

## **SPECIAL ELEVENTH DIVISION**

**[ CA-G.R. CV No. 99610, November 13, 2014 ]**

**JOVALYN A. RETINO, PLAINTIFF-APPELLANT, VS. JACINTO A. VALLIDO, DEFENDANT-APPELLEE,**

### **DECISION**

**PAREDES, J.:[\*]**

#### **THE CASE**

THIS APPEAL, filed by plaintiff-appellant Jovalyn A. Retino (appellant), assails the Decision<sup>[1]</sup> dated September 8, 2011 of the Regional Trial Court (RTC), Branch 49, Urdaneta City, Pangasinan, which dismissed the Complaint docketed as Civil Case No. U-9411, for the Declaration of Nullity of Marriage, stating in the decretal portion thereof, the following pronouncement, viz.:

WHEREFORE, the Complaint is DISMISSED for lack of merit.

The marriage between Jacinto Vallido and Jovalyn Retino subsists and remains valid.

Furnish copies of this decision (to) the Office of the Solicitor General and the Offices of the Civil Registry of Pasay City and Urdaneta City, Pangasinan.

SO ORDERED.

Also assailed is the Resolution<sup>[2]</sup> dated August 23, 2012, which denied appellant's Motion for Reconsideration.

#### **THE ANTECEDENTS**

Appellant and defendant-appellee Jacinto Vallido (appellee), both hail from Aklan, met when they were in their teens. They became sweethearts despite the objection of appellant's parents. Appellant became a nurse and was hired at one of the hospitals in the sultanate of Oman. Three (3) days before appellant was to leave for Oman, appellee hurriedly proposed marriage to her to secure their relationship. Appellant agreed; they also agreed that the marriage will be secret and the marriage contract will not be registered.

Through the assistance of appellee's uncle, appellant and appellee were married<sup>[3]</sup> on December 6, 1991 with Judge Ricardo Conjares of the Metropolitan Trial Court, Branch 48, Pasay City, as solemnizing officer. Appellant and appellee never lived

together as husband and wife as appellant immediately left for Oman. Since then, they never communicated with each other and never had a chance to see each other.

Four (4) years without any communication from appellee, and believing that her marriage to appellee was not registered, appellant married<sup>[4]</sup> Raquelito Morales on April 29, 1995, and bore<sup>[5]</sup> him a son.

As she was processing her papers for Canada, she was required to submit a Certificate of No Marriage (CENOMAR). When she applied for a CENOMAR with the National Statistics Office, she was surprised to learn that contrary to her belief, the marriage contract with appellee was registered. When appellant inquired from appellee's relative, she learned that appellee is also married to another woman and has two (2) children by her.

Alleging that she and appellee are both psychologically incapacitated to perform the requisites of marriage since they could no longer live together, care and support each other as they have their own families, appellant filed the Complaint to have her marriage to appellee declared null and void.

Despite service of summons, appellee did not file an Answer; he was not declared in default as the Rule<sup>[6]</sup> on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, proscribes<sup>[7]</sup> a declaration of default.

Pre-trial<sup>[8]</sup> was conducted; and on December 3, 2009, the RTC issued an Order<sup>[9]</sup> dated December 3, 2009, where appellant and the public prosecutor stipulated that: appellant and appellee are legally married as evidenced by their marriage contract; and, appellant contracted a second marriage with Raquelito Morales where a child was born to them. Thereafter, trial on the merits ensued.

Appellant testified<sup>[10]</sup> on the averments in the Complaint, and that: she and appellee were married the same day he proposed to her; they did not secure a marriage license nor was there an actual solemnization of the marriage as they just signed a copy of the Marriage Contract; appellant knows the address of appellee, his contact number, and that he went abroad, through the letters they exchanged; she discovered that her marriage to appellee was registered when she secured a Certificate of No Marriage, which is a required document for Canada.

A Psychological Evaluation Report (the Psychological Report)<sup>[11]</sup> was presented in evidence and, with the admission of its authenticity and due execution, the presentation of the psychologist was dispensed with<sup>[12]</sup>.

On March 5, 2009, the RTC rendered the assailed Decision<sup>[13]</sup> dismissing the Complaint on the finding that appellant had not discharged her burden of proving the nullity of her marriage to appellee due to their psychological incapacity.

Appellant filed a motion for reconsideration, but it was denied in the Resolution<sup>[14]</sup> dated August 23, 2012.

Hence, this appeal, ascribing the sole issue, to wit:

WHETHER OR NOT THE MARRIAGE CONTRACTED BY THE PLAINTIFF (*now, appellant*) AND DEFENDANT (*now, appellee*) (Exh. "A") COULD BE DECLARED NULL AND VOID.<sup>[15]</sup>

### **THE COURT'S RULING**

#### ***The appeal is bereft of merit.***

Appellant argues that her marriage to appellee should be annulled pursuant to Article 36 of the Family Code considering, that: they married hurriedly; they never exercised any marital rights; and, they have established their respective families and could no longer live together. These pieces of evidence shows that both are psychologically incapacitated to comply with their marital obligations.

#### ***The evidence is insufficient to show psychological incapacity under Article 36 of the Family Code.***

Article 36 of the Family Code provides, that:

Art. 36. 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.

Article 36 contemplates a psychological 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. 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 offsprings; 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>[16]</sup>.

In ***Republic of the Philippines vs. Court of Appeals and Roridel Olaviano Molina*** (*Molina case*)<sup>[17]</sup>, the Supreme Court set forth guidelines in the interpretation and application of Article 36 of the Family Code, 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. 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. Article 36 of the

Family Code requires that the incapacity must be psychological --- not physical, although its manifestation 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 *ejusdem generis*, 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.

3. The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's". The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

4. Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. x x x.

5. Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as *root* causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to 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. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

7. Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. x x x.

In ***Leouel Santos vs. The Honorable Court of Appeals and Julia Rosario Bedia-Santos***<sup>[18]</sup>, the doctrinal guidelines in the Molina case on psychological incapacity were summarized; the psychological incapacity must be characterized by: