

## **FOURTH DIVISION**

**[ CA-G.R. CV No. 100860, November 21, 2014 ]**

**MA. CRISELDA C. FERNANDO, PETITIONER-APPELLANT, VS. JOSE ROBERTO ENRIQUE SJ FERNANDO, RESPONDENT-APPELLEE.**

### **D E C I S I O N**

**CARANDANG, J.:**

Before Us is the appeal interposed by petitioner-appellant Ma. Criselda C. Fernando from the Decision dated November 20, 2012 of the Regional Trial Court (RTC), Branch 107 of Quezon City, in Civil Case No. Q-09-64267, which dismissed petitioner-appellant's Petition for Declaration of Nullity of Marriage.<sup>[1]</sup>

The antecedents are as follows:

On February 11, 2009, petitioner-appellant Ma. Criselda C. Fernando (Criselda) filed a petition for declaration of nullity of marriage seeking the annulment of her marriage with respondent-appellee Jose Roberto Enrique SJ Fernando (Roberto) under Article 36 of the Family Code due to their inability to have sexual intercourse in the entire course of their being together as husband and wife. Roberto was served with Summons on March 9, 2009,<sup>[2]</sup> but did not file any responsive pleading to the Petition. Hence, the RTC issued an Order dated April 7, 2009 directing the public prosecutor assigned with the trial court to investigate whether the parties were in collusion. Subsequently, on September 9, 2000, Assistant City Prosecutor Evelyn M. Pascual-Lee submitted her Collusion Report recommending that the case be heard on the merits finding that no collusion existed between the parties.<sup>[3]</sup> Thus, trial on the merits ensued.

In support of her Petition, Criselda took the witness stand. She also presented her mother, Teresita Canlas, and Ms. Nery Tayag, a clinical psychologist. From the testimonies of Criselda and her witnesses, the following facts were established:

Criselda and Roberto first met in May 2000, and became a dating couple after a month or so. During the six to eight months of their relationship, they engaged in pre-marital sex, around two to three times.<sup>[4]</sup> Their pre-marital sexual intercourse, however, stopped at the instance of Roberto after a year of dating, which Criselda assumed that he was being old fashioned<sup>[5]</sup> and wanted to get married first before engaging into sex.<sup>[6]</sup>

On November 21, 2002, Criselda and Roberto exchanged marital vows at St. James the Great Parish in Ayala Alabang Village, Muntinlupa City.<sup>[7]</sup> According to Criselda, they did not have sexual contact during their honeymoon, which she thought was just due to exhaustion because of the wedding celebration. As it turned out, however, the couple did not have any sexual intercourse at all since their marriage

despite actually living together from 2002 until Criselda decided to live separately from Roberto in 2007.<sup>[8]</sup>

During the first year of their marriage, Criselda tried to understand their situation and did not nag Roberto for their lack of sexual intimacy; and that she thought that Roberto was depressed for being jobless after retiring early, and embarrassed since she was the one holding a job. On the succeeding years, however, she thought it unusual not to have sexual intercourse with her husband; they both sought counseling, wherein Roberto revealed that he “gets turned on” when the girl initiates the sex; and that because of Roberto's revelation, Criselda tried to initiate their sexual intimacy about 20 to 30 times, but nothing happened, not even an arousal or erection from Roberto.<sup>[9]</sup> Criselda intimated that she wanted children with Roberto, but the latter only answered “next year.”<sup>[10]</sup>

To bolster her claim that Roberto is suffering from psychological incapacity, Criselda presented Ms. Nedy Tayag, a psychologist, who testified that based on the tests she administered and results of her clinical interviews with Criselda and one her friends, she found out that both Criselda and Roberto are suffering from psychological incapacity; that Criselda was diagnosed to have Narcissistic Personality Disorder while she found Roberto to be suffering from Schizoid Personality Disorder.<sup>[11]</sup>

On November 20, 2012, the RTC rendered its Decision dismissing the Petition, with the following ratiocination:

“The Court finds that no sufficient evidence was presented to prove gravity, incurability and juridical antecedence.

Other than the findings of Ms. Nedy Tayag, the psychologist who evaluated the parties in this case, there was no sufficient evidence presented to prove that the parties are suffering from a personality disorder before the celebration and during their marriage. As can be adduced from the testimony of the petitioner and her witness, the parties did not encounter any marital problem except of the alleged failure of the respondent to have sexual intercourse with the petitioner, allegedly from the time they got married up to the time they separated which is more or less covering a period of five (5) years. xxx

xxx xxx xxx

IS the alleged refusal of the respondent to have sexual intercourse with the petitioner from the time they got married to the time they separated which is more or less 5 years considered as senseless and protracted to be considered as psychological incapacity on the part of the respondent?

xxx xxx xxx

From the evidence adduced there was no convincing evidence showing senseless and protracted refusal of the respondent to have sexual

intercourse with the petitioner.

