

TWENTIETH DIVISION

[CA-G.R. CV NO. 03841, November 13, 2014]

**LANI P. ROSIT, PETITIONER-APPELLEE, VS. EDGARDO C. ROSIT,
RESPONDENT-APPELLEE.**

REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

D E C I S I O N

QUIJANO-PADILLA, J.:

Before Us is an Appeal^[1] from the Decision^[2] dated January 13, 2010 of the Regional Trial Court, Seventh (7th) Judicial Region, Branch 61 of Dakit, Bogo City, Cebu in Civil Case No. BOGO-01483 for Declaration of Nullity of Marriage, as well as the Order^[3] dated July 22, 2010 of the same RTC which denied herein oppositor-appellant's Motion for Reconsideration.^[4]

The Antecedents

In gist, the petitioner-appellee Lani P. Rosit filed a Petition^[5] on December 16, 2005 before the lower court to declare her marriage with respondent-appellee Edgardo C. Rosit null and void due to the latter's psychological incapacity.

Petitioner-appellant alleged that their courtship started in 1991^[6] and it was on March 6, 1993 that she married^[7] respondent-appellee Edgardo C. Rosit at the St. Therese of the Child Jesus Parish in Cebu City. Their union blessed them with three (3) children; namely: Gabriel Marco Rosit, Vince Miguel Eduard Rosit and Mikaela Danielle Rosit.

Petitioner-appellee further alleged that her husband was alcoholic and preferred to be with his friends than his family. He constantly goes out with friends during nighttime and simply refused to find a stable means of income. Respondent-appellee was also financially dependent upon the petitioner-appellee during their marriage. In fact, it was only petitioner-appellee who was gainfully employed and provided the basic necessities of their family.^[8]

On the other hand, in his Answer,^[9] respondent-appellee countered that it was the petitioner-appellee who was psychologically incapacitated as the latter refused to cohabit with him and it was only after relatives intervened that she agreed. There was also a time when petitioner-appellee abandoned their home and went abroad. Petitioner-appellee was also remiss of her duties at home, as she refused to do household chores like cooking and doing the laundry. Moreover, petitioner-appellee also failed to give her family support and was incompetent in handling the finances.

After the presentation of petitioner-appellee's evidence the latter submitted her

Formal Offer^[10] dated July 17, 2009. Subsequently, respondent-appellee also filed his Comment with Manifestation^[11] dated July 20, 2009. In his Comment, respondent-appellee manifested that the totality of the testimonial and documentary evidence of the petitioner-appellee failed to prove psychological incapacity. What it merely established was spousal misunderstanding; hence, respondent-appellee found no need for him to present evidence.

On October 5, 2009, the trial court issued an Order^[12] which admitted the Formal Offer of the petitioner-appellee and took notice of the Comment with Manifestation filed by the respondent-appellee.

The Ruling of the Regional Trial Court

In a Decision^[13] dated January 13, 2010, the Regional Trial Court, Seventh (7th) Judicial Region, Branch 61 of Dakit, Bogo City, Cebu granted the petition. The lower court was strongly convinced by the evidence presented by herein petitioner-appellee. Thus, it found respondent-appellee psychologically incapacitated to perform his marital functions and consequently declared the absolute nullity of the marriage between the two parties. The decretal portion of the decision reads:

“WHEREFORE, premises considered, the instant Petition dated December 14, 2005 is hereby GRANTED.

Judgment is hereby rendered declaring the absolute nullity of the marriage by and between the petitioner and respondent.

Permanent custody of the children of the parties is awarded to the petitioner.

Since the parties have no estate or substantial property during the marriage, with the proprietary regime of absolute community of property, this Court does not have to make any declaration of their respective rights in respect thereto.

Furnish the parties and counsels with copies of this decision.

Furnish likewise the City Civil Registrar of Cebu City and the St. Therese of Child Jesus Parish, Lahug, Cebu City, with copies of this decision for proper recording in the record of marriage.

SO ORDERED.”^[14]

Unsatisfied, oppositor-appellant filed a Motion for Reconsideration.^[15] However, such motion was denied by the trial court in an Order^[16] dated July 22, 2010.

Aggrieved with the decision, the oppositor-appellant, Republic of the Philippines through the Office of the Solicitor General (OSG) interposed this appeal raising the sole issue, to wit:

PETITIONER-APPELLEE FAILED TO PROVE THE PSYCHOLOGICAL INCAPACITY OF RESPONDENT.

The Ruling of this Court

We grant the appeal.

The core of the present controversy hinges upon the determination of whether or not there was sufficient evidence to prove that the respondent-appellee was psychologically incapacitated to perform his basic marital obligations.

At the outset, deeply entrenched in our laws and jurisprudence is the doctrine which states that (p)sychological 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. 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.^[17]

In *Santos v. Court of Appeals*,^[18] the (Supreme) Court first declared that psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. It should 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."^[19] It must be confined to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

(The Supreme Court) laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic v. Court of Appeals*^[20] (the Molina case) where we said:

(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. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(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*, 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

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The

Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.^[21]

The foregoing pronouncements in Santos and Molina have remained as the precedential guides in deciding cases grounded on the psychological incapacity of a spouse. But the (Supreme) Court has declared the existence or absence of the psychological incapacity based strictly on the facts of each case and not on a priori assumptions, predilections or generalizations.^[22] Indeed, the incapacity should be established by the totality of evidence presented during trial,^[23] making it incumbent upon the petitioner to sufficiently prove the existence of the psychological incapacity.^[24]

In the case at bench, We find that there is evident paucity of proof to establish respondent-appellee's psychological incapacity. Without a doubt, the totality of the evidence presented by the petitioner-appellee miserably failed to comply with the standard requirements set forth by jurisprudence. Aside from the seemingly inadequate evidence, manifest also is the failure to sufficiently explain the gravity, root cause and incurability of the alleged psychological incapacity suffered by the respondent-appellee.

To further stress on this matter, We deemed it best to reproduce salient portions of the Psychologist's Report,^[25] and the testimony of the psychologist himself as follows:

Psychologist's Report

Marital Violations

1. Failed to support the wife and their children (Art. 68);
2. Has caused emotional abuses on the petitioner by expressed inability to give his time with his wife and children and be rather with his peers, friends, drinking and had easy life style on a protracted basis or a chronic phenomenon in the family; (Violation of Art. 68 of the FCP)
3. Respondent has failed to get a gainful employment to be able to give ample financial comforts for his family rather than depended on his wife; (Violation of Art. 68)
4. Because of these actions by the respondent, the petitioner suffered emotional abuse by her husband being distant, indifferent, detached as to his primordial duty as husband and father. There is a deliberate refusal on the part of the respondent to form emotional attachment with his family. (Art. 68)

Thus, obviously, the defendant husband is psychologically incapacitated