

## THIRD DIVISION

[ G.R. No. 168796, April 15, 2010 ]

**SILVINO A. LIGERALDE, PETITIONER, VS. MAY ASCENSION A. PATALINGHUG AND THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This petition seeks to set aside the November 30, 2004 Decision<sup>[1]</sup> of the Court of Appeals (CA) which reversed the Decision<sup>[2]</sup> of the Regional Trial Court of Dagupan City (RTC) declaring the marriage between petitioner Silvino A. Ligeralde (*Silvino*) and private respondent May Ascension A. Patalinghug (*May*) null and void.

Silvino and May got married on October 3, 1984. They were blessed with four children. Silvino claimed that, during their marriage, he observed that May had several manifestations of a negative marital behavior. He described her as immature, irresponsible and carefree. Her infidelity, negligence and nocturnal activities, he claimed, characterized their marital relations.

Sometime in September 1995, May arrived home at 4:00 o'clock in the morning. Her excuse was that she had watched a video program in a neighboring town, but admitted later to have slept with her Palestinian boyfriend in a hotel. Silvino tried to persuade her to be conscientious of her duties as wife and mother. His pleas were ignored. His persuasions would often lead to altercations or physical violence.

In the midst of these, Silvino's deep love for her, the thought of saving their marriage for the sake of their children, and the commitment of May to reform dissuaded him from separating from her. He still wanted to reconcile with her.

The couple started a new life. A few months after, however, he realized that their marriage was hopeless. May was back again to her old ways. This was demonstrated when Silvino arrived home one day and learned that she was nowhere to be found. He searched for her and found her in a nearby apartment drinking beer with a male lover.

Later, May confessed that she had no more love for him. They then lived separately.

With May's irresponsible, immature and immoral behavior, Silvino came to believe that she is psychologically incapacitated to comply with the essential obligations of marriage.

Prior to the filing of the complaint, Silvino referred the matter to Dr. Tina Nicdao-Basilio for psychological evaluation. The psychologist certified that May was psychologically incapacitated to perform her essential marital obligations; that the

incapacity started when she was still young and became manifest after marriage; and that the same was serious and incurable.<sup>[3]</sup>

On October 22, 1999, the RTC declared the marriage of Silvino and May null and void. Its findings were based on the Psychological Evaluation Report of Dr. Tina Nicdao-Basilio.

The Court of Appeals reversed the RTC decision. It ruled that private respondent's alleged sexual infidelity, emotional immaturity and irresponsibility do not constitute psychological incapacity within the contemplation of the Family Code and that the psychologist failed to identify and prove the root cause thereof or that the incapacity was medically or clinically permanent or incurable.

Hence, this petition for certiorari under Rule 65.

The core issue raised by petitioner Silvino Ligeralde is that "the assailed order of the CA is based on conjecture and, therefore, issued without jurisdiction, in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction."<sup>[4]</sup>

The Court required the private respondent to comment but she failed to do so. Efforts were exerted to locate her but to no avail.

Nevertheless, the petition is technically and substantially flawed. On procedural grounds, the Court agrees with the public respondent that the petitioner should have filed a petition for review on certiorari under Rule 45 instead of this petition for certiorari under Rule 65. For having availed of the wrong remedy, this petition deserves outright dismissal.

Substantially, the petition has no merit. In order to avail of the special civil action for *certiorari* under Rule 65 of the Revised Rules of Court,<sup>[5]</sup> the petitioner must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess in jurisdiction. By grave abuse of discretion is meant such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power.<sup>[6]</sup>

In this case at bench, the Court finds no commission of a grave abuse of discretion in the rendition of the assailed CA decision dismissing petitioner's complaint for declaration of nullity of marriage under Article 36 of the Family Code. Upon close scrutiny of the records, we find nothing whimsical, arbitrary or capricious in its findings.

A petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides: