

# FIRST DIVISION

[ CA-G.R. CV NO. 100348, March 31, 2015 ]

**CHARITO G. FERRER, PETITIONER-APPELLANT, VS. ROLLY G. UMALI, RESPONDENT-APPELLEE.**

## DECISION

**SORONGON, E.D., J.**

*The Constitution sets out a policy of protecting and strengthening the family as the basic social institution, and marriage is the foundation of the family. Marriage, as an inviolable institution protected by the State, cannot be dissolved at the whim of the parties. In petitions for the declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies with the plaintiff. Unless the evidence presented clearly reveals a situation where the parties, or one of them, could not have validly entered into a marriage by reason of a grave and serious psychological illness existing at the time it was celebrated, we are compelled to uphold the indissolubility of the marital tie.*<sup>[1]</sup>

## STATEMENT OF THE CASE

This is an appeal from the Decision<sup>[2]</sup> dated September 18, 2012 of the Regional Trial Court (RTC) of Makati City, Branch 136, dismissing the petition for declaration of nullity of marriage filed by Charito G. Ferrer (petitioner-appellant) against her husband Rolly G. Umali (respondent-appellee).

## STATEMENT OF FACTS

Petitioner-appellant and respondent-appellee crossed path in 1992 while working at Uniwide Sales, Inc. in Libis, Quezon City as Filing Clerk and Merchandiser, respectively. During their five-month stint thereat they became closer to each other that they went out regularly. Their relationship deepen and blossomed that on September 09, 1995, they decided to get married in a Catholic ceremony in Angono, Rizal.<sup>[3]</sup>

After their wedding, respondent took their cash gifts because he needed them to repay the money of his employer in Cuenca, Batangas which he spent for his personal use. Petitioner-appellant would ask the respondent-appellee about his dishonest ways but their talks would often end up in fights with respondent-appellee verbally abusing and threatening her.<sup>[4]</sup> On one occasion, petitioner-appellant found in their bedroom an elongated aluminum foil and a small plastic of white powder that looked like "tawas." She confronted respondent-appellee about it and the latter admitted that he was using drugs.<sup>[5]</sup> Also, respondent-appellee despite being employed did not give her any financial support. So that when they encountered financial difficulties, she asked permission from him to find a job in Manila not

knowing she was already pregnant. In Manila she had a miscarriage wherein she was hospitalized.<sup>[6]</sup> She informed respondent-appellee about her physical condition and asked helped for her hospital expenses but respondent-appellee told her; *"Natuto kang umalis, matuto kang umuwi tatal nandiyan ka na, eh di sila ang magpa-hospital sa'yo, malas ka talaga at malas yung batang dinadala mo!"*<sup>[7]</sup>

Petitioner-appellant decided to go home to Lipa but she was not able to see the respondent-appellee. She learned from his relatives that he was already living with another woman in an undisclosed place. Later she received a call from her husband. She wanted to be reunited with him but he told her that he is setting her free and he is now living with another woman who bore him a child. She was shocked and felt devastated.<sup>[8]</sup>

The couple lived together as husband and wife for only 3 months and they have been separated for 18 years already. They had no child and acquired no conjugal property. Respondent-appellee has not communicated with petitioner-appellant and has sired four children with Liezl Marandan.<sup>[9]</sup>

Ms. Maria Ligaya Bien-Andres (Ms. Andres), a psychologist and petitioner's longtime friend and churchmate<sup>[10]</sup> administered a series of psychological examinations on petitioner-appellant. She found her to be emotionally adaptable, with no "psychopathology." In contrast, she speculates that respondent-appellee is suffering from psychological disorder which is rooted to his lack of parental love.<sup>[11]</sup> In her Psychological Report, she gave the following assessment of the respondent-appellee:

"Rolly displayed absence of deep emotional response to provide for his wife's essential and basic needs, her failure in supporting her physical, emotional, social and financial requirements which are necessary in building up a marriage are evidences of psychological incapacity to carry out and assume his role as a husband and responsible head of his family."<sup>[12]</sup>

As mentioned earlier, the RTC rendered the assailed Decision dismissing the petition upon the ground that petitioner-appellant failed to identify the root cause of the psychological incapacity of her husband. On October 11, 2012, she filed a Motion for Reconsideration but the same was similarly denied in the Order dated January 18, 2013.

## **ISSUES**

In this appeal petitioner-appellant assigns the following errors:

**I.** WHETHER OR NOT THE LOWER COURT ERRED IN DENYING THE PETITION FOR DECLARATION OF NULLITY OF MARRIAGE BASED ON THE STRICT APPLICATION OF THE MOLINA CASE.

**II.** WHETHER OR NOT THE LOWER COURT ERRED IN ITS FAILURE TO APPRECIATE THAT THE TOTALITY OF THE EVIDENCE PRESENTED SHOWED PSYCHOLOGICAL INCAPACITY ON THE PART OF RESPONDENT TO FULFILL THE ESSENTIAL OBLIGATIONS OF MARRIAGE.

The appeal is devoid of merit and we uphold the validity petitioner-appellant's marriage with respondent-appellee on the ground that the alleged psychological incapacity of the latter was not sufficiently established.

## **DISCUSSION**

Psychological incapacity under Article 36 of the Family Code contemplates an incapacity or inability to take cognizance of and to assume basic marital obligations, and is not merely the difficulty, refusal, or neglect in the performance of marital obligations or ill will.<sup>[13]</sup> It refers to a serious psychological illness afflicting a party even before the celebration of the marriage and must refer to 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.<sup>[14]</sup> It consists of: (a) a true inability to commit oneself to the essentials of marriage; (b) the inability must refer to the essential obligations of marriage, that is, the conjugal act, the community of life and love, the rendering of mutual help, and the procreation and education of offspring; and (c) the inability must be tantamount to a psychological abnormality. Proving that a spouse failed to meet his or her responsibility and duty as a married person is not enough; it is essential that he or she must be shown to be incapable of doing so due to some psychological illness.<sup>[15]</sup>

*Republic v. Court of Appeals*<sup>[16]</sup> laid down the guidelines in the interpretation and application of the said Article. Thus:

- (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.
- (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.
- (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage.
- (4) Such incapacity must also be shown to be medically or clinically permanent or incurable.
- (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.
- (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children.
- (7) Interpretations given by the National Appellate Matrimonial