Recognition of Absolute Divorce in Mixed Marriages under Philippine Law: A Critical Analysis

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I. INTRODUCTION

Marriage is an inviolable social institution and a special contract of permanent union vested with state interest.[1] In the Philippines, a marriage may be dissolved only in specific cases as provided by law. If any one of the essential requisites of marriage is absent, or if the marriage is contracted against public policy, the marriage will be considered null and void from the beginning.[2] There are, in addition, specific grounds provided by the Family Code for annulment of marriage.[3] Perhaps the most liberal ground in the Family Code that can be invoked to dissolve a marriage is that of psychological incapacity but even this ground is premised on the nullity of the marriage at the time of its celebration.[4] For valid marriages, the law provides only legal separation which entitles spouses to live separately from each other but does not sever the marriage bonds.[5]

Absolute divorce is not recognized in the Philippines. The country is predominantly Catholic and divorce is viewed as being contrary to public policy; thus, the recognition of the Filipino family as the foundation of the nation and the commitment to strengthen its solidarity.[6] Marriage, as an inviolable social institution, is the foundation of this family.[7] Even an absolute divorce obtained by a Filipino abroad is not recognized as valid in the Philippines. It is only by way of exception that the Family Code recognizes divorce and only in cases where an alien spouse legally married to a Filipino spouse obtains an absolute divorce. Under the second paragraph of article 26 of the Family Code:

> [w]here 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.[8]

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1. The Family Code of the Philippines [THE FAMILY CODE] art. 1:

   > Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

2. *Id. See*, arts. 4, 35-38, 41, and 44.
3. *Id.* art. 45.
4. *Id.* art. 36.
5. *Id.* arts. 55 and 63.
6. PHIL. CONST. art XV, § 1.
7. PHIL. CONST. art XV, § 2 ("[m]arriage is an inviolable social institution, is the foundation of the family and shall be protected by the State.").
8. FAMILY CODE, art. 26 (2).

   > 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

Even prior to the enactment of the Family Code, the Supreme Court had occasion to rule on the situation contemplated by the said provision. In *Van Dorn v. Romillo, Jr.*,[9] a Filipino and an American got married and later obtained a divorced in Nevada, United States of America.[10] The foreigner, after the said divorce, claimed that business owned by the Filipino is conjugal property. The court then sought to resolve the effect of the foreign divorce on the parties. The court held that the divorce in Nevada released the foreigner from the marriage and that the purpose and effect of a decree of divorce from the bond of matrimony by a court of competent jurisdiction are to change the existing status or domestic relation of husband and wife, and *to free them both from the bond.*[11]

There is no question that if at the time of the celebration of the marriage, there is a mixed marriage between a Filipino and an alien and the alien gets a divorce abroad, the divorce is valid in the Philippines even as to the Filipino spouse.

The rationale behind the second paragraph of article 26 of the Family Code quoted above is to avoid the absurd and unjust situation of a Filipino citizen still being married to his or her alien spouse, although the latter is no longer married to the Filipino spouse because he or she has obtained a divorce abroad. This is the clear legislative intent.[12]

The members of the Civil Code and Family Law Committee dealt with many issues before the second paragraph of article 26 was finally adopted. In one of the meetings, this question was raised:

> Will the provision apply if at the time of marriage, both spouses are Filipinos, but six months later, the husband is naturalized elsewhere and, therefore becomes a foreigner and was able to get a divorce?[13]

This Article will explore the question set forth in the preceding paragraph. The discussions will contemplate the situation wherein the

> alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.
>
> *Id.* art. 26.

9. Van Dorn v. Romillo, Jr., 139 SCRA 139 (1985).

10. *Id.* at 141.

11. *Id.* at 143-44 (emphasis supplied).

12. MINUTES OF THE CIVIL CODE AND FAMILY LAW COMMITTEE MEETINGS 5 (July 12, 1986) (Justice Caguioa explained that the intention of the provision is to legalize foreign divorces for the Filipino so that in the case of a Filipina, who was married to an American, who in turn later secured a divorce, said Filipina will be allowed to remarry.).

13. MINUTES OF THE CIVIL CODE AND FAMILY LAW COMMITTEE MEETINGS 14 (July 11, 1987) (Judge Diy remarked that it is a legal absurdity for one to stay married without a spouse.).

marriage is between Filipino Citizens where one of the spouses becomes a naturalized citizen of another country after the celebration of marriage. The recent Supreme Court decisions in *Republic v. Orbecido*[14] and *Republic v. Iyoy*[15] will be examined in light of the rationale of the law and the application of article 26 to the contemplated valid mixed marriage and subsequent divorce will be analyzed.

