

FIRST DIVISION

[G.R. No. 166357, September 19, 2011]

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

D E C I S I O N

DEL CASTILLO, J.:

A finding of psychological incapacity must be supported by well-established facts. It is the plaintiff's burden to convince the court of the existence of these facts.

Before the Court is a Petition for Review^[1] of the Court of Appeals' (CA) May 27, 2004 Decision^[2] and December 15, 2004 Resolution^[3] in CA-G.R. CV No. 64240, which reversed the trial court's declaration of nullity of the herein parties' marriage. The *fallo* of the assailed Decision reads:

WHEREFORE, the appeal is **GRANTED**, and the assailed Decision is **SET ASIDE** and **VACATED** while the petition for declaration of nullity of marriage is hereby **DISMISSED**.

SO ORDERED.^[4]

Factual Antecedents

Petitioner Valerio E. Kalaw (Tyrone) and respondent Ma. Elena Fernandez (Malyn) met in 1973. They maintained a relationship and eventually married in Hong Kong on November 4, 1976. They had four children, Valerio (Rio), Maria Eva (Ria), Ramon Miguel (Miggy or Mickey), and Jaime Teodoro (Jay).

Shortly after the birth of their youngest son, Tyrone had an extramarital affair with Jocelyn Quejano (Jocelyn), who gave birth to a son in March 1983.^[5]

In May 1985, Malyn left the conjugal home (the house of her Kalaw in-laws) and her four children with Tyrone.^[6] Meanwhile, Tyrone started living with Jocelyn, who bore him three more children.^[7]

In 1990, Tyrone went to the United States (US) with Jocelyn and their children. He left his four children from his marriage with Malyn in a rented house in Valle Verde with only a househelp and a driver.^[8] The househelp would just call Malyn to take care of the children whenever any of them got sick. Also, in accordance with their custody agreement, the children stayed with Malyn on weekends.^[9]

In 1994, the two elder children, Rio and Ria, asked for Malyn's permission to go to Japan for a one-week vacation. Malyn acceded only to learn later that Tyrone brought the children to the US.^[10] After just one year, Ria returned to the Philippines and chose to live with Malyn.

Meanwhile, Tyrone and Jocelyn's family returned to the Philippines and resumed physical custody of the two younger children, Miggy and Jay. According to Malyn, from that time on, the children refused to go to her house on weekends because of alleged weekend plans with their father.^[11]

Complaint for declaration of nullity of marriage

On July 6, 1994, nine years since the *de facto* separation from his wife, Tyrone filed a petition for declaration of nullity of marriage based on Article 36 of the Family Code.^[12] He alleged that Malyn was psychologically incapacitated to perform and comply with the essential marital obligations at the time of the celebration of their marriage. He further claimed that her psychological incapacity was manifested by her immaturity and irresponsibility towards Tyrone and their children during their co-habitation, as shown by Malyn's following acts:

1. she left the children without proper care and attention as she played mahjong all day and all night;
2. she left the house to party with male friends and returned in the early hours of the following day; and
3. she committed adultery on June 9, 1985, which act Tyrone discovered *in flagrante delicto*.^[13]

During trial,^[14] Tyrone narrated the circumstances of Malyn's alleged infidelity. According to him, on June 9, 1985, he and his brother-in-law, Ronald Fernandez (Malyn's brother), proceeded to Hyatt Hotel and learned that Malyn was occupying a room with a certain Benjie Guevarra (Benjie). When he proceeded to the said room, he saw Benjie and Malyn inside.^[15] At rebuttal, Tyrone elaborated that Benjie was wearing only a towel around his waist, while Malyn was lying in bed in her underwear. After an exchange of words, he agreed not to charge Malyn with adultery when the latter agreed to relinquish all her marital and parental rights.^[16] They put their agreement in writing before Atty. Jose Palarca.

Tyrone presented a psychologist, Dr. Cristina Gates (Dr. Gates), and a Catholic canon law expert, Fr. Gerard Healy, S.J. (Fr. Healy), to testify on Malyn's psychological incapacity.

