

## EN BANC

[G.R. No. 182894. April 22, 2014.]

FE FLORO VALINO, *petitioner*, vs. ROSARIO D. ADRIANO, FLORANTE D. ADRIANO, RUBEN D. ADRIANO, MARIA TERESA ADRIANO ONGOCO, VICTORIA ADRIANO BAYONA, and LEAH ANTONETTE D. ADRIANO, *respondents*.

## DECISION

MENDOZA, J :

Challenged in this petition is the October 2, 2006 Decision <sup>1</sup> and the May 9, 2008 Resolution <sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 61613, which reversed the October 1, 1998 Decision <sup>3</sup> of the Regional Trial Court, Branch 77, Quezon City (RTC) which ruled that petitioner Fe Floro Valino (*Valino*) was entitled to the remains of the decedent.

### The Facts:

Atty. Adriano Adriano (*Atty. Adriano*), a partner in the Pelaez Adriano and Gregorio Law Office, married respondent Rosario Adriano (*Rosario*) on November 15, 1955. The couple had two (2) sons, Florante and Ruben Adriano; three (3) daughters, Rosario, Victoria and Maria Teresa; and one (1) adopted daughter, Leah Antonette.

The marriage of Atty. Adriano and Rosario, however, turned sour and they were eventually separated-in-fact. Years later, Atty. Adriano courted Valino, one of his clients, until they decided to live together as husband and wife. Despite such arrangement, he continued to provide financial support to Rosario and their children (*respondents*).

In 1992, Atty. Adriano died of acute emphysema. At that time, Rosario was in the United States spending Christmas with her children. As none of the family members was around, Valino took it upon herself to shoulder the funeral and burial expenses for Atty. Adriano. *When Rosario learned about the death of her husband, she immediately called Valino and requested that she delay the interment for a few days* but her request was not heeded. The remains of Atty. Adriano were then interred at the mausoleum of the family of Valino at the Manila Memorial Park. Respondents were not able to attend the interment.

Claiming that they were deprived of the chance to view the remains of Atty. Adriano before he was buried and that his burial at the Manila Memorial Park was contrary to his wishes, respondents commenced suit against Valino praying that they be indemnified for actual, moral and exemplary damages and attorney's fees and that the remains of Atty. Adriano be exhumed and transferred to the family plot at the Holy Cross Memorial Cemetery in Novaliches, Quezon City.

In her defense, Valino countered that Rosario and Atty. Adriano had been separated for more than twenty (20) years before he courted her. Valino claimed that throughout the time they were together, he had introduced her to his friends and associates as his wife. Although they were living together, *Valino admitted that he never forgot his obligation to support the respondents*. She contended that, unlike Rosario, she took good care of Atty.

Adriano and paid for all his medical expenses when he got seriously ill. She also claimed that despite knowing that Atty. Adriano was in a coma and dying, Rosario still left for the United States. According to Valino, it was Atty. Adriano's last wish that his remains be interred in the Valino family mausoleum at the Manila Memorial Park.

Valino further claimed that she had suffered damages as result of the suit brought by respondents. Thus, she prayed that she be awarded moral and exemplary damages and attorney's fees.

### **Decision of the RTC**

The RTC dismissed the complaint of respondents for lack of merit as well as the counterclaim of Valino after it found them to have not been sufficiently proven.

The RTC opined that because Valino lived with Atty. Adriano for a very long time, she knew very well that it was his wish to be buried at the Manila Memorial Park. Taking into consideration the fact that Rosario left for the United States at the time that he was fighting his illness, the trial court concluded that Rosario did not show love and care for him. Considering also that it was Valino who performed all the duties and responsibilities of a wife, the RTC wrote that it could be reasonably presumed that he wished to be buried in the Valino family mausoleum. <sup>4</sup>

In disposing of the case, the RTC noted that the exhumation and the transfer of the body of Atty. Adriano to the Adriano family plot at the Holy Cross Memorial Cemetery in Novaliches, Quezon City, would not serve any useful purpose and so he should be spared and respected. <sup>5</sup>

### **Decision of the CA**

On appeal, the CA reversed and set aside the RTC decision and directed Valino to have the remains of Atty. Adriano exhumed at the expense of respondents. It likewise directed respondents, at their expense, to transfer, transport and inter the remains of the decedent in the family plot at the Holy Cross Memorial Park in Novaliches, Quezon City.

