

THIRD DIVISION

[G.R. No. 179786, July 24, 2013]

**JOSIELENE LARA CHAN, PETITIONER, VS. JOHNNY T. CHAN,
RESPONDENT.**

DECISION

ABAD, J.:

This case is about the propriety of issuing a subpoena *duces tecum* for the production and submission in court of the respondent husband's hospital record in a case for declaration of nullity of marriage where one of the issues is his mental fitness as a husband.

The Facts and the Case

On February 6, 2006 petitioner Josielene Lara Chan (Josielene) filed before the Regional Trial Court (RTC) of Makati City, Branch 144 a petition for the declaration of nullity of her marriage to respondent Johnny Chan (Johnny), the dissolution of their conjugal partnership of gains, and the award of custody of their children to her. Josielene claimed that Johnny failed to care for and support his family and that a psychiatrist diagnosed him as mentally deficient due to incessant drinking and excessive use of prohibited drugs. Indeed, she had convinced him to undergo hospital confinement for detoxification and rehabilitation.

Johnny resisted the action, claiming that it was Josielene who failed in her wifely duties. To save their marriage, he agreed to marriage counseling but when he and Josielene got to the hospital, two men forcibly held him by both arms while another gave him an injection. The marriage relations got worse when the police temporarily detained Josielene for an unrelated crime and released her only after the case against her ended. By then, their marriage relationship could no longer be repaired.

During the pre-trial conference, Josielene pre-marked the Philhealth Claim Form¹ that Johnny attached to his answer as proof that he was forcibly confined at the rehabilitation unit of a hospital. The form carried a physician's handwritten note that Johnny suffered from "methamphetamine and alcohol abuse." Following up on this point, on August 22, 2006 Josielene filed with the RTC a request for the issuance of a subpoena *duces tecum* addressed to Medical City, covering Johnny's medical records when he was there confined. The request was accompanied by a motion to "be allowed to submit in evidence" the records sought by subpoena *duces tecum*.^[2]

Johnny opposed the motion, arguing that the medical records were covered by physician-patient privilege. On September 13, 2006 the RTC sustained the opposition and denied Josielene's motion. It also denied her motion for reconsideration, prompting her to file a special civil action of *certiorari* before the Court of Appeals (CA) in CA-G.R. SP 97913, imputing grave abuse of discretion to

the RTC.

On September 17, 2007 the CA^[3] denied Josielene's petition. It ruled that, if courts were to allow the production of medical records, then patients would be left with no assurance that whatever relevant disclosures they may have made to their physicians would be kept confidential. The prohibition covers not only testimonies, but also affidavits, certificates, and pertinent hospital records. The CA added that, although Johnny can waive the privilege, he did not do so in this case. He attached the Philhealth form to his answer for the limited purpose of showing his alleged forcible confinement.

Question Presented

The central question presented in this case is:

Whether or not the CA erred in ruling that the trial court correctly denied the issuance of a subpoena *duces tecum* covering Johnny's hospital records on the ground that these are covered by the privileged character of the physician-patient communication.

The Ruling of the Court

Josielene requested the issuance of a subpoena *duces tecum* covering the hospital records of Johnny's confinement, which records she wanted to present in court as evidence in support of her action to have their marriage declared a nullity. Respondent Johnny resisted her request for subpoena, however, invoking the privileged character of those records. He cites Section 24(c), Rule 130 of the Rules of Evidence which reads:

SEC. 24. *Disqualification by reason of privileged communication.*— The following persons cannot testify as to matters learned in confidence in the following cases:

x x x x

(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient.

The physician-patient privileged communication rule essentially means that a physician who gets information while professionally attending a patient cannot in a civil case be examined without the patient's consent as to any facts which would blacken the latter's reputation. This rule is intended to encourage the patient to open up to the physician, relate to him the history of his ailment, and give him access to his body, enabling the physician to make a correct diagnosis of that ailment and provide the appropriate cure. Any fear that a physician could be compelled in the future to come to court and narrate all that had transpired between

him and the patient might prompt the latter to clam up, thus putting his own health at great risk.^[4]

1. The case presents a procedural issue, given that the time to object to the admission of evidence, such as the hospital records, would be at the time they are offered. The offer could be made part of the physician's testimony or as independent evidence that he had made entries in those records that concern the patient's health problems.

Section 36, Rule 132, states that objections to evidence must be made after the offer of such evidence for admission in court. Thus:

SEC. 36. *Objection.*— Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified.

Since the offer of evidence is made at the trial, Josielene's request for subpoena *duces tecum* is premature. She will have to wait for trial to begin before making a request for the issuance of a subpoena *duces tecum* covering Johnny's hospital records. It is when those records are produced for examination at the trial, that Johnny may opt to object, not just to their admission in evidence, but more so to their disclosure. Section 24(c), Rule 130 of the Rules of Evidence quoted above is about non-disclosure of privileged matters.

2. It is of course possible to treat Josielene's motion for the issuance of a subpoena *duces tecum* covering the hospital records as a motion for production of documents, a discovery procedure available to a litigant prior to trial. Section 1, Rule 27 of the Rules of Civil Procedure provides:

SEC. 1. *Motion for production or inspection; order.*— Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, **not privileged**, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of