

520 Phil. 702

FIRST DIVISION

[G.R. NO. 139676. March 31, 2006]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. NORMA CUISON-MELGAR AND EULOGIO A. MELGAR, RESPONDENTS

DECISION

AUSTRIA-MARTINEZ, J.:

Filed by the Republic of the Philippines (petitioner) is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) dated August 11, 1999 in CA-G.R. CV No. 55538, which affirmed *in toto* the decision of the Regional Trial Court, Branch 43, Dagupan City (RTC) nullifying the marriage of respondents Norma Cuison-Melgar (Norma) and Eulogio A. Melgar^[2] (Eulogio) pursuant to Article 36^[3] of the Family Code.

The factual background of the case is as follows:

On March 27, 1965, Norma and Eulogio were married before the Catholic Church in Dagupan City. Their union begot five children, namely, Arneldo, Fermin, Norman, Marion Joy, and Eulogio III. On August 19, 1996, Norma filed for declaration of nullity of her marriage on the ground of Eulogio's psychological incapacity to comply with his essential marital obligations.^[4] According to Norma, the manifestations of Eulogio's psychological incapacity are his immaturity, habitual alcoholism, unbearable jealousy, maltreatment, constitutional laziness, and abandonment of his family since December 27, 1985.

Summons, together with a copy of the complaint, was served by personal service on Eulogio on October 21, 1996 by the sheriff.^[5] Eulogio failed to file an answer or to enter his appearance within the reglementary period.

On November 25, 1996, the RTC ordered the Public Prosecutor to conduct an investigation on the case to determine whether or not there exists collusion between the contending parties.^[6] On December 18, 1996, Public Prosecutor Joven M. Maramba submitted his

Manifestation to the effect that no collusion existed between the contending parties.^[7] On December 19, 1996, the RTC set the reception of evidence on January 8, 1997.^[8]

On January 8, 1997, upon motion of Norma's counsel, the RTC allowed the presentation of evidence before the Clerk of Court.^[9] Norma testified that since the birth of their firstborn, Eulogio has been a habitual alcoholic; when he is drunk he (a) sometimes sleeps on the streets, (b) every so often, he goes to her office, utters unwholesome remarks against her and drags her home, (c) he usually lays a hand on her, (d) he often scolds their children without justifiable reason; his liquor drinking habit has brought shame and embarrassment on their family; when she would refuse to give him money for his compulsive drinking habit, he would beat her up and threaten her; he has not been employed since he was dismissed from work and he refuses to look for a job; she has been the one supporting the family, providing for the education and the basic needs of their children out of her salary as a government employee; on December 27, 1985, because of unbearable jealousy to her male officemates, Eulogio went to her office, dragged her home and then beat her up; her brothers saw this, came to her rescue and then told Eulogio to get out of the house; and since then, Eulogio has not visited or communicated with his family such that reconciliation is very unlikely.^[10] The Public Prosecutor thereafter conducted a brief cross-examination of Norma.^[11]

Twelve days later, or on January 20, 1997, the RTC rendered its decision nullifying the marriage of Norma and Eulogio. The dispositive portion of the decision reads:

WHEREFORE, the Court hereby GRANTS the instant petition for being impressed with merit. As such, pursuant to Art. 36 of the Family Code of the Philippines, the marriage between Norma L. Cuison-Melgar and Eulogio A. Melgar, Jr. is declared an ABSOLUTE NULLITY.

The Local Civil Registrar of Dagupan City is therefore ordered to cancel the Marriage Contract of the parties bearing Registry No. 180 in the Marriage Registry of said Office after payment of the required fees.

Let a copy of this decision be furnished the following offices: The City Prosecution Office, Dagupan City, the Solicitor General, and the Local Civil Registrar of Dagupan City.

SO ORDERED.^[12]

The RTC reasoned that:

With the testimony of the petitioner, the Court is convinced that defendant has been incorrigible in his vices such as habitual alcoholism, subjecting his family to physical maltreatment and many times caused them to be scandalized, his being indolent by not at least trying to look for a job so that he could also help his wife in supporting his family, and also his uncalled for display of his jealousy. These are clear manifestation of his psychological incapacity to perform his marital obligation to his wife such as showing respect, understanding and love to her. Defendant also became indifferent to the needs of his own children who really longed for a father who is willing to make the sacrifice in looking for a job so as to support them. Without any communication to his family since 1985, certaining [sic] reconciliation and love would be improbable. The attendant circumstances in this case really point to the fact that defendant was unprepared to comply with his responsibilities as a good and responsible husband to his wife and a loving father to his children x x x.^[13]

