

FIRST DIVISION

[G.R. NO. 127358, March 31, 2005]

**NOEL BUENAVENTURA, PETITIONER, VS. COURT OF APPEALS
AND ISABEL LUCIA SINGH BUENAVENTURA, RESPONDENTS.**

G.R. NO. 127449

**NOEL BUENAVENTURA, PETITIONER, VS. COURT OF APPEALS
AND ISABEL LUCIA SINGH BUENAVENTURA, RESPONDENTS;.**

D E C I S I O N

AZCUNA, J.:

These cases involve a petition for the declaration of nullity of marriage, which was filed by petitioner Noel Buenaventura on July 12, 1992, on the ground of the alleged psychological incapacity of his wife, Isabel Singh Buenaventura, herein respondent. After respondent filed her answer, petitioner, with leave of court, amended his petition by stating that both he and his wife were psychologically incapacitated to comply with the essential obligations of marriage. In response, respondent filed an amended answer denying the allegation that she was psychologically incapacitated.

[1]

On July 31, 1995, the Regional Trial Court promulgated a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1) Declaring and decreeing the marriage entered into between plaintiff Noel A. Buenaventura and defendant Isabel Lucia Singh Buenaventura on July 4, 1979, null and void *ab initio*;

2) Ordering the plaintiff to pay defendant moral damages in the amount of 2.5 million pesos and exemplary damages of 1 million pesos with 6% interest from the date of this decision plus attorney's fees of P100,000.00;

3) Ordering the plaintiff to pay the defendant expenses of litigation of P50,000.00, plus costs;

4) Ordering the liquidation of the assets of the conjugal partnership property[,] particularly the plaintiff's separation/retirement benefits received from the Far East Bank [and] Trust Company[,] by ceding, giving and paying to her fifty percent (50%) of the net amount of P3,675,335.79 or P1,837,667.89 together with 12% interest per annum from the date of this decision and one-half (1/2) of his outstanding shares of stock with Manila Memorial Park and Provident Group of

Companies;

5) Ordering him to give a regular support in favor of his son Javy Singh Buenaventura in the amount of P15,000.00 monthly, subject to modification as the necessity arises;

6) Awarding the care and custody of the minor Javy Singh Buenaventura to his mother, the herein defendant; and

7) Hereby authorizing the defendant to revert back to the use of her maiden family name Singh.

Let copies of this decision be furnished the appropriate civil registry and registries of properties.

SO ORDERED.^[2]

Petitioner appealed the above decision to the Court of Appeals. While the case was pending in the appellate court, respondent filed a motion to increase the P15,000 monthly support *pendente lite* of their son Javy Singh Buenaventura. Petitioner filed an opposition thereto, praying that it be denied or that such incident be set for oral argument.^[3]

On September 2, 1996, the Court of Appeals issued a Resolution increasing the support *pendente lite* to P20,000.^[4] Petitioner filed a motion for reconsideration questioning the said Resolution.^[5]

On October 8, 1996, the appellate court promulgated a Decision dismissing petitioner's appeal for lack of merit and affirming in toto the trial court's decision.^[6] Petitioner filed a motion for reconsideration which was denied. From the abovementioned Decision, petitioner filed the instant Petition for Review on *Certiorari*.

On November 13, 1996, through another Resolution, the Court of Appeals denied petitioner's motion for reconsideration of the September 2, 1996 Resolution, which increased the monthly support for the son.^[7] Petitioner filed a Petition for *Certiorari* to question these two Resolutions.

On July 9, 1997, the Petition for Review on *Certiorari*^[8] and the Petition for *Certiorari*^[9] were ordered consolidated by this Court.^[10]

In the Petition for Review on *Certiorari* petitioner claims that the Court of Appeals decided the case not in accord with law and jurisprudence, thus:

1. WHEN IT AWARDED DEFENDANT-APPELLEE MORAL DAMAGES IN THE AMOUNT OF P2.5 MILLION AND EXEMPLARY DAMAGES OF P1 MILLION, WITH 6% INTEREST FROM THE DATE OF ITS DECISION, WITHOUT ANY LEGAL AND MORAL BASIS;

2. WHEN IT AWARDED P100,000.00 ATTORNEY'S FEES AND P50,000.00 EXPENSES OF LITIGATION, PLUS COSTS, TO

DEFENDANT-APPELLEE, WITHOUT FACTUAL AND LEGAL BASIS;

3. WHEN IT ORDERED PLAINTIFF-APPELLANT NOEL TO PAY DEFENDANT-APPELLEE ONE-HALF OR P1,837,667.89 OUT OF HIS RETIREMENT BENEFITS RECEIVED FROM THE FAR EAST BANK AND TRUST CO., WITH 12% INTEREST THEREON FROM THE DATE OF ITS DECISION, NOTWITHSTANDING THAT SAID RETIREMENT BENEFITS ARE GRATUITOUS AND EXCLUSIVE PROPERTY OF NOEL, AND ALSO TO DELIVER TO DEFENDANT-APPELLEE ONE-HALF OF HIS SHARES OF STOCK WITH THE MANILA MEMORIAL PARK AND THE PROVIDENT GROUP OF COMPANIES, ALTHOUGH SAID SHARES OF STOCK WERE ACQUIRED BY NOEL BEFORE HIS MARRIAGE TO RESPONDENT ISABEL AND ARE, THEREFORE, AGAIN HIS EXCLUSIVE PROPERTIES; AND
4. WHEN IT AWARDED EXCLUSIVE CARE AND CUSTODY OVER THE PARTIES' MINOR CHILD TO DEFENDANT-APPELLEE WITHOUT ASKING THE CHILD (WHO WAS ALREADY 13 YEARS OLD AT THAT TIME) HIS CHOICE AS TO WHOM, BETWEEN HIS TWO PARENTS, HE WOULD LIKE TO HAVE CUSTODY OVER HIS PERSON.^[11]