Dr. Gates explained on the stand that the factual allegations regarding Malyn's behavior - her sexual infidelity, habitual mahjong playing, and her frequent nights-out with friends - may reflect a narcissistic personality disorder (NPD).^[17] NPD is present when a person is **obsessed** to meet her wants and needs in utter disregard of her significant others.^[18] Malyn's NPD is manifest in her **utter** neglect of her

duties as a mother.^[19]

Dr. Gates reported that Malyn's personality disorder "may have been evident even prior to her marriage" because it is rooted in her family background and upbringing, which the psychologist gathered to be materially deprived and without a proper maternal role model.^[20]

Dr. Gates based her diagnosis on the facts revealed by her interviews with Tyrone, Trinidad Kalaw (Tyrone's sister-in-law), and the son Miggy. She also read the transcript of Tyrone's court testimony.^[21]

Fr. Healy corroborated Dr. Gates' assessment. He concluded that Malyn was psychologically incapacitated to perform her marital duties.^[22] He explained that her psychological incapacity is rooted in her role as the breadwinner of her family. This role allegedly inflated Malyn's ego to the point that her needs became priority, while her kids' and husband's needs became secondary. Malyn is so self-absorbed that she is incapable of prioritizing her family's needs.

Fr. Healy clarified that playing mahjong and spending time with friends are not disorders by themselves. They only constitute psychological incapacity whenever inordinate amounts of time are spent on these activities to the detriment of one's familial duties.^[23] Fr. Healy characterized Malyn's psychological incapacity as grave and incurable.^[24]

He based his opinion on his interview with Tyrone, the trial transcripts, as well as the report of Dr. Natividad Dayan (Dr. Dayan), Malyn's expert witness.^[25] He clarified that he did not verify the truthfulness of the factual allegations regarding Malyn's "habits" because he believed it is the court's duty to do so.^[26] Instead, he formed his opinion on the assumption that the factual allegations are indeed true.

Malyn's version

Malyn denied being psychologically incapacitated.^[27] While she admitted playing mahjong, she denied playing as frequently as Tyrone alleged. She maintained that she did so only two to three times a week and always between 1 p.m. to 6 p.m. only.^[28] And in those instances, she always had Tyrone's permission and would often bring the children and their respective *yayas* with her.^[29] She maintained that she did not neglect her duties as mother and wife.

Malyn admitted leaving the conjugal home in May 1985. She, however, explained that she did so only to escape her physically abusive husband.^[30] On the day she left, Tyrone, who preferred to keep Malyn a housewife, was upset that Malyn was preparing to go to work. He called up the security guards and instructed them not to let Malyn out of the house. Tyrone then placed cigarette ashes on Malyn's head and proceeded to lock the bedroom doors. Fearing another beating, Malyn rushed out of their bedroom and into her mother-in-law's room. She blurted that Tyrone would beat her up again so her mother-in-law gave her P300 to leave the house.^[31] She never returned to their conjugal home.

Malyn explained that she applied for work, against Tyrone's wishes, because she wanted to be self-sufficient. Her resolve came from her discovery that Tyrone had a son by Jocelyn and had secretly gone to the US with Jocelyn.^[32]

Malyn denied the allegation of adultery. She maintained that Benjie only booked a room at the Hyatt Hotel for her because she was so drunk after partying with friends. She admitted finding her brother Ronald and Tyrone at the door of the Hyatt Hotel room, but maintained being fully clothed at that time.^[33] Malyn insisted that she wrote the letter relinquishing all her spousal and parental rights under duress.^[34]

After the Hyatt Hotel incident, Malyn only saw her children by surreptitiously visiting them in school. She later obtained partial custody of the children as an incident to the legal separation action filed by Tyrone against her (which action was subsequently dismissed for lack of interest).

