though they reside in a foreign country."—

And article 11, the last part of which reads:—

". . . the prohibitive laws concerning persons, their acts and their property, and those intended to promote public order and good morals, shall not be rendered without effect by any foreign laws or judgments or by anything done or any agreements entered into in a foreign country."—

It is therefore a serious question whether any foreign divorce, relating to citizens of the Philippine Islands, will be recognized in this jurisdiction, except it be for a cause and under conditions for which the courts of the Philippine Islands would grant a divorce. The lower court in granting relief as prayed for frankly stated that the securing of the divorce, the contracting of another marriage and the bringing into the world of innocent children brings about such a condition that the court must grant relief. The hardships of the existing divorce laws of the Philippine Islands are well known to the members of the Legislature. It is of no moment in this litigation what the personal views of the writer on the subject of divorce may be. It is the duty of the courts to enforce the laws of divorce as written by the Legislature if they are constitutional. Courts have no right to say that such laws are too strict or too liberal.

Litigants by mutual agreement can not compel the courts to approve of their own actions or permit the personal relations of the citizens of these Islands to be affected by decrees of foreign courts in a manner which our Government believes is contrary to public order and good morals. Holding the above views it becomes unnecessary to discuss the serious constitutional question presented by appellant in his assignment of error.

The judgment of the Court of First Instance of the City of Manila must therefore be reversed and defendant absolved from the demands made against him in this action. This, however, without prejudice to any right of maintenance that plaintiff and the intervenors may have against defendant. No special pronouncement as to costs. So ordered.

Avanceña, C.J., Street, Villamor, Ostrand, Abad Santos, Vickers, Imperial and Butte, JJ., concur.