II. RECENT DECISIONS INTERPRETING ARTICLE 26 OF THE FAMILY CODE

The literal reading of the second paragraph of article 26 would seem to imply that the provision would be applicable only when a valid marriage is celebrated between a Filipino citizen and a foreigner. The law is silent as regards Filipino citizens who later become naturalized and whether they will come under the purview of the said provision. In 1998, this situation was considered by the court in the case of *Quita v. Court of Appeals*[16] In that case, the spouses were both Filipino citizens at the time their marriage was celebrated. Subsequently, the wife became a naturalized American citizen and obtained a divorce. The Court remarked that the citizenship of the wife at the time of divorce was material in determining whether the divorce would be considered valid under Philippine Laws. Commenting on the decision of the lower court, the Supreme Court held that:

> ...their divorce obtained in 1954 in San Francisco, California, U.S.A., was not valid in Philippine jurisdiction. We deduce that the finding on their citizenship pertained solely to the time of their marriage as the trial court was not supplied with a basis to determine petitioner's citizenship at the time of their divorce. The doubt persisted as to whether she was still a Filipino citizen when their divorce was decreed. The trial court must have overlooked the materiality of this aspect. Once proved that she was no longer a Filipino citizen at the time of their divorce, *Van Dorn* would become applicable and petitioner could very well lose her right to inherit from Arturo.[17]

The validity of a foreign divorce between Filipino citizens where one later becomes naturalized directly confronted the Supreme Court in recent decisions.

A. Republic v. Orbecido

The Supreme Court of the Philippines departed from the literal interpretation of the second paragraph of article 26 of the Family Code. In

14. Republic v. Orbecido, 472 SCRA 114 (2005).

15. Republic v. Iyoy, 470 SCRA 508 (2005).

16. Quita v. Court of Appeals, 300 SCRA 406 (1998).

17. *Id.* at 413-14.

this case, both spouses were Filipino citizens at the time of the celebration of the marriage. The wife later left for the United States, became a naturalized American citizen, and subsequently obtained a divorce decree. The husband then filed a petition for authority to remarry invoking paragraph 2 of article 26. The Supreme Court held:

> [T]he intent of Paragraph 2 of Article 26 ... 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.
>
> x x x
>
> 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 citizen, 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 foreigner at the time of the solemnizations 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 support 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. If we are to give meaning to the legislative intent to avoid the absurd situation where the Filipino spouse remains married to an 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.[18]

The *Orbecido* case is not a case of first impression. The Supreme Court had made the same ruling earlier in the 2000 case of *Llorente vs. Court of Appeals*.[19] Lorenzo Llorente, a Filipino enlisted serviceman of the US Navy married Paula, another Filipino. Lorenzo went to the US and became a naturalized American. On return to the Philippines, he discovered that Paula was pregnant by his own brother. Paula and Lorenzo agreed to a legal separation out of court. Lorenzo then went back to the US and obtained a divorce from Paula. He then married Alice upon returning to the Philippines.

Is the divorce obtained by Lorenzo valid? The Supreme Court ruled in the affirmative, applying the Nationality Principle of the Civil Code[20] which allows the aliens to obtain divorce abroad, provided that they are valid according to their national law. In this case, the Nationality Principle under

18. *Orbecido*, 472 SCRA at 121-22.

19. Llorente v. Court of Appeals, 345 SCRA 592 (2000).

20. An Act to Ordain and Institute the Civil Code of the Philippines [NEW CIVIL CODE].

article 15 which provides that "laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad"[21] is made applicable to the alien.

B. Republic v. Iyoy

In this case, the Supreme Court held that article 26, paragraph 2 is not applicable to a Filipino spouse who became a naturalized American after obtaining the divorce decree.

> As it is worded, Article 26, paragraph 2, refers to a special situation wherein one of the couple getting married is a Filipino citizen and the other a foreigner at the time the marriage was celebrated. *By its plain and literal interpretation, the said provision cannot be applied to the case of respondent Crasus and his wife Fely because at the time Fely obtained her divorce, she was still a Filipino citizen.* Although the exact date was not established, Fely herself admitted in her Answer filed before the RTC that she obtained a divorce from respondent Crasus sometime after she left for the United States *in 1984*, after which she married her American husband in 1985. In the same Answer, she alleged that she had been an American citizen *since 1988*. At the time she filed for divorce, Fely was *still a Filipino citizen*, and pursuant to the nationality principle embodied in Article 15 of the Civil Code of the Philippines, she was still bound by Philippine laws on family rights and duties, status, condition, and legal capacity, even when she was already living abroad. Philippine laws, then and even until now, do not allow and recognize divorce between Filipino spouses. Thus, Fely could not have validly obtained a divorce from respondent Crasus.[22]

The Nationality Principle under article 15 was again invoked in this case. The fact that the wife was still a Filipino citizen when she obtained a divorce decree was material to the determination of the validity of the said divorce. The Filipino wife was bound by Philippine laws and, therefore, the court ruled that she could not have validly obtained the said divorce. The clear implication of this decision is that if the petitioner for divorce is already a naturalized alien at the time of obtaining a divorce decree which is valid in accordance with his national law, the divorce is valid to the spouses, the divorcing alien and the divorced Filipino citizen.

21. *Id.* art. 15 ("[l]aws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.").

22. Republic v. Iyoy, 470 SCRA 508, 527-28 (2005)(emphasis supplied).

III. The Apparent Conflict

In *Iyoy*, we have a situation where the Filipino spouse is still married under Philippine law to a former Filipino spouse who was a Filipino citizen at the time of the celebration of the marriage and later became a naturalized foreigner after obtaining an absolute divorce abroad.

Naturalization is the legal act of adopting an alien and clothing him with the political and civil rights belonging to a citizen. By becoming a citizen of another country, a person severs his allegiance to the Philippines and the *vinculum juris* that ties him to Philippine personal laws.[23] The divorce decree would be recognized in the new country of the naturalized citizen.

It then seems that the rationale of the second paragraph of article 26 of the Family Code to avoid the absurd and unjust situation of a Filipino citizen still married to his or her alien spouse although the latter is no longer married to the Filipino spouse is defeated in the *Iyoy* case.

It appears that the standard laid down by the Supreme Court in *Orbecido* "that the reckoning point is not the citizenship of the parties at 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"[24] defeats the spirit and intent of the law in the case of a Filipino spouse married to another Filipino citizen who obtained a divorce and then got naturalized as a foreign citizen. Since divorce is valid in his new country, now we have the absurd and unjust situation of his or her Filipino spouse still married to him under Philippine law, while he is capacitated to marry under the national law of his new country.

The reckoning point should not be the time when the divorce decree is obtained, but the time when the spouse who obtained the divorce becomes a naturalized foreigner if he has obtained the divorce while still a Filipino citizen. If he is already an alien at the time he obtains the divorce, then there is no question that the rationale under *article 26, second paragraph of the Family Code* applies, under the *Orbecido* doctrine. The same rationale shall be defeated if it is not applied to a situation of a Filipino spouse whose Filipino spouse obtained first a divorce before being naturalized as a foreigner. Unless the spirit and intent of the law is extended to the situation presented in the *Iyoy* case, such Filipino spouse will remain married to his or her spouse who is no longer married to her under the national law of the latter, the very unjust and absurd situation sought to be prevented by the *second paragraph of article 26 of the Family Code*.

23. Garcia v. Recio, 366 SCRA 437 (2001) (citing JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 560 [1996 ed.]).

24. Republic v. Orbecido, 472 SCRA 114, 122 (2005).

The *Iyoy* case must be harmonized with the spirit and intent of the 2nd paragraph of article 26 of the Family Code. The better rule is that the Filipino spouse should be qualified to marry when the foreign spouse, whether originally a foreigner or a former Filipino naturalized as a foreigner becomes capacitated to re-marry. This is the standard under which foreign divorce should be recognized in the Philippines within the legislative intent of article 26, second paragraph of the Family Code as interpreted in the *Orbecido* case that a Filipino spouse should not be kept married to one who is no longer married to such Filipino spouse. This is the legal consequence of recognizing the foreign divorce. *The marriage tie, when thus severed as to one party, ceases to bind either. A husband without a wife, or a wife without a husband is unknown to the law.*[25]

One of the criticism against the *Orbecido* ruling is that it is a case of judicial legislation. The textual language is clear and does not require any statutory construction. It covers only mixed marriage between a Filipino citizen and a foreigner, and not a marriage between Filipino citizens. The court previously stated that the grant of effectivity to foreign divorce decrees between two Filipinos could give rise to an "irritating and scandalous" discrimination in favor of wealthy Filipinos who can go abroad, get naturalized as a foreigner and obtain a divorce.[26]

This concern was in the minds of the framers of the Family Code. The second paragraph of article 26 which was not originally included in the Family Code drafted by the Civil Code Revision Committee and signed by President Aquino under Executive Order No. 209. Another Executive Order was promulgated by President Aquino after its approval by the Cabinet to include the second paragraph to article 26.[27]

25. Van Dorn vs. Romillo, Jr., 139 *SCRA* 139, 144 (1985) (citing Atherton v. Atherton, 45 L. ED. 794, 799) (emphasis supplied).

