

SECOND DIVISION

[G.R. No. 109975, February 09, 2001]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. ERLINDA
MATIAS DAGDAG, RESPONDENT.**

DECISION

QUISUMBING, J.:

For review on certiorari is the decision^[1] of the Court of Appeals dated April 22, 1993, in CA-G.R. CV No. 34378, which affirmed the decision of the Regional Trial Court of Olongapo City in Civil Case No. 380-0-90 declaring the marriage of Erlinda Matias Dagdag and Avelino Dagdag void under Article 36 of the Family Code.

On September 7, 1975, Erlinda Matias, 16 years old, married Avelino Parangan Dagdag, 20 years old, at the Iglesia Filipina Independent Church in Cuyapo, Nueva Ecija.^[2] The marriage certificate was issued by the Office of the Local Civil Registrar of the Municipality of Cuyapo, Nueva Ecija, on October 20, 1988.

Erlinda and Avelino begot two children, namely: Avelyn M. Dagdag, born on January 16, 1978; and Eden M. Dagdag, born on April 21, 1982.^[3] Their birth certificates were issued by the Office of the Local Civil Registrar of the Municipality of Cuyapo, Nueva Ecija, also on October 20, 1988.

Erlinda and Avelino lived in a house in District 8, Cuyapo, Nueva Ecija, located at the back of the house of their in-laws.^[4] A week after the wedding, Avelino started leaving his family without explanation. He would disappear for months, suddenly reappear for a few months, then disappear again. During the times when he was with his family, he indulged in drinking sprees with friends and would return home drunk. He would force his wife to submit to sexual intercourse and if she refused, he would inflict physical injuries on her.^[5]

On October 1993, he left his family again and that was the last they heard from him. Erlinda was constrained to look for a job in Olongapo City as a manicurist to support herself and her children. Finally, Erlinda learned that Avelino was imprisoned for some crime,^[6] and that he escaped from jail on October 22, 1985.^[7] A certification therefor dated February 14, 1990, was issued by Jail Warden Orlando S. Limon. Avelino remains at-large to date.

On July 3, 1990, Erlinda filed with the Regional Trial Court of Olongapo City a petition for judicial declaration of nullity of marriage on the ground of psychological incapacity under Article 36 of the Family Code.^[8] Since Avelino could not be located, summons was served by publication in the Olongapo News, a newspaper of general circulation, on September 3, 10, and 17, 1990.^[9] Subsequently, a hearing was conducted to establish jurisdictional facts. Thereafter, on December 17, 1990, the

date set for presentation of evidence, only Erlinda and her counsel appeared. Erlinda testified and presented her sister-in-law, Virginia Dagdag, as her only witness.

Virginia testified that she is married to the brother of Avelino. She and her husband live in Olongapo City but they spend their vacations at the house of Avelino's parents in Cuyapo, Nueva Ecija. She testified that Erlinda and Avelino always quarrelled, and that Avelino never stayed for long at the couple's house. She knew that Avelino had been gone for a long time now, and that she pitied Erlinda and the children.^[10]

Thereafter, Erlinda rested her case. The trial court issued an Order giving the investigating prosecutor until January 2, 1991, to manifest in writing whether or not he would present controverting evidence, and stating that should he fail to file said manifestation, the case would be deemed submitted for decision.

In compliance with the Order, the investigating prosecutor conducted an investigation and found that there was no collusion between the parties. However, he intended to intervene in the case to avoid fabrication of evidence.^[11]

On December 27, 1990, without waiting for the investigating prosecutor's manifestation dated December 5, 1990, the trial court rendered a decision^[12] declaring the marriage of Erlinda and Avelino void under Article 36 of the Family Code, disposing thus:

"WHEREFORE, and viewed from the foregoing considerations, the Court hereby declares the marriage celebrated at Cuyapo, Nueva Ecija between Erlinda Matias and Avelino Dagdag on 7 September 1975 to be null and void.

The Local Civil Registrar of Cuyapo, Nueva Ecija is hereby ordered to enter into his Book of Marriage this declaration after this decision shall have become final and executory.

SO ORDERED."

On January 29, 1991, the investigating prosecutor filed a Motion to Set Aside Judgment on the ground that the decision was prematurely rendered since he was given until January 2, 1991 to manifest whether he was presenting controverting evidence.

