

## TWENTIETH DIVISION

[ CA-G.R. CEB-CV NO. 04527, April 24, 2014 ]

**JOCELYN TAGARO-COLES, PETITIONER-APPELLANT, VS.  
MAGDALINO A. COLES, RESPONDENT-APPELLEE.**

### **DECISION**

**HERNANDO, J:**

Before this Court is an appeal filed by Jocelyn Tagaro-Coles seeking review of the Decision<sup>[1]</sup> dated September 20, 2011 of the Regional Trial Court (RTC), Branch 2, of Borongan, Eastern Samar in Civil Case No. 4044, an action for declaration of nullity of marriage.

#### **The Antecedents:**

Magdalino A. Coles and Jocelyn Tagaro-Coles were married on April 18, 1990 in Larena, Siquijor. Out of their union, they begot three children namely: Christine Anne, Jyacinth and Angelinn T. Coles.

On March 16, 2007, Jocelyn filed a Petition<sup>[2]</sup> for Declaration of Nullity of Marriage against her husband Magdalino on the ground of his psychological incapacity. Consequently, she prayed, among others, for the nullity of their marriage, dissolution of the conjugal partnership of gains and support for their three children.

On September 20, 2011, the trial court rendered a Decision granting the petition and thereby nullifying the marriage between Magdalino and Jocelyn. However, the trial court was silent on the dissolution and liquidation of the community properties of the spouses. Moreover, it did not provide any provision for the support of Christine Anne, Jyacinth and Angelinn.

Hence, the current appeal before Us.

#### **The Issues:**

Instead of raising the errors committed by the court *a quo*, petitioner-appellant raises the following queries:<sup>[3]</sup>

- a) What constitutes the conjugal assets of the parties that will be dissolved and liquidated?
- b) How will liquidation be and support for the children be provided for?

#### **The Court's Ruling**

*The appeal is bereft of merit.*

It bears stressing that this appeal should be dismissed at the onset since petitioner-appellant failed to file a motion for reconsideration or new trial from the Decision of

the court *a quo*. Indubitably, this is a pre-condition before filing an appeal from the decision of the trial court. This is set forth under Section 20 on the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC), to wit:

**Section 20. Appeal. –**

(1) Pre-condition. – No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

(2) Notice of appeal. – An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.

Consequently, the dismissal of the instant appeal is inevitable. In any event, it is worth noting that the trial court should have rendered judgment relative to the liquidation, partition and distribution of the properties of the parties. In *Domingo v. Court of Appeals, et al.*<sup>[4]</sup>, the Supreme Court held that the declaration of nullity of marriage must carry with it, among others, a judgment for the liquidation, partition and distribution of property, *viz*:

When a marriage is declared void *ab initio*, the law states that the final judgment therein shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children and the delivery of their presumptive legitimes, unless such matters had been adjudicated in the previous proceedings. x  
x x

The legal basis for this is found under Article 50 of the Family Code, which states:

**Art. 50.** The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared *ab initio* or annulled by final judgment under Articles 40 and 45.

**The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.**

All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.

In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129. (Emphasis Ours)

Assayed from the foregoing disquisitions, the trial court's Decision is clearly wanting. Evidently, it should have provided for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes. Surprisingly, the trial court's Decision was