Petitioner, represented by the Office of the Solicitor General (OSG), filed an appeal with the CA, contending that the evidence presented are not sufficient to declare the marriage void under Article 36 of the Family Code.^[14]

On August 11, 1999, the CA rendered its Decision affirming the decision of the RTC.^[15] The CA, quoting extensively Norma's testimony, ratiocinated:

[I]t has been adequately established that the decree of annulment is proper not simply because of defendant's habitual alcoholism but likewise because of other causes amounting to psychological incapacity as a result of which defendant has failed to perform his obligations under Articles 68-72, 220, 221 and 225 of the Family Code x x x.

Contrary to the submission of the appellant Republic, the grant of annulment is not based merely on defendant's habitual alcoholism but also because of his inability to cope with his other essential marital obligations foremost of which is his obligation to live together with his wife, observe mutual love, respect, fidelity and render mutual help and support.

For the whole duration of their marriage, that is, the period when they actually lived together as husband and wife and even thereafter, defendant has miserably failed to perform his obligations for which reason the plaintiff should not be made to suffer any longer. The contention of the Republic that plaintiff never showed that she exerted effort to seek medical help for her husband is stretching the obligations of the plaintiff beyond its limits. To our mind, it is equivalent to saying that plaintiff deserves to be punished for all the incapacities of defendant to perform his concomitant duties as a husband and a father all of which incapacities in the first place are in no way attributable to the herein plaintiff.^[16]

Hence, the present petition for review on *certiorari*.

In its Petition,^[17] the OSG poses a sole issue for resolution:

WHETHER OR NOT THE ALLEGED PSYCHOLOGICAL INCAPACITY OF RESPONDENT IS IN THE NATURE CONTEMPLATED BY ARTICLE 36 OF THE FAMILY CODE.^[18]

The OSG contends that the law does not contemplate mere inability to perform the essential marital obligations as equivalent to or evidence of psychological incapacity under Article 36 of the Family Code; that such inability must be due to causes that are psychological in nature; that no psychiatrist or psychologist testified during the trial that a psychological disorder is the cause of Eulogio's inability to look for a job, his resulting drunkenness, unbearable jealousy and other disagreeable behavior; and that the decision failed to state the nature, gravity or seriousness, and incurability of Eulogio's alleged psychological incapacity.

In her Comment,^[19] Norma maintains that her testimony pointing to the facts and circumstances of Eulogio's immaturity, habitual alcoholism, unbearable jealousy, maltreatment, constitutional laziness and indolence are more than enough proof of Eulogio's psychological incapacity to comply with his essential marital obligations, which justifies the dissolution of their marriage.

In its Reply,^[20] the OSG submits that Norma's comments are irrelevant and not responsive to the arguments in the petition. Nonetheless, the OSG reiterates that Norma's evidence fell short of the requirements of the law since no competent evidence was presented during the

trial to prove that Eulogio's inability to look for a job, his resulting drunkenness, jealousy and other disagreeable behavior are manifestations of psychological incapacity under Article 36 of the Family Code.

Prefatorily, it bears stressing that it is the policy of our Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family.^[21] Our family law is based on the policy that marriage is not a mere contract, but a social institution in which the state is vitally interested. The State can find no stronger anchor than on good, solid and happy families. The break up of families weakens our social and moral fabric and, hence, their preservation is not the concern alone of the family members.^[22]

In this regard, Article 48 of the Family Code mandates:

ART. 48. In all cases of annulment or declaration of absolute nullity of marriage, **the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed.**

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment. (Emphasis supplied)

Similarly, Section 6 of Rule 18 of the 1985 Rules of Court,^[23] the rule then applicable, provides:

Sec. 6. *No defaults in actions for annulment of marriage or for legal separation.* – If the defendant in an action for annulment of marriage or for legal separation fails to answer, **the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.** (Emphasis supplied)

In *Republic v. Molina*,^[24] the Court emphasized the role of the prosecuting attorney or fiscal, and the OSG to appear as counsel for the State in proceedings for annulment and

declaration of nullity of marriages:

(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.[25] (Emphasis supplied)

In this case, the State did not actively participate in the prosecution of the case at the trial level. Other than the Public Prosecutor's Manifestation^[26] that no collusion existed between the contending parties and the brief cross-examination^[27] which had barely scratched the surface, no pleading, motion, or position paper was filed by the Public Prosecutor or the OSG. The State should have been given the opportunity to present controverting evidence before the judgment was rendered.^[28] Truly, only the active participation of the Public Prosecutor or the OSG will ensure that the interest of the State is represented and protected in proceedings for annulment and declaration of nullity of marriages by preventing collusion between the parties, or the fabrication or suppression of evidence.^[29]

Be that as it may, the totality of evidence presented by Norma is completely insufficient to sustain a finding that Eulogio is psychologically incapacitated.