In reaching said determination, the CA explained that Rosario, being the legal wife, was entitled to the custody of the remains of her deceased husband. Citing Article 305 of the New Civil Code in relation to Article 199 of the Family Code, it was the considered view of the appellate court that the law gave the surviving spouse not only the duty but also the right to make arrangements for the funeral of her husband. For the CA, Rosario was still entitled to such right on the ground of her subsisting marriage with Atty. Adriano at the time of the latter's death, notwithstanding their 30-year separation in fact.

Like the RTC, however, the CA did not award damages in favor of respondents due to the good intentions shown by Valino in giving the deceased a decent burial when the wife and the family were in the United States. All other claims for damages were similarly dismissed.

### **The Sole Issue**

The lone legal issue in this petition is who between Rosario and Valino is entitled to the remains of Atty. Adriano.

### **The Court's Ruling**

Article 305 of the Civil Code, in relation to what is now Article 199 <sup>6</sup> of the Family

Code, specifies the persons who have the right and duty to make funeral arrangements for the deceased. Thus:

**Art. 305.** The **duty** and the **right** to make arrangements for the funeral of a relative shall be in accordance with the order established for support, under Article 294. In case of descendants of the same degree, or of brothers and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right. [Emphases supplied]

**Art. 199.** Whenever two or more persons are obliged to give support, the liability shall devolve upon the following persons in the order herein provided:

- (1) **The spouse;**
- (2) The descendants in the nearest degree;
- (3) The ascendants in the nearest degree; and
- (4) The brothers and sisters. (294a) [Emphasis supplied]

Further, Article 308 of the Civil Code provides:

**Art. 308.** No human remains **shall be retained, interred, disposed of or exhumed** without the consent of the persons mentioned in Articles 294 and 305. [Emphases supplied]

In this connection, Section 1103 of the Revised Administrative Code provides:

**Section 1103.** *Persons charged with the duty of burial.* – The immediate duty of burying the body of a deceased person, regardless of the ultimate liability for the expense thereof, shall devolve upon the persons herein below specified:

- (a) **If the deceased was a married man or woman, the duty of the burial shall devolve upon the surviving spouse if he or she possesses sufficient means to pay the necessary expenses;**

xxx xxx xxx. [Emphases supplied]

From the aforesaid provisions, it is undeniable that the law simply confines the right and duty to make funeral arrangements to the members of the family to the exclusion of one's common law partner. In *Tomas Eugenio, Sr. v. Velez*, <sup>7</sup> a petition for *habeas corpus* was filed by the brothers and sisters of the late Vitaliana Vargas against her lover, Tomas Eugenio, Sr., alleging that the latter forcibly took her and confined her in his residence. It appearing that she already died of heart failure due to toxemia of pregnancy, Tomas Eugenio, Sr. sought the dismissal of the petition for lack of jurisdiction and claimed the right to bury the deceased, as the common-law husband.

In its decision, the Court resolved that the trial court continued to have jurisdiction over the case notwithstanding the death of Vitaliana Vargas. As to the claim of Tomas Eugenio, Sr. that he should be considered a "spouse" having the right and duty to make funeral arrangements for his common-law wife, the Court ruled:

. . . Indeed, Philippine Law does not recognize common law marriages. A man and woman not legally married who cohabit for many years as husband and wife, who represent themselves to the public as husband and wife, and who are reputed to be husband and wife in the community where they

live may be considered legally married in common law jurisdictions but not in the Philippines.

While it is true that our laws do not just brush aside the fact that such relationships are present in our society, and that they produce a community of properties and interests which is governed by law, authority exists in case law to the effect that such form of co-ownership requires that the man and woman living together must not in any way be incapacitated to contract marriage. In any case, herein petitioner has a subsisting marriage with another woman, a legal impediment which disqualified him from even legally marrying Vitaliana. In *Santero vs. CFI of Cavite*, the Court, thru Mr. Justice Paras, interpreting Art. 188 of the Civil Code (Support of Surviving Spouse and Children During Liquidation of Inventoried Property) stated: "Be it noted, however, that **with respect to 'spouse,' the same must be the legitimate 'spouse'** (not common-law spouses)."