As an affirmative defense, Malyn maintained that it was Tyrone who was suffering from psychological incapacity, as manifested by his drug dependence, habitual drinking, womanizing, and physical violence.^[35] Malyn presented Dr. Dayan a clinical psychologist, as her expert witness.

Dr. Dayan interviewed Tyrone, Malyn, Miggy/Mickey, Jay, and Ria for her psychological evaluation of the spouses. The factual narrations culled from these interviews reveal that Tyrone found Malyn a "lousy" mother because of her mahjong habit,^[36] while Malyn was fed up with Tyrone's sexual infidelity, drug habit, and physical abuse.^[37] Dr. Dayan determined that both Tyrone and Malyn were behaviorally immature. They encountered problems because of their personality differences, which ultimately led to the demise of their marriage. Her diagnostic impressions are summarized below:

The marriage of Tyrone and Malyn was a mistake from the very beginning. Both of them were not truly ready for marriage even after two years of living together and having a child. When Malyn first met Tyrone who showered her with gifts, flowers, and affection she resisted his overtures. She made it clear that she could 'take him or leave him.' But the minute she started to care, she became a different person - clingy and immature, doubting his love, constantly demanding reassurance that she was the most important person in his life. She became relationship-dependent. It appears that her style then was when she begins to care for a man, she puts all her energy into him and loses focus on herself. This imbalance between thinking and feeling was overwhelming to Tyrone who admitted that the thought of commitment scared him. Tyrone admitted that when he was in his younger years, he was often out seeking other women. His interest in them was not necessarily for sex, just for fun - dancing, drinking, or simply flirting.

Both of them seem behaviorally immature. For some time, Malyn adapted to her husband who was a moody man with short temper and unresolved issues with parents and siblings. He was a distancer, concerned more about his work and friends tha[n] he was about

spending time with his family. Because of Malyn's and Tyrone's backgrounds (both came from families with high conflicts) they experienced turmoil and chaos in their marriage. The conflicts they had struggled to avoid suddenly galloped out of control. Their individual personalities broke through, precipitating the demise of their marriage.

[38]

Dr. Dayan likewise wrote in her psychological evaluation report that Malyn exhibited significant, but not severe, dependency, narcissism, and compulsiveness.[39]

On the stand, the psychologist elaborated that while Malyn had relationship problems with Tyrone, she appeared to have a good relationship with her kids.[40] As for Tyrone, he has commitment issues which prevent him from committing himself to his duties as a husband. He is unable to remain faithful to Malyn and is psychologically incapacitated to perform this duty.[41]

Children's version

The children all stated that both their parents took care of them, provided for their needs, and loved them. Rio testified that they would accompany their mother to White Plains on days that she played mahjong with her friends. None of them reported being neglected or feeling abandoned.

The two elder kids remembered the fights between their parents but it was only Ria who admitted actually witnessing physical abuse inflicted on her mother.[42] The two elder kids also recalled that, after the separation, their mother would visit them only in school.[43]

The children recalled living in Valle Verde with only the househelp and driver during the time that their dad was abroad.[44] While they did not live with their mother while they were housed in Valle Verde, the kids were in agreement that their mother took care of them on weekends and would see to their needs. They had a common recollection that the househelp would call their mother to come and take care of them in Valle Verde whenever any of them was sick.[45]

Other witnesses

Dr. Cornelio Banaag, Tyrone's attending psychiatrist at the Manila Sanitarium, testified that, for the duration of Tyrone's confinement, the couple appeared happy and the wife was commendable for the support she gave to her spouse.[46] He likewise testified that Tyrone tested negative for drugs and was not a drug dependent.[47]

Malyn's brother, Ronald Fernandez, confirmed Tyrone's allegation that they found Malyn with Benjie in the Hyatt hotel room. Contrary to Tyrone's version, he testified that neither he nor Tyrone entered the room, but stayed in the hallway. He likewise did not recall seeing Benjie or Malyn half-naked.[48]

Tyrone then presented Mario Calma (Mario), who was allegedly part of Malyn's