In *Santos v. Court of Appeals*,^[30] the Court declared that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.^[31] 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."^[32] The intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.^[33]

Subsequently, the Court laid down in *Republic of the Philippines v. Molina*^[34] the guidelines in the interpretation and application of Article 36 of the Family Code, to wit:

(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* (*Salita v. Magtolis*, 233 SCRA 100, 108), 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. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(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.^[35] (Emphasis supplied)

Later, the Court clarified in *Marcos v. Marcos*^[36] that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition *sine qua non* for the declaration of nullity of marriage based on psychological incapacity. Such psychological incapacity, however, must be established by the totality of the evidence presented during the trial.^[37]

In the present case, Norma alone testified in support of her complaint for declaration of nullity of her marriage under Article 36 of the Family Code. She failed to establish the fact that at the time they were married, Eulogio was already suffering from a psychological defect which in fact deprived him of the ability to assume the essential duties of marriage

and its concomitant responsibilities. In fact, Norma admitted in her testimony that her marital woes and Eulogio's disagreeable behavior started only after the birth of their firstborn and when Eulogio lost his job.^[38]

Further, no other evidence was presented to show that Eulogio was not cognizant of the basic marital obligations as outlined in Articles 68 to 72,^[39] 220,^[40] 221,^[41] and 225^[42] of the Family Code. It was not sufficiently proved that Eulogio was really incapable of fulfilling his duties due to some incapacity of a psychological nature, and not merely physical. The Court

cannot presume psychological defect from the mere fact of Eulogio's immaturity, habitual alcoholism, unbearable jealousy, maltreatment, constitutional laziness, and abandonment of his family. These circumstances by themselves cannot be equated with psychological incapacity within the contemplation of the Family Code. It must be shown that these acts are manifestations of a disordered personality which make Eulogio completely unable to discharge the essential obligations of the marital state.^[43]

At best, the circumstances relied upon by Norma are grounds for legal separation under Article 55^[44] of the Family Code. As the Court ruled in *Republic of the Philippines v. Molina*,^[45] it is not enough to prove that a spouse failed to meet his responsibility and duty as a married person, it is essential that he must be shown to be incapable of doing so due to some psychological, not physical, illness. There was no proof of a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates a person from accepting and complying with the obligations essential to marriage.^[46]

All told, in order that the allegation of psychological incapacity may not be considered a mere fabrication, evidence other than Norma's lone testimony should have been adduced. While an actual medical, psychiatric or psychological examination is not a *conditio sine qua non* to a finding of psychological incapacity,^[47] an expert witness would have strengthened Norma's claim of Eulogio's alleged psychological incapacity. Norma's omission to present one is fatal to her position. There can be no conclusion of psychological incapacity where there is absolutely no showing that the "defects" were already present at the inception of the marriage or that they are incurable.^[48]

The Court commiserates with Norma's marital predicament, but as a court, even as the highest one, it can only apply the letter and the spirit of the law; it cannot reinvent or

modify it. Unfortunately, law and jurisprudence are ranged against Norma's stance. The Court has no choice but to apply them accordingly, if it must be true to its mission under the rule of law. The Court's first and foremost duty is to apply the law no matter how harsh it may be.

WHEREFORE, the present petition is **GRANTED**. The assailed Decision of the Court of Appeals dated August 11, 1999 in CA-G.R. CV No. 55538, affirming the Decision of the Regional Trial Court, Branch 43, Dagupan City in Civil Case No. CV-96-01061-D, dated January 20, 1997, is **REVERSED** and **SET ASIDE**. The complaint of Norma Cuison-Melgar in Civil Case No. CV-96-01061-D is **DISMISSED**.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

^[1] Penned by Associate Justice Eugenio S. Labitoria (now retired) and concurred in by Associate Justices Marina L. Buzon and Edgardo P. Cruz.

^[2] Appears as "Eulogio Melgar, Jr." in the Marriage Contract, records, p. 5.

^[3] 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.

^[4] Records, p. 1.

^[5] Id. at 8.

^[6] Id. at 12.

^[7] Id. at 14.

^[8] Id. at 17.

^[9] Id. at 19.

^[10] TSN, January 8, 1997, pp. 3-5.

^[11] Id. at 6.

^[12] Records, pp. 21-22.

^[13] Id. at 21.

^[14] CA *rollo*, p. 10.

^[15] Id. at 73.

^[16] Id. at 79-80

^[17] *Rollo*, p. 7.

^[18] Id. at 11.

^[19] Id. at 69.

^[20] Id. at 109.

^[21] Section 12 of Article II of the 1987 Constitution provides:

SEC. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x

Sections 1 and 2 of Article XV of the 1987 Constitution state:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

SEC. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

^[22] *Ancheta v. Ancheta*, G.R. No. 145370, March 4, 2004, 424 SCRA 725, 740; *Tuason v. Court of Appeals*, 326 Phil. 169, 180-181 (1996).

^[23] Now Section 3(e), Rule 9 of the 1997 Rules of Civil Procedure, effective July 1, 1997.

^[24] 335 Phil. 664 (1997).

^[25] Id. at 679-680. The procedure has been modified by the Court in Administrative Matter No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages) which took effect on March 15, 2003.

Sec. 8. Answer.—(1) The respondent shall file his answer within fifteen days from service of summons, or within thirty days from the last issue of publication in case of service of summons by publication. The answer must be verified by the respondent himself and not by counsel or attorney-in-fact.

(2) If the respondent fails to file an answer, the court shall not declare him or her in default.

(3) Where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

Sec. 9. *Investigation report of public prosecutor.*—(1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.

(2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten days from receipt of a copy of the report. The court shall set the report for hearing and, if convinced that the parties are in collusion, it shall dismiss the petition.

(3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

^[26] Records, p. 14.

^[27] Supra note 11.

^[28] *Malcampo-Sin v. Sin*, G.R. No. 137590, March 26, 2001, 355 SCRA 285, 289; *Republic v. Dagdag*, G.R. No. 109975, February 9, 2001, 351 SCRA 425, 435.

^[29] *Republic v. Iyoy*, G.R. No. 152577, September 21, 2005, 470 SCRA 508, 529; *Ancheta v. Ancheta*, *supra* note 22, at 181.

^[30] 310 Phil. 21 (1995).

^[31] *Id.* at 39

^[32] *Id.* at 40.

^[33] *Id.*

^[34] *Supra* note 24.

^[35] *Id.* at 676-678.

^[36] 397 Phil. 840 (2000).

^[37] *Id.* at 850.

^[38] TSN, January 8, 1997, pp. 4-5.

^[39] ART. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

ART. 69. The husband and wide shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

ART. 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case [of] insufficiency or absence of said income or fruits, such obligations shall be satisfied from their separate properties.

ART. 71. The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

ART. 72. When one of the spouses neglects his or her duties to the conjugal union or commits acts which tend to bring danger, dishonor or injury to the other or to the family, the aggrieved party may apply to the court for relief.

^[40] ART. 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties.

- (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
- (2) To give them love and affection, advice and counsel, companionship and understanding;
- (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
- (4) To enhance, protect, preserve and maintain their physical and mental health at all times;
- (5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
- (6) To represent them in all matters affecting their interests;
- (7) To demand from them respect and obedience;
- (8) To impose discipline on them as may be required under the circumstances; and
- (9) To perform such other duties as are imposed by law upon parents and guardians.

^[41] ART. 221. Parents and other persons exercising parental authority shall be civilly liable

for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.

^[42] ART. 225. The father and the mother shall jointly exercise legal guardianship over the property of their unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds P50,000.00, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply.

^[43] *Villalon v. Villalon*, G.R. No. 167206, November 18, 2005; *Carating-Siayngco v. Siayngco*, G.R. No. 158896, October 27, 2004, 441 SCRA 422, 437; *Dedel v. Court of Appeals*, G.R. No. 151867, January 29, 2004, 421 SCRA 461, 466; *Hernandez v. Court of Appeals*, 377 Phil. 919, 931-932 (1999).

^[44] ART. 55. — A petition for legal separation may be filed on any of the following grounds:

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child or a child of the petitioner;

- (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
- (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
- (4) Final judgment sentencing the respondent to imprisonment of more than six years even if pardoned;
- (5) Drug addiction or **habitual alcoholism of the respondent;**
- (6) Lesbianism or homosexuality of the respondent;
- (7) Contracting by the respondent of a subsequent bigamous marriage in the Philippines, whether in the Philippines or abroad;
- (8) Sexual infidelity or perversion.
- (9) Attempt by the respondent against