There is a view that under Article 332 of the Revised Penal Code, the term "spouse" embraces common law relation for purposes of exemption from criminal liability in cases of theft, swindling and malicious mischief committed or caused mutually by spouses. The Penal Code article, it is said, makes no distinction between a couple whose cohabitation is sanctioned by a sacrament or legal tie and another who are husband and wife *de facto*. But this view cannot even apply to the facts of the case at bar. We hold that the provisions of the Civil Code, unless expressly providing to the contrary as in Article 144, when referring to a "**spouse**" **contemplate a lawfully wedded spouse**. Petitioner vis-a-vis Vitaliana was not a lawfully-wedded spouse to her; in fact, he was not legally capacitated to marry her in her lifetime. <sup>8</sup> [Emphases supplied]

As applied to this case, it is clear that the law gives the right and duty to make funeral arrangements to Rosario, she being the surviving legal wife of Atty. Adriano. The fact that she was living separately from her husband and was in the United States when he died has no controlling significance. To say that Rosario had, in effect, waived or renounced, expressly or impliedly, her right and duty to make arrangements for the funeral of her deceased husband is baseless. **The right and duty to make funeral arrangements, like any other right, will not be considered as having been waived or renounced, except upon clear and satisfactory proof of conduct indicative of a free and voluntary intent to that end.** <sup>9</sup> While there was disaffection between Atty. Adriano and Rosario and their children when he was still alive, the Court also recognizes that human compassion, more often than not, opens the door to mercy and forgiveness once a family member joins his Creator. *Notably, it is an undisputed fact that the respondents wasted no time in making frantic pleas to Valino for the delay of the interment for a few days so they could attend the service and view the remains of the deceased. As soon as they came to know about Atty. Adriano's death in the morning of December 19, 1992 (December 20, 1992 in the Philippines), the respondents immediately contacted Valino and the Arlington Memorial Chapel to express their request, but to no avail.*

Valino insists that the expressed wishes of the deceased should nevertheless prevail pursuant to Article 307 of the Civil Code. Valino's own testimony that it was Atty. Adriano's wish to be buried in their family plot is being relied upon heavily. It should be noted, however, that other than Valino's claim that Atty. Adriano wished to be buried at the Manila Memorial Park, no other evidence was presented to corroborate such claim. Considering that Rosario equally claims that Atty. Adriano wished to be buried in the Adriano family plot in Novaliches, it becomes apparent that the supposed burial wish of

Atty. Adriano was unclear and indefinite. Considering this ambiguity as to the true wishes of the deceased, it is the law that supplies the presumption as to his intent. No presumption can be said to have been created in Valino's favor, solely on account of a long-time relationship with Atty. Adriano.

Moreover, it cannot be surmised that just because Rosario was unavailable to bury her husband when she died, she had already renounced her right to do so. Verily, in the same vein that the right and duty to make funeral arrangements will not be considered as having been waived or renounced, the right to deprive a legitimate spouse of her legal right to bury the remains of her deceased husband should not be readily presumed to have been exercised, except upon clear and satisfactory proof of conduct indicative of a free and voluntary intent of the deceased to that end. **Should there be any doubt as to the true intent of the deceased, the law favors the legitimate family.** Here, Rosario's keenness to exercise the rights and obligations accorded to the legal wife was even bolstered by the fact that **she was joined by the children in this case.**

Even assuming, *ex gratia argumenti*, that Atty. Adriano truly wished to be buried in the Valino family plot at the Manila Memorial Park, the result remains the same. Article 307 of the Civil Code provides:

**Art. 307.** The funeral shall be in accordance with the **expressed wishes** of the deceased. In the absence of such expression, his religious beliefs or affiliation shall determine **the funeral rites**. In case of doubt, **the form** of the funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting the other members of the family.