In the Petition for *Certiorari*, petitioner advances the following contentions:

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT REFUSED TO SET RESPONDENT'S MOTION FOR INCREASED SUPPORT FOR THE PARTIES' SON FOR HEARING.^[12]

THERE WAS NO NEED FOR THE COURT OF APPEALS TO INCREASE JAVY'S MONTHLY SUPPORT OF P15,000.00 BEING GIVEN BY PETITIONER EVEN AT PRESENT PRICES.^[13]

IN RESOLVING RESPONDENT'S MOTION FOR THE INCREASE OF JAVY'S SUPPORT, THE COURT OF APPEALS SHOULD HAVE EXAMINED THE LIST OF EXPENSES SUBMITTED BY RESPONDENT IN THE LIGHT OF PETITIONER'S OBJECTIONS THERETO, INSTEAD OF MERELY ASSUMING THAT JAVY IS ENTITLED TO A P5,000 INCREASE IN SUPPORT AS SAID AMOUNT IS "TOO MINIMAL."^[14]

LIKEWISE, THE COURT OF APPEALS SHOULD HAVE GIVEN PETITIONER AN OPPORTUNITY TO PROVE HIS PRESENT INCOME TO SHOW THAT HE CANNOT AFFORD TO INCREASE JAVY'S SUPPORT.^[15]

With regard to the first issue in the main case, the Court of Appeals articulated:

On Assignment of Error C, the trial court, after findings of fact ascertained from the testimonies not only of the parties particularly the defendant-appellee but likewise, those of the two psychologists, awarded damages on the basis of Articles 21, 2217 and 2229 of the Civil Code of the Philippines.

Thus, the lower court found that plaintiff-appellant deceived the defendant-appellee into marrying him by professing true love instead of revealing to her that he was under heavy parental pressure to marry and that because of pride he married defendant-appellee; that he was not ready to enter into marriage as in fact his career was and always would be his first priority; that he was unable to relate not only to defendant-appellee as a husband but also to his son, Javy, as a father; that he had no inclination to make the marriage work such that in times of trouble, he chose the easiest way out, that of leaving defendant-appellee and their son; that he had no desire to keep defendant-appellee and their son as proved by his reluctance and later, refusal to reconcile after their separation; that the aforementioned caused defendant-appellee to suffer mental anguish, anxiety, besmirched reputation, sleepless nights not only in those years the parties were together but also after and throughout their separation.

Plaintiff-appellant assails the trial court's decision on the ground that unlike those arising from a breach in ordinary contracts, damages arising as a consequence of marriage may not be awarded. While it is correct that there is, as yet, no decided case by the Supreme Court where damages by reason of the performance or non-performance of marital obligations were awarded, it does not follow that no such award for damages may be made.

Defendant-appellee, in her amended answer, specifically prayed for moral and exemplary damages in the total amount of 7 million pesos. The lower court, in the exercise of its discretion, found full justification of awarding at least half of what was originally prayed for. We find no reason to disturb the ruling of the trial court.^[16]

The award by the trial court of moral damages is based on Articles 2217 and 21 of the Civil Code, which read as follows:

ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

ART. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

The trial court referred to Article 21 because Article 2219^[17] of the Civil Code enumerates the cases in which moral damages may be recovered and it mentions Article 21 as one of the instances. It must be noted that Article 21 states that the individual must wilfully cause loss or injury to another. There is a need that the act is willful and hence done in complete freedom. In granting moral damages, therefore, the trial court and the Court of Appeals could not but have assumed that the acts on which the moral damages were based were done wilfully and freely, otherwise the grant of moral damages would have no leg to stand on.

On the other hand, the trial court declared the marriage of the parties null and void based on Article 36 of the Family Code, due to psychological incapacity of the petitioner, Noel Buenaventura. Article 36 of the Family Code states:

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.

Psychological incapacity has been defined, thus:

. . . 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.** . . .^[18]

The Court of Appeals and the trial court considered the acts of the petitioner after the marriage as proof of his psychological incapacity, and therefore a product of his incapacity or inability to comply with the essential obligations of marriage. Nevertheless, said courts considered these acts as willful and hence as grounds for granting moral damages. It is contradictory to characterize acts as a product of psychological incapacity, and hence beyond the control of the party because of an innate inability, while at the same time considering the same set of acts as willful. By declaring the petitioner as psychologically incapacitated, the possibility of awarding moral damages on the same set of facts was negated. The award of moral damages should be predicated, not on the mere act of entering into the marriage, but on specific evidence that it was done deliberately and with malice by a party who had knowledge of his or her disability and yet willfully concealed the same. No such evidence appears to have been adduced in this case.

For the same reason, since psychological incapacity means that one is truly incognitive of the basic marital covenants that one must assume and discharge as a consequence of marriage, it removes the basis for the contention that the petitioner purposely deceived the private respondent. If the private respondent was deceived, it was not due to a willful act on the part of the petitioner. Therefore, the award of moral damages was without basis in law and in fact.

Since the grant of moral damages was not proper, it follows that the grant of exemplary damages cannot stand since the Civil Code provides that exemplary damages are imposed **in addition** to moral, temperate, liquidated or compensatory damages.^[19]

With respect to the grant of attorney's fees and expenses of litigation the trial court explained, thus: