

TWENTY-THIRD DIVISION

[CA-G.R. CV No. 03071, February 25, 2014]

**VINCENT M. DELUNA, PETITIONER-APPELLANT, VS. ROXANE
BALTAR DELUNA, RESPONDENT-APPELLEE.**

D E C I S I O N

LLOREN, J.:

This is an appeal from the Judgment^[1] dated September 21, 2012 of the Regional Trial Court of Misamis Oriental, 10th Judicial Region, Branch 22 in FC Civil Case No. 2007-03. The dispositive portion of which reads as follows:

"WHEREFORE, the foregoing considered, judgment is hereby rendered declaring the marriage entered into by petitioner VINCENT M. DELUNA and respondent ROXANE P. BALTAR-DELUNA on June 5, 1999 at the St. Ignatius de Loyola Parish, Camp Evangelista, Cagayan de Oro City officiated by Rev. Fr. Fidel S. Era, Jr. as valid and subsisting, and this case is hereby ordered dismissed for lack of evidence.

The custody of the minor child Vince Djimoun Baltar Deluna is granted to the respondent, Roxane P. Baltar-Deluna. The father petitioner is given visitatorial rights over the said child from Friday afternoon to Sunday morning. He may take the child on special occasions with the permission of the respondent.

SO ORDERED."^[2]

The facts as culled from the records:

Appellant Vincent M. Deluna and appellee Roxane Baltar were married on June 5, 1999 at St. Ignatius de Loyola Parish, Camp Evangelista Cagayan de Oro City^[3]. Their union begot a child named Vince Djimoun Baltar Deluna.^[4]

On January 25, 2007, appellant filed with the RTC of Misamis Oriental a Petition for Annulment of Marriage which was docketed as FC Civil Case No. 2007-03^[5]. He alleged that his wife is a lesbian and is psychologically incapacitated to perform her obligations as a wife and as a mother to their son.^[6] Thus, appellant prays that his marriage be declared void.^[7]

On February 22, 2007, the Office of the Solicitor General entered its appearance as counsel for the Republic of the Philippines and authorized the Office of the City Prosecutor of Cagayan de Oro City to appear in this case.^[8] On March 16, 2007, the court *a quo* issued an Order^[9] directing the City Prosecutor of Cagayan de Oro City to conduct an investigation as to whether or not collusion exists between the parties

in filing this case.^[10] Likewise, the said Order^[11] directed the Social Welfare Office to conduct a social case study considering that a minor is involved in this case.

On May 15, 2007, appellee Roxane filed an Answer^[12] alleging that the financial support that appellant sent to her from Malaysia barely covered their needs, leaving (sic) them with no single centavo for savings.^[13] Appellee claims that appellant Vincent is not providing support for the family. He stopped sending money for their basic needs, had not visited them in Cagayan de Oro City for a long time, and that he never bothered to communicate with them, nor showed concern for their condition. On the contrary, it was appellee who single-handedly raised and provided for their own child.^[14]

On June 15, 2007, the Social Welfare Office of Cagayan de Oro City submitted her Social Case Study Report^[15] before the court *a quo* and recommended that the minor, Vince Djimoun Baltar Deluna, should remain in the custody of his mother. The father, appellant Vincent, shall be entitled to visitorial rights over said child and is allowed to take the child during special occasions. Lastly, the appellant must provide financial support for the child's education and other needs that the Court must determine.^[16]

On December 22, 2009, a Compromise Agreement^[17] was entered into by the appellant and the appellee, assisted by their respective counsels, as to the custody, visitation rights, medical benefits, educational assistance, and support of their minor child. On January 22, 2010, the court *a quo* rendered a Partial Judgment^[18] approving the compromise agreement and enjoining the parties to observe and comply strictly with the terms and conditions set forth therein.^[19]

On September 21, 2012, the RTC rendered a Judgment,^[20] the dispositive portion of which was quoted at the outset.

The appellant filed a Motion for Reconsideration^[21] which was denied in an Order^[22] dated October 19, 2012. Hence, the appellant appealed^[23] before Us and raised the following errors, to wit:

1. THE HONORABLE COURT A QUO COMMITTED REVERSIBLE ERROR IN RULING THAT THE APPELLANT FAILED TO PROVE THE PSYCHOLOGICAL INCAPACITY OF THE APPELLEE;
2. THE HONORABLE COURT A QUO COMMITTED REVERSIBLE ERROR IN RULING THAT THE FINDINGS AND CONCLUSIONS OF THE PSYCHIATRIST ARE UNDESERVING TO BE RELIED UPON;
3. THE HONORABLE COURT A QUO COMMITTED REVERSIBLE ERROR IN DISMISSING THE PETITION FOR LACK OF EVIDENCE.^[24]

The Ruling of this Court

The main issue is whether or not the totality of appellant's evidence was able to prove that respondent is psychologically incapacitated to comply with the essential obligations of marriage warranting the annulment of their marriage under Article 36 of the Family Code, to wit:

xxx. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

In *Republic v. Court of Appeals*,^[25] the Supreme Court laid down the guidelines in the interpretation and application of Article 36 of the Family Code, thus:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

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(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological -- not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild

characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally -- subject to our law on evidence -- what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church -- while remaining independent, separate and apart from each other -- shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.

The guidelines incorporate the three basic requirements earlier mandated by the Supreme Court in *Santos v. Court of Appeals*^[26] "psychological incapacity must be