From its terms, it is apparent that Article 307 simply seeks to prescribe the *"form of the funeral rites"* that should govern in the burial of the deceased. As thoroughly explained earlier, the right and duty to make funeral arrangements reside in the persons specified in Article 305 in relation to Article 199 of the Family Code. Even if Article 307 were to be interpreted to include the place of burial among those on which the wishes of the deceased shall be followed, Dr. Arturo M. Tolentino (*Dr. Tolentino*), an eminent authority on civil law, commented that it is **generally recognized that any inferences as to the wishes of the deceased should be established by some form of testamentary disposition.** <sup>10</sup> As Article 307 itself provides, the wishes of the deceased must be *expressly* provided. **It cannot be inferred lightly**, such as from the circumstance that Atty. Adriano spent his last remaining days with Valino. It bears stressing once more that other than Valino's claim that Atty. Adriano wished to be buried at the Valino family plot, no other evidence was presented to corroborate it.

At any rate, it should be remembered that the **wishes of the decedent** with respect to his funeral are **not absolute**. As Dr. Tolentino further wrote:

The dispositions or wishes of the deceased in relation to his funeral, **must not be contrary to law**. They **must not violate the legal and reglamentary provisions concerning funerals** and **the disposition of the remains**, whether as regards the time and manner of disposition, or **the place of burial**, or the ceremony to be observed. <sup>11</sup> [Emphases supplied]

In this case, the **wishes of the deceased** with respect to his funeral are **limited by Article 305 of the Civil Code in relation to Article 199 of the Family Code**, and subject the same to those charged with the right and duty to make the proper arrangements to bury the remains of their loved-one. As aptly explained by the appellate court in its **disquisition:**

The testimony of defendant-appellee Fe Floro Valino that it was the oral wish of Atty. Adriano Adriano that he be interred at the Floro family's mausoleum at the Manila Memorial Park, must bend to the provisions of the law. Even assuming *arguendo* that it was the express wish of the deceased to be interred at the Manila Memorial Park, still, the law grants the duty and the right to decide what to do with the remains to the wife, in this case, plaintiff-appellant Rosario D. Adriano, as the surviving spouse, and not to defendant-appellee Fe Floro Valino, who is not even in the list of those legally preferred, despite the fact that her intentions may have been very commendable. The law does not even consider the emotional fact that husband and wife had, in this case at bench, been separated-in-fact and had been living apart for more than 30 years. **12**

As for Valino's contention that there is no point in exhuming and transferring the remains of Atty. Adriano, it should be said that the burial of his remains in a place other than the Adriano family plot in Novaliches runs counter to the wishes of his family. It does not only violate their right provided by law, but it also disrespects the family because the remains of the patriarch are buried in the family plot of his live-in partner.

It is generally recognized that the corpse of an individual is outside the commerce of man. However, the law recognizes that a certain right of possession over the corpse exists, for the purpose of a decent burial, and for the exclusion of the intrusion by third persons who have no legitimate interest in it. This quasi-property right, arising out of the duty of those obligated by law to bury their dead, also authorizes them to take possession of the dead body for purposes of burial to have it remain in its final resting place, or to even transfer it to a proper place where the memory of the dead may receive the respect of the living. **This is a family right.** There can be no doubt that persons having this right may recover the corpse from third persons. **13**

All this notwithstanding, the Court finds laudable the acts of Valino in taking care of Atty. Adriano during his final moments and giving him a proper burial. For her sacrifices, it would indeed be unkind to assess actual or moral damages against her. As aptly explained by the CA:

The trial court found that there was good faith on the part of defendant-appellee Fe Floro Valino, who, having lived with Atty. Adriano after he was separated in fact from his wife, lovingly and caringly took care of the well-being of Atty. Adriano Adriano \* while he was alive and even took care of his remains when he had died.

On the issue of damages, plaintiffs-appellants are not entitled to actual damages. Defendant-appellee Fe Floro Valino had all the good intentions in giving the remains of Atty. Adriano a decent burial when the wife and family were all in the United States and could not attend to his burial. Actual damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. To be recoverable, they must not only be capable of proof but must actually be proven with a reasonable degree of certainty. In this case at bench, there was no iota of evidence presented to justify award of actual damages.

Plaintiffs-appellants are not also entitled to moral and exemplary damages. Moral damages may be recovered only if the plaintiff is able to satisfactorily prove the existence of the factual basis for the damages and its causal connection with the acts complained of because moral damages although incapable of pecuniary estimation are designed not to impose a penalty but to compensate for injury sustained and actual damages suffered. No injury was

caused to plaintiffs-appellants, nor was any intended by anyone in this case. Exemplary damages, on the other hand, may only be awarded if claimant is able to establish his right to moral, temperate, liquidated or compensatory damages. Unfortunately, neither of the requirements to sustain an award for either of these damages would appear to have been adequately established by plaintiffs-appellants.

As regards the award of attorney's fees, it is an accepted doctrine that the award thereof as an item of damages is the exception rather than the rule, and counsel's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the New Civil Code demands factual, legal and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In this case, we have searched but found nothing in plaintiffs-appellants' suit that justifies the award of attorney's fees. **14**

Finally, it should be said that controversies as to who should make arrangements for the funeral of a deceased have often aggravated the bereavement of the family and disturbed the proper solemnity which should prevail at every funeral. It is for the purpose of preventing such controversies that the Code Commission saw it best to include the provisions on "Funerals." **15**

**WHEREFORE**, the petition is **DENIED**.

**SO ORDERED**.

*Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Reyes and Perlas-Bernabe, JJ., concur.*

*Abad, J.,* I join Justice Leonen's dissent.

*Leonen, J.,* I dissent. See separate opinion.

## Separate Opinions

**LEONEN, J., dissenting:**

We will all die. But what may matter to many of us is how we live and how our life is kept in the memories of those we leave behind. This case is not about whether a common-law wife has more rights over the corpse of the husband than the latter's estranged legal spouse. This case is about which between them knows his wishes.

Therefore, I respectfully disagree with the ponencia in denying this petition.

I vote to set aside the decision of the Court of Appeals dated October 2, 2006 in CA-G.R. CV No. 61613, which directs petitioner Fe to have the remains of Atty. Lope Adriano exhumed, and orders respondents to transfer, transport, and inter, at their expense, the remains of the decedent from Manila Memorial Park to the family plot in Holy Cross Memorial Park in Novaliches, Quezon City. I vote to sustain the decision dated October 1, 1998, of the Regional Trial Court of Quezon City, Branch 77 in Civil Case No. Q-93-15288, dismissing respondents' complaint for damages.

I disagree with the position that in the determination of how Atty. Adriano should be buried, "the law gives the right and duty to make funeral arrangements to Rosario, she

being the surviving legal wife of Atty. Adriano," <sup>1</sup> in accordance with Article 305 <sup>2</sup> of the Civil Code in relation to Article 199 <sup>3</sup> of the Family Code.

I am of the opinion that Article 305 should only be considered when, *first*, the deceased left no explicit instructions on how he wishes to be interred, and *second*, when none among the deceased's surviving relations are willing to make the funeral arrangements and a conflict arises. In these situations, the conflict must be settled according to the order of preference stated in Article 199. In any other case, it should be the express wishes of the deceased which should take precedence.

This view, in fact, is embodied in Article 307 of the Civil Code, which states:

Article 307. **The funeral shall be in accordance with the expressed wishes of the deceased.** – In the absence of such expression, his religious beliefs or affiliation shall determine the funeral rites. *In case of doubt, the form of the funeral shall be decided upon by the person obliged to make arrangements for the same, after consulting the other members of the family.* (Emphasis supplied)

It is the ponencia's opinion that the wishes of the deceased contemplated in Article 307 only governs the "*form of the funeral*" and that the duty and, more specifically, the *right* to make arrangements for the funeral remains with the persons specified in Article 305 in relation to Article 199. It is my submission, however, that Article 307 should be interpreted to mean that the right to determine one's funeral, including the right to determine *how* and *where* one wishes to be buried, remains with the deceased, and it is only in the absence of his express wishes, or in the absence of his religious beliefs and affiliations, or if there is doubt as to his wishes, that other persons may assume the right to decide the funeral arrangements.

This right, like other rights pointed out by the ponencia, <sup>4</sup> must not be considered waived or renounced except upon clear and satisfactory proof of conduct indicative of a free and voluntary intent to that end. There is neither indication nor have there been any allegations that Atty. Adriano did not freely and voluntarily relay his last wishes to his common-law wife, petitioner Fe. Atty. Adriano, therefore, did not waive *his* right to determine where he should be buried, in favor of the persons indicated in Article 305 in relation to Article 199.

