

GLICERO R. KATINDOY, Plaintiff
v.
CARMEN SISON KATINDOY, Defendant
Civil Action No. 952
Trial Division of the High Court
Mariana Islands District

June 22, 1971

Action for divorce by foreign nationals. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that once person had acquired a residence for divorce under the Trust Territory Code the law of the Trust Territory would be applied.

1. Domestic Relations—Divorce—Jurisdiction

Foreign national's residence for purpose of divorce is to be considered in the light of the laws of the Trust Territory, rather than any foreign jurisdiction and where such foreign national had complied with the residency requirement of the Trust Territory Code, court had jurisdiction of the action. (39 T.T.C. sec. 202)

2. Domestic Relations—Divorce—Defenses

Under Trust Territory Code court may grant divorce on grounds of separation whether or not the separation was by mutual consent, and this negates the question of fault. (39 T.T.C. Sec. 201(8))

BURNETT, Chief Justice

The parties to this action are both nationals of the Republic of the Philippines. Defendant is a resident of Pasay City, Philippine Islands, and plaintiff has resided in the Trust Territory since 1960 as a contract employee, first of Pacific Micronesian Lines, and presently of Micronesian Interocean Lines.

Plaintiff seeks divorce under 39 T.T.C. 201 (8), since the parties have lived apart in excess of two years without cohabitation. Defendant challenges the court's jurisdiction, since both are nationals of the Philippines, which, she alleges, refuses to recognize divorce of her own citizens.

[1] Plaintiff's residence for purpose of divorce is to be considered in the light of the laws of the Trust Territory,

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rather than any foreign jurisdiction. Certainly plaintiff has resided in the Trust Territory for more than the two year period required by 39 T.T.C. 202. Further I find such residence to constitute more than mere physical presence, and that plaintiff has in fact established his domicile here. Restatement, A.L.I., Conflict of Laws, Sec. 15.

[2] I find also that divorce can be granted without concern for any question of fault on the part of either party. *Canavos v. Canavos*, 139 S.E.2d 825, 14 A.L.R.3d 495, and annotation following at 14 A.L.R.3d 502. The theory, of course, is that the obvious statutory intent is to terminate in law those marriages which have ceased to exist in fact. Here, the statute provides the divorce may be granted whether or not the separation was by mutual consent, thus negating question of fault.

Plaintiff last visited the Philippines in April 1968. There has been no cohabitation since that time. The period following is more than sufficient to meet the statutory requirement.

It is unnecessary to consider the extent of the court's jurisdiction with respect to community property of the parties, since plaintiff agrees to relinquish any claim he might have to such property.

Three children were born of the marriage. Plaintiff clearly has both obligation and ability to contribute to their support.

It is, therefore, ordered, adjudged, and decreed:—

1. Plaintiff is hereby granted a divorce from the bonds of matrimony hitherto existing between him and the defendant, Carmen Sison Katindoy.

2. Community property acquired by the parties shall be the sole property of the defendant. Plaintiff will execute any documents which may be required to transfer to her any interest he may now hold in such property, whether real or personal.

3. Plaintiff will pay to defendant as and for child support the sum of \$25.00 monthly for each of their children until the child shall reach the age of eighteen years.
