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SECOND DIVISION

[G.R. No. 53703. August 19, 1986]

LILIA OLIVA WIEGEL, *petitioner, vs.* **THE HONORABLE ALICIA V. SEMPIO-DIY (as presiding judge of the Juvenile and Domestic Relations Court of Caloocan City) and KARL HEINZ WIEGEL,** *respondents.*

SYLLABUS

1. **CIVIL LAW; FAMILY RELATIONS; VOID MARRIAGE; EVIDENCE THAT PRIOR MARRIAGE WAS VITIATED BY FORCE, NEED NOT BE INTRODUCED.**— There is not need for petitioner to prove that her first marriage was vitiated by force committed against both parties because assuming this to do so, the marriage will not be void but merely voidable (Art. 85, Civil Code), and therefore valid until annulled. Since no annulment has yet been made, it is clear that when she married respondent she was still validly married to her first husband, consequently, her marriage to respondent is VOID (Art. 80, Civil Code).

2. **ID.; ID.; ID.; EVIDENCE ABOUT THE EXISTING PRIOR MARRIAGE OF FIRST SPOUSE, NEED NOT BE INTRODUCED.**— There is likewise no need of introducing evidence about the existing prior marriage of her first husband at the time they married each other, for then such a marriage though void still needs according to this Court a judicial declaration of such fact and for all legal intents and purposes she would still be regarded as a married woman at the time she contracted her marriage with respondent Karl Heinz Wiegel; accordingly, the marriage of petitioner and respondent would be regarded VOID under the law.

APPEARANCES OF COUNSEL

Dapucanta Dulay & Associates for petitioner.

Siguion Reyna Montecillo and Ongsiako Law Office for private respondent.

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DECISION

PARAS, *J.*:

In an action (Family Case No. 483) filed before the erstwhile Juvenile and Domestic Relations Court of Caloocan City, herein respondent Karl Heinz Wiegel (plaintiff therein) asked for the declaration of Nullity of his marriage (celebrated on July, 1978 at the Holy Catholic Apostolic Christian Church Branch in Makati, Metro Manila) with herein petitioner Lilia Oliva Wiegel (Lilia, for short, and defendant therein) on the ground of Lilia's previous existing marriage to one Eduardo A. Maxion, the ceremony having been performed on June 25, 1972 at our Lady of Lourdes Church in Quezon City. Lilia, while admitting the existence of said prior subsisting marriage claimed that said marriage was null and void, she and the first husband Eduardo A. Maxion having been allegedly *forced* to enter said marital union. In the pre-trial that ensued, the issue agreed upon by both parties was the status of the first marriage (assuming the presence of force exerted against both parties): was said prior marriage void or was it merely *voidable*? Contesting the validity of the pre-trial order, Lilia asked the respondent court for an opportunity to present evidence —

(1) that the first marriage was vitiated by force exercised upon both her and the first husband; and

(2) that the first husband was at the time of the marriage in 1972 already married to *someone else*.

Respondent judge ruled against the presentation of evidence because the existence of force exerted on both parties of the first marriage had already been agreed upon. Hence, the present petition for *certiorari* assailing the following Orders of the respondent Judge —

(1) the Order dated March 17, 1980 in which the parties were compelled to submit the case for resolution based on "agreed facts;" and

(2) the Order dated April 14, 1980, denying petitioner's motion to allow her to present evidence in her favor.

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We find the petition *devoid* of merit.

There is no need for petitioner to prove that her first marriage was vitiated by force committed against both parties because assuming this to be so, the marriage will not be void but merely viodable (Art. 85, Civil Code), and therefore valid until annulled. Since no annulment has yet been made, it is clear that when she married respondent she was still validly married to her first husband, consequently, her marriage to respondent is VOID (Art. 80, Civil Code).

There is likewise no need of introducing evidence about the existing prior marriage of her first husband at the time they married each other, for then such a marriage though void still needs according to this Court a judicial declaration[1] of such fact and for all legal intents and purposes she would still be regarded as a married woman at the time she contracted her marriage with respondent Karl Heinz Wiegel); accordingly, the marriage of petitioner and respondent would be regarded VOID under the law.

WHEREFORE, this petition is hereby DISMISSED, for lack of merit, and the Orders complained of are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.

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[1] *Vda. de Consuegra vs. GSIS*, 37 SCRA 315.