Accordingly, it was improper to cite in the ponencia *Tomas Eugenio, Sr. v. Judge Velez*. <sup>5</sup> In *Eugenio*, Tomas Eugenio, Sr. claimed the right to bury his common-law wife, arguing that he should be considered a "spouse" under Article 305 in relation to Article 199. The assertion led this court to expound on the interpretation of Article 305 in relation to Article 199 and conclude that:

. . . . Indeed, Philippine Law does not recognize common law marriages. A man and woman not legally married who cohabit for many years as husband and wife, who represent themselves to the public as husband and wife, and who are reputed to be husband and wife in the community where they live may be considered legally "married" in common law jurisdictions but not in the Philippines.

While it is true that our laws do not just brush aside the fact that such relationships are present in our society, and that they produce a community of properties and interests which is governed by law, authority exists in case law to the effect that such form of co-ownership requires that the man and woman living

together must not in any way be incapacitated to contract marriage. In any case, herein petitioner has a subsisting marriage with another woman, a legal impediment which disqualified him from even legally marrying Vitaliana. In *Santero vs. CFI of Cavite*, the Court, thru Mr. Justice Paras, interpreting Art. 188 of the Civil Code (Support of Surviving Spouse and Children During Liquidation of Inventoried Property) stated: "Be it noted however that with respect to 'spouse', the same must be the legitimate 'spouse' (not common-law spouses. . .)."

There is a view that under Article 332 of the Revised Penal Code, the term "spouse" embraces common law relation for purposes of exemption from criminal liability in cases of theft, swindling and malicious mischief committed or caused mutually by spouses. The Penal Code article, it is said, makes no distinction between a couple whose cohabitation is sanctioned by a sacrament or legal tie and another who are husband and wife *de facto*. But this view cannot even apply to the facts of the case at bar. We hold that the provisions of the Civil Code, unless expressly providing to the contrary as in Article 144, when referring to a "spouse" contemplate a lawfully wedded spouse. Petitioner *vis-a-vis* Vitaliana was not a lawfully-wedded spouse to her; in fact, he was not legally capacitated to marry her in her lifetime. <sup>6</sup>

In the present case, petitioner Fe has not asserted that she be considered a "spouse" under Article 305 in relation to Article 199 with the right and the duty to make funeral arrangements for Atty. Adriano. What she asserts is that she was Atty. Adriano's constant companion for a long time who was constantly by his side, showing him the love and devotion as a wife would have, who took care of him in his final moments and gave him a proper burial. As such, there is a presumption that she would be in the best position to relay his final wishes.

The trial court in its decision dated October 1, 1998 reached the same conclusion, thus:

Atty. Lope Adriano's wish was established at the trial and shown in the following testimony of the defendant, to wit:

"ATTY. PIZARRAS:

**Madam witness, what was the wish of Atty. Lope Adriano regarding his burial?**

WITNESS:

**He wanted to be buried at Manila Memorial.**

Q: Why do you say that?

A: We have discussed it long before.

Q: When did you first discuss this?

A: The first time we went to Manila Memorial. He wanted that his lawn type lot be upgraded to estate type. He doesn't want that people will step on his grave.

Q: What happened to this request if his lawn type lot to be upgraded to estate type?

A: It did not take long. I had it upgraded."

(TSN, May 7, 1997, pp. 4-5; underscoring supplied)

This crucial fact remained unrefuted.

Moreover, considering the very, very long time that the defendant and the deceased lived like husband and wife prior to his death, it can be reasonably assumed that it is the defendant who really knows the wishes of the deceased. And it appears that it was the express wish of the deceased that he be interred at the Manila Memorial Park. <sup>7</sup>

The ponencia also noted there was "animosity" between Atty. Adriano and respondents when he was still alive. He and his legal spouse, respondent Rosario, have been separated-in-fact for more than thirty (30) years, and he has not been in contact with his children, the other respondents, for about the same period of time. They did not even visit him when he fell ill and was on his deathbed; it was only after he died that they came, asserting their rights to his remains.