26. *See*, Tenchavez v. Escano, 15 SCRA 355 (1965).

27. *See*, MINUTES OF THE CIVIL CODE AND FAMILY LAW COMMITTEE MEETINGS 2-3 (July 16, 1987).

> Justice Puno stated that the second paragraph [of art.26] was not included in the Draft of the Proposed Family Code because the Committee rejected it in a split decision of 5-4. Undersecretary Romero recommended that, inasmuch as the President is amenable to the second paragraph, provided it is clarified that the same does not apply to marriages between Filipino citizens because only those who can go abroad would be benefited, a separate Executive Order be issued amending Article 26 to include the second paragraph on foreign divorce.

IV. HARMONIZATION OF THE CONFLICT

The conflict between *Iyoy* and *Orbecido* may be harmonized in either of two ways.

I

Abandon the sweeping and general doctrine in *Orbecido* and follow the result of *Iyoy* by applying the textual language of the second paragraph of article 26. This will give life and effect to the equal protection of the law clause of the Constitution to avoid the scandalous discrimination in favor of rich Filipinos who can be naturalized and obtain a divorce abroad.

Even under this approach, Philippine courts may recognize foreign divorce to protect Filipino citizens under the doctrine of "divorce by estoppel." In the 1985 *Van Dorn* case, a foreigner who obtained a divorce was held to have lost his standing to sue in Philippine courts and to exercise control and management of the alleged conjugal properties by virtue of the divorce he obtained abroad.[28]

The result in the *Llorente* case is justified by the equitable consideration that the first wife who got herself pregnant in an adulterous relation with the brother of the husband should not benefit from the non-recognition of the foreign divorce obtained by the offended husband after his naturalization.

II

The other way of harmonizing the conflict between *Iyoy* and *Orbecido* is to maintain the *Orbecido* ruling but modify it to apply to a situation where the other spouse, whether originally a foreigner at the time of the marriage or naturalized into a foreigner before or after obtaining a divorce abroad, becomes capacitated to marry to avoid the anomalous situation of a Filipino spouse remaining married to a spouse who is no longer married to such Filipino spouse.

V. CONCLUSION AND RECOMMENDATION

In order to avoid discrimination in favor of rich Filipinos who can go abroad, get naturalized and obtain a divorce, the textual language of the second paragraph of article 26 ought to be upheld. Exceptions may be allowed by the Court under the doctrine of divorce by estoppel as may be necessary to protect the interest of the Filipino spouse and prevent an unjust and inequitable result. This is the better approach.

28. *Van Dorn*, 139 SCRA at 143-44.

The other approach, if the rationale of the law as interpreted by the Supreme Court in *Orbecido* is to be maintained, is to extend its coverage to a situation where the other spouse has obtained a divorce before or after becoming naturalized as a foreigner and becomes capacitated to marry, to avoid the anomalous situation of the Filipino spouses remaining married to the foreigner now who is no longer married to such Filipino spouse. This approach maintains the judicial gloss to the textual language of the law under *Orbecido* which is open to challenge for being discriminatory to poor Filipinos who cannot go abroad, get naturalized and obtain a divorce. The framers of the second paragraph of article 26 intended to strictly apply the law to mixed marriage between a Filipino citizen and a foreigner. Justice Alicia Sempio-Dy, a leading authority on Family Law and a member of the Civil Code Revision Committee who drafted the law, is cited by the Supreme Court in *Orbecido* as the authority for applying the second paragraph to the situation obtaining in the case. Ironically, she has the opposite stand and takes the position that the second paragraph is intended to cover strictly mixed marriage between a Filipino citizen and a foreigner. This precisely affirms the concern of Justice of J.B.L. Reyes in the *Van Dorn* case to the discriminatory effect in favor of rich Filipinos. Such is a fundamental constitutional issue of equal protection of the law not taken into account by the Supreme Court in *Orbecido*.