The petitioner failed to present any sufficient evidence showing that she and the respondent were not cognizant of their basic marital obligations at the time of the celebration of their marriage. The petitioner likewise failed to establish the fact that during their marriage, the respondent and the petitioner were suffering from psychological defect which deprived them to assume the essential duties of marriage and its concomitant responsibilities.

Though the Court recognizes the psychological evaluation prepared by Ms. Nedy Tayag, yet the Supreme Court in the case of Marcos vs. Marcos, GR No. 136490, October 19, 2000, lead to another judicial teaching that the Court, may or may not accept, the testimony of the psychologist or psychiatrist as it should based its decision on the totality of the evidence presented other than the findings of a psychologist or psychiatrist.

Given the foregoing yardstick, the totality of the evidence presented by the petitioner to prove his psychological incapacity is clearly insufficient to sustain a finding of psychological incapacity on his part. Foremost of which is the failure of the petitioner to prove that his alleged personality disorder was already existing at the time of the celebration of their marriage nor there was any evidence to show that he was indeed psychologically incapacitated during the marriage (gravity).

In sum, this Court cannot declare the dissolution of the marriage for failure of the petitioner to show that his alleged psychological incapacity is characterized by gravity, juridical antecedence and incurability.

WHEREFORE, the instant petition for declaration of void marriage is denied. The above-entitled case is DISMISSED.

SO ORDERED.”<sup>[12]</sup>

On motion for reconsideration,<sup>[13]</sup> the RTC denied the same per Order dated March 4, 2013.<sup>[14]</sup>

Aggrieved, petitioner-appellant Criselda appealed the RTC's Decision with the following as assigned errors:<sup>[15]</sup>

I. THE HONORABLE TRIAL COURT ERRED WHEN IT CONCLUDED THAT RESPONDENT-APPELLEE WAS HAVING SEXUAL INTERCOURSE WITH PETITIONER-APPELLANT DURING THEIR MARRIAGE;

II. THE HONORABLE TRIAL COURT ERRED WHEN IT CONCLUDED THAT PETITIONER-APPELLANT FAILED TO SHOW THAT THE PSYCHOLOGICAL INCAPACITY IS CHARACTERIZED BY GRAVITY, JURIDICAL ANTECEDENCE AND INCURABILITY.

Petitioner-appellant argues that the RTC erred in concluding that respondent Roberto can engage in sexual intercourse based on a text message of another woman claiming to have had "fun last night," which meant that the trial court entertained doubts on petitioner-appellant's claim that she and respondent never had any sexual intercourse during their marriage; that the term "I had fun last night" is a vague and general to suggest sexual encounter; and that there was nothing in the said text message implying that respondent Roberto had sexual intercourse with another woman.<sup>[16]</sup> As to the alleged failure to adduce evidence to prove her case, petitioner-appellant argues that the RTC erred in disregarding the findings of the expert witness, Ms. Nedy Tayag.<sup>[17]</sup>

Oppositor-appellee Republic of the Philippines through the Office of the Solicitor General aver that the findings of Ms. Nedy Tayag "were baseless and unsupported by any reliable information and data;" that her clinical findings failed to explain the juridical antecedence of the parties' respective disorders; and that the psychological report was merely a narration of the parties' past, without identifying the root causes of the parties' alleged disorders.<sup>[18]</sup> It further averred that Ms. Tayag's conclusions on respondent-appellee Roberto's psychological makeup were merely suppositions since she had not been able to interview him or anybody who personally knew him during his childhood.<sup>[19]</sup>

We resolve to grant the appeal.

One of the equally important rights and obligations between husband and wife is the obligation "to live together, observe mutual love, respect and fidelity, and render mutual help and support."<sup>[20]</sup> Such obligation, as the others, are geared towards the "establishment of conjugal and family life."<sup>[21]</sup> Specifically, by observing the mutual obligation to love, that is "to procreate children based on the universal principle that procreation of children through sexual cooperation xxx the basic end of marriage" is achieved.<sup>[22]</sup> And, the "**constant non-fulfillment** of this obligation will finally destroy the integrity or wholeness of the marriage."<sup>[23]</sup> (emphasis Ours) Thus, "the senseless and protracted refusal of one of the parties to fulfill the above marital obligation is equivalent to psychological incapacity"<sup>[24]</sup> as defined in Article 36 of the Family Code.<sup>[25]</sup>

The Supreme Court in *Republic of the Philippines vs. Court of Appeals and Molina*<sup>[26]</sup> laid down the guidelines in applying Article 36 as follows:

**"(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. xxx xxx xxx**

**(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. xxx xxx xxx**

**(3) The incapacity must be proven to be existing at "the time of**