It is unfortunate that the ponencia would rather uphold the wishes of his estranged family rather than give the deceased his final request. Part of life is the ability to control how one wishes to be memorialized, and such right should remain with the deceased. It is only when the deceased has not left any express instructions that the right is given to the persons specified under the law.

Given the circumstances, the remains of Atty. Adriano should remain in the Floro family mausoleum at the Manila Memorial Park.

The law reaches into much of our lives while we live. It constitutes and frames most of our actions. But at the same time, the law also grants us the autonomy or the space to define who we are. Upon our death, the law does not cease to respect our earned autonomy. Rather, it gives space for us to speak through the agency of she who may have sat at our bedside as we suffered through a lingering illness.

I am of the view that it is that love and caring which should be rewarded with the honor of putting us in that place where we mark our physical presence for the last time and where we will be eternally remembered.

**ACCORDINGLY**, the petition should be **GRANTED**. The decision of the Court of Appeals in CA-G.R. CV No. 61613, reversing the October 1, 1998 decision of the Regional Trial Court, Branch 77, Quezon City, must be **SET ASIDE**.

## Footnotes

1. *Rollo*, pp. 36-46; Penned by Associate Justice Vicente Q. Roxas with Associate Justice Josefina Guevara-Salonga, and Associate Justice Apolinario D. Bruselas, Jr., concurring.
2. *Id.* at 65.
3. *Id.* at 127-131.
4. *Id.* at 129-130.
5. *Id.* at 131.
6. Formerly Article 294a of the New Civil Code.
7. 263 Phil. 1149 (1990).

8. *Id.* at 1158-1159.
9. See *Marawi Marantao General Hospital, Inc. v. CA*, 402 Phil. 356, 369 (2001). See also *Thomson v. CA*, 358 Phil. 761, 778, (1998); *Gatchalian v. Delim*, G.R. No. 56487, October 21, 1991, 203 SCRA 126, 132; *Yepes v. Samar Express Transit*, 123 Phil. 948, 949 (1966); *Andres v. The Crown Life Insurance Co.*, 102 Phil. 919, 924 (1958); *Lang v. Acting Provincial Sheriff of Surigao*, 93 Phil. 661, 669 (1953); and *Fernandez v. Sebido*, 70 Phil. 151, 159 (1940).
10. TOLENTINO, I CIVIL CODE OF THE PHILIPPINES, p. 657, citing *Sheeban v. Commercial Travelers*, 283 Mass. 543, 186 N.E. 627; *Lindh v. Great Northern*, 99 Minn. 408, 109 N.W. 823; *Kyles v. Southern Ry Co.*, 147 N.C. 394, 61 S.E. 278.
11. TOLENTINO, I CIVIL CODE OF THE PHILIPPINES, p. 657, citing *Sacred Heart of Jesus v. Soklowski*, 159 Minn. 331, 199 N.W. 81; *Wilson v. Read*, 74 N.H. 322, 68 Atl. 37; *Pettigrew v. Pettigrew*, 20 Pa. 313, 56 Atl. 878.
12. *Rollo*, p. 43.
13. TOLENTINO, I CIVIL CODE OF THE PHILIPPINES, p. 654, citing 1-I Enneccerus, Kipp & Wolff 548 fn; 1 Valverde 239-240 fn.
14. *Id.* at 43-45.
15. Report of the Code Commission, p. 49.

**LEONEN, J., dissenting:**

1. Ponencia, p. 6.
2. Article 305. The duty and the right to make arrangements for the funeral of a relative shall be in accordance with the order established for support, under Article 294. In case of descendants of the same degree, or of brothers and sisters, the oldest shall be preferred. In case of ascendants, the paternal shall have a better right.
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  - (1) The spouse;
  - (2) The descendants in the nearest degree;
  - (3) The ascendants in the nearest degree; and
  - (4) The brothers and sisters. (294a)
4. Ponencia, p. 6.
5. 263 Phil. 1149 (1990) [Per J. Padilla, En Banc].
6. *Id.* at 1159-1160. See also ponencia, pp. 5-6.
7. *Rollo*, p. 129.