The Office of the Solicitor General likewise filed a Motion for Reconsideration of the decision on the ground that the same is not in accordance with the evidence and the law. After requiring Erlinda to comment, the trial court denied the Motion for Reconsideration in an Order dated August 21, 1991 as follows:^[13]

"This resolves the Motion for Reconsideration of the Decision of this Honorable Court dated December 27, 1990 filed by the Solicitor-General. The observation of the movant is to the effect that 'Mere alcoholism and abusiveness are not enough to show psychological incapacity. Nor is abandonment. These are common in marriage. There must be showing that these traits, stemmed from psychological incapacity existing at the time of celebration of the marriage.'

In the case at bar, the abandonment is prolonged as the husband left his wife and children since 1983. The defendant, while in jail escaped and whose present whereabouts are unknown. He failed to support his family for the same period of time, actuations clearly indicative of the failure of the husband to comply with the essential marital obligations of marriage defined and enumerated under Article 68 of the Family Code. These findings of facts are uncontroverted.

Defendant's character traits, by their nature, existed at the time of marriage and became manifest only after the marriage. In rerum natura, these traits are manifestations of lack of marital responsibility and appear now to be incurable. Nothing can be graver since the family members are now left to fend for themselves. Contrary to the opinion of the Solicitor-General, these are not common in marriage.

Let it be said that the provisions of Article 36 of the New Family Code, to assuage the sensibilities of the more numerous church, is a substitute for divorce (See: Sempio Diy, New Family Code, p. 36) in order to dissolve marriages that exist only in name.

WHEREFORE, and the foregoing considered, the motion for Reconsideration aforecited is DENIED for lack of merit.

SO ORDERED"

The Solicitor General appealed to the Court of Appeals, raising the sole assignment of error that:

THE LOWER COURT ERRED IN DECLARING APPELLEE'S MARRIAGE TO AVELINO DAGDAG NULL AND VOID ON THE GROUND OF PSYCHOLOGICAL INCAPACITY OF THE LATTER, PURSUANT TO ARTICLE 36 OF THE FAMILY CODE, THE PSYCHOLOGICAL INCAPACITY OF THE NATURE CONTEMPLATED BY THE LAW NOT HAVING BEEN PROVEN TO EXIST.^[14]

On April 22, 1993, the Court of Appeals rendered a decision^[15] affirming the decision of the trial court, disposing thus:

"Avelino Dagdag is psychologically incapacitated not only because he failed to perform the duties and obligations of a married person but because he is emotionally immature and irresponsible, an alcoholic, and a criminal. Necessarily, the plaintiff is now endowed with the right to seek the judicial declaration of nullity of their marriage under Article 36 of the Family Code. Defendant's constant non-fulfillment of any of such obligations is continously (sic) destroying the integrity or wholeness of his marriage with the plaintiff. (Pineda, The Family Code of the Philippines Annotated, 1992 Ed., p. 46)."^[16]

Hence, the present petition for review,^[17] filed by the Solicitor General.

The Solicitor General contends that the alleged psychological incapacity of Avelino

Dagdag is not of the nature contemplated by Article 36 of the Family Code. According to him, the Court of Appeals made an erroneous and incorrect interpretation of the phrase "psychological incapacity" and an incorrect application thereof to the facts of the case. Respondent, in her Comment, insists that the facts constituting psychological incapacity were proven by preponderance of evidence during trial.

At issue is whether or not the trial court and the Court of Appeals correctly declared the marriage as null and void under Article 36 of the Family Code, on the ground that the husband suffers from psychological incapacity as he is emotionally immature and irresponsible, a habitual alcoholic, and a fugitive from justice.

Article 36 of the Family Code provides -

"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."

Whether or not psychological incapacity exists in a given case calling for annulment of a marriage, depends crucially, more than in any field of the law, on the facts of the case. Each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. In regard to psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on "all fours" with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court.^[18]

In *Republic v. Court of Appeals and Molina*,^[19] the Court laid down the following GUIDELINES in the interpretation and application of Article 36 of the Family Code:

"(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. x x x

(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* (*Salita vs. Magtolis*, 233 SCRA 100, June 13, 1994), 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.