

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 parental custody, even the trial court recognized said decree to be valid and binding, thereby endowing private respondent the capacity to remarry. Thus, the present controversy mainly relates to the award of the custody of their two children, Carolynne and Alexandra Kristine, to petitioner.

As a general rule, divorce decrees obtained by foreigners in other countries are recognizable in our jurisdiction, but the legal effects thereof, *e.g.* on custody, care and support of the children, must still be determined by our courts.^[23] Before our courts can give the effect of *res judicata* to a foreign judgment, such as the award of custody to petitioner by the German court, it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of Court (now Rule 39, Section 48, 1997 Rules of Civil Procedure), to wit:

SEC. 50. *Effect of foreign judgments.* — The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:

(a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;

(b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy. In this jurisdiction, our Rules of Court clearly provide that with respect to actions *in personam*, as distinguished from actions *in rem*, a foreign judgment merely constitutes *prima facie* evidence of the justness of the claim of a party and, as such, is subject to proof to the contrary.^[24]

In the present case, it cannot be said that private respondent was given the opportunity to challenge the judgment of the German court so that there is basis for declaring that judgment as *res judicata* with regard to the rights of petitioner to have parental custody of their two children. The proceedings in the German court were summary. As to what was the extent of private respondent's participation in the proceedings in the German court, the records remain unclear. The divorce decree itself states that neither has she commented on the proceedings^[25] nor has she given her opinion to the Social Services Office.^[26] Unlike petitioner who was represented by two lawyers, private respondent had no counsel to assist her in said proceedings.^[27] More importantly, the divorce judgment was issued to petitioner by virtue of the German

Civil Code provision to the effect that when a couple lived separately for three years, the marriage is deemed irrefutably dissolved. The decree did not touch on the issue as to who the offending spouse was. Absent any finding that private respondent is unfit to obtain custody of the children, the trial court was correct in setting the issue for hearing to determine the issue of parental custody, care, support and education mindful of the best interests of the children. This is in consonance with the provision in the Child and Youth Welfare Code that the child's welfare is always the paramount consideration in all questions concerning his care and custody. [28]

On the matter of property relations, petitioner asserts that public respondent exceeded the bounds of her jurisdiction when she claimed cognizance of the issue concerning property relations between petitioner and private respondent. Private respondent herself has admitted in Par. 14 of her petition for declaration of nullity of marriage dated August 26, 1996 filed with the RTC of Makati, subject of this case, that: "[p]etitioner and respondent have not acquired any conjugal or community property nor have they incurred any debts during their marriage." [29] Herein petitioner did not contest this averment. Basic is the rule that a court shall grant relief warranted by the allegations and the proof. [30] Given the factual admission by the parties in their pleadings that there is no property to be accounted for, respondent judge has no basis to assert jurisdiction in this case to resolve a matter no longer deemed in controversy.

In sum, we find that respondent judge may proceed to determine the issue regarding the custody of the two children born of the union between petitioner and private respondent. Private respondent erred, however, in claiming cognizance to settle the matter of property relations of the parties, which is not at issue.

WHEREFORE, the orders of the Regional Trial Court of Makati, Branch 149, issued on September 30, 1999 and March 31, 2000 are **AFFIRMED with MODIFICATION**. We hereby declare that the trial court has jurisdiction over the issue between the parties as to who has parental custody, including the care, support and education of the children, namely Carolynne and Alexandra Kristine Roehr. Let the records of this case be remanded promptly to the trial court for continuation of appropriate proceedings. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), and Callejo, Sr., JJ., concur.

Austria-Martinez, J., on official leave.

[1] Rollo, p. 15.

[2] Judge Josefina Guevara-Salonga signed as Executive Judge.

[3] Rollo, p. 16.

[4] Records, pp. 5-6.

[5] *Id.* at 1-4.

[6] *Id.* at 19-28.

[7] *Id.* at 147.

[8] *Id.* at 165.

[9] Rollo, p. 33.

[10] 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 likewise have capacity to remarry under Philippine law. (*As amended by E. O. No. 227, dated July 17, 1987.*)

[11] *Supra*, note 1.

[12] *Supra*, note 3.

[13] Rollo, p. 6.

[14] *Id.* at 8.

[15] *Ibid.*

[16] G.R. No. 108338, 17 April 2001, 356 SCRA 546, 561.

[17] David v. Court of Appeals, G.R. No. 115821, 13 October 1999, 316 SCRA 710, 719.

[18] People v. Gallo, G.R. No. 124736, 29 September 1999, 315 SCRA 461, 463.

[19] G.R. No. 138322, 2 October 2001, 366 SCRA 437, 447.

[20] No. L-68470, 8 October 1985, 139 SCRA 139, 143.

[21] G.R. No. 124371, 23 November 2000, 345 SCRA 592, 601.

[22] G.R. No. 80116, 30 June 1989, 174 SCRA 653, 663.

[23] *Llorente v. Court of Appeals*, *supra* at 602.

[24] *Philsec Investment Corporation v. Court of Appeals*, G.R. No. 103493, 19 June 1997, 274 SCRA 102, 110.

[25] *Rollo*, p. 57.

[26] *Ibid.*

[27] *Id.* at 55-56.

[28] *Sagala-Eslao v. Court of Appeals*, G.R. No. 116773, 16 January 1997, 266 SCRA 317, 321, citing Art. 8, P.D. No. 603, *The Child and Youth Welfare Code*—

Art. 8. *Child's Welfare Paramount.* — In all questions regarding the care, custody, education and property of the child, his welfare shall be the paramount consideration.

[29] *Rollo*, p. 19.

[30] *JG Summit Holdings, Inc. v. Court of Appeals*, G.R. No. 124293, 20 November 2000, 345 SCRA 143, 154.



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