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SPECIAL FIRST DIVISION

[G.R. No. 166357, January 14, 2015]

VALERIO E. KALAW, PETITIONER, VS. MA. ELENA FERNANDEZ, RESPONDENT.

R E S O L U T I O N

BERSAMIN, J.:

In our decision promulgated on September 19, 2011,[1] the Court dismissed the complaint for declaration of nullity of the marriage of the parties upon the following ratiocination, to wit:

> The petition has no merit. The CA committed no reversible error in setting aside the trial court's Decision for lack of legal and factual basis.
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> In the case at bar, petitioner failed to prove that his wife (respondent) suffers from psychological incapacity. He presented the testimonies of two supposed expert witnesses who concluded that respondent is psychologically incapacitated, but the conclusions of these witnesses were premised on the alleged acts or behavior of respondent which had not been sufficiently proven. Petitioner's experts heavily relied on petitioner's allegations of respondent's constant mahjong sessions, visits to the beauty parlor, going out with friends, adultery, and neglect of their children. Petitioner's experts opined that respondent's alleged habits, when performed constantly to the detriment of quality and quantity of time devoted to her duties as mother and wife, constitute a psychological incapacity in the form of NPD.
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> But petitioner's allegations, which served as the bases or underlying premises of the conclusions of his experts, were not actually proven. In fact, respondent presented contrary evidence refuting these allegations of the petitioner.
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> For instance, petitioner alleged that respondent constantly played mahjong and neglected their children as a result. Respondent admittedly played mahjong, but it was not proven that she engaged in mahjong so frequently that she ***neglected*** her duties as a mother and a wife. Respondent refuted petitioner's allegations that she played four to five times a week. She maintained it was only two to three times a week and always with the permission of her husband and without abandoning her children at home. The children corroborated this, saying that they were with their mother when she played mahjong in their relative's home.

Petitioner did not present any proof, other than his own testimony, that the mahjong sessions were so frequent that respondent neglected her family. While he intimated that two of his sons repeated the second grade, he was not able to link this episode to respondent's mahjong-playing. The least that could have been done was to prove the frequency of respondent's mahjong-playing during the years when these two children were in second grade. This was not done. Thus, while there is no dispute that respondent played mahjong, its alleged debilitating frequency and adverse effect on the children were not proven.

Also unproven was petitioner's claim about respondent's alleged constant visits to the beauty parlor, going out with friends, and obsessive need for attention from other men. No proof whatsoever was presented to prove her visits to beauty salons or her frequent partying with friends. Petitioner presented Mario (an alleged companion of respondent during these nights-out) in order to prove that respondent had affairs with other men, but Mario only testified that respondent *appeared* to be dating other men. Even assuming *arguendo* that petitioner was able to prove that respondent had an extramarital affair with another man, that one instance of sexual infidelity cannot, by itself, be equated with obsessive need for attention from other men. Sexual infidelity per se is a ground for legal separation, but it does not necessarily constitute psychological incapacity.

Given the insufficiency of evidence that respondent actually engaged in the behaviors described as constitutive of NPD, there is no basis for concluding that she was indeed psychologically incapacitated. Indeed, the totality of the evidence points to the opposite conclusion. A fair assessment of the facts would show that respondent was not totally remiss and incapable of appreciating and performing her marital and parental duties. Not once did the children state that they were neglected by their mother. On the contrary, they narrated that she took care of them, was around when they were sick, and cooked the food they like. It appears that respondent made real efforts to see and take care of her children despite her estrangement from their father. There was no testimony whatsoever that shows abandonment and neglect of familial duties. While petitioner cites the fact that his two sons, Rio and Miggy, both failed the second elementary level despite having tutors, there is nothing to link their academic shortcomings to Malyn's actions.

After poring over the records of the case, the Court finds no factual basis for the conclusion of psychological incapacity. There is no error in the CA's reversal of the trial court's ruling that there was psychological incapacity. The trial court's Decision merely summarized the allegations, testimonies, and evidence of the respective parties, but it did not actually assess the veracity of these allegations, the credibility of the witnesses, and the weight of the evidence. The trial court did not make factual findings which can serve as bases for its legal conclusion of psychological incapacity.

What transpired between the parties is acrimony and, perhaps, infidelity, which may have constrained them from dedicating the best of themselves

to each other and to their children. There may be grounds for legal separation, but certainly not psychological incapacity that voids a marriage.

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals' May 27, 2004 Decision and its December 15, 2004 Resolution in CA-G.R. CV No. 64240 are AFFIRMED.

SO ORDERED.[2]

In his Motion for Reconsideration,[3] the petitioner implores the Court to take a thorough second look into what constitutes *psychological incapacity*; to uphold the findings of the trial court as supported by the testimonies of three expert witnesses; and consequently to find that the respondent, if not both parties, were psychologically incapacitated to perform their respective essential marital obligation.

Upon an assiduous review of the records, we resolve to grant the petitioner's Motion for Reconsideration.

I

Psychological incapacity as a ground for the nullity of marriage under Article 36 of the Family Code refers to a serious psychological illness afflicting a party even prior to the celebration of the marriage that is permanent as to deprive the party of the awareness of the duties and responsibilities of the matrimonial bond he or she was about to assume. Although the Family Code has not defined the term *psychological incapacity*, the Court has usually looked up its meaning by reviewing the deliberations of the sessions of the Family Code Revision Committee that had drafted the Family Code in order to gain an insight on the provision. It appeared that the members of the Family Code Revision Committee were not unanimous on the meaning, and in the end they decided to adopt the provision "with less specificity than expected" in order to have the law "allow some resiliency in its application."[4] Illustrative of the "less specificity than expected" has been the omission by the Family Code Revision Committee to give any examples of psychological incapacity that would have limited the applicability of the provision conformably with the principle of *ejusdem generis*, because the Committee desired that the courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and the decisions of church tribunals that had persuasive effect by virtue of the provision itself having been taken from the Canon Law.[5]

On the other hand, as the Court has observed in *Santos v. Court of Appeals*,[6] the deliberations of the Family Code Revision Committee and the relevant materials on psychological incapacity as a ground for the nullity of marriage have rendered it obvious that the term *psychological incapacity* as used in Article 36 of the Family Code "has not been meant to comprehend all such possible cases of psychoses as, likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity, and like circumstances," and could not be taken and construed independently of "but must stand in conjunction with, existing precepts in our law

on marriage." Thus correlated:-

> x x x "psychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. This psychologic condition must exist at the time the marriage is celebrated. The law does not evidently envision, upon the other hand, an inability of the spouse to have sexual relations with the other. This conclusion is implicit under Article 54 of the Family Code which considers children conceived prior to the judicial declaration of nullity of the void marriage to be "legitimate."[7]

In time, in *Republic v. Court of Appeals,*[8] the Court set some guidelines for the interpretation and application of Article 36 of the Family Code, as follows:

> (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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> The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence, inviolability* and *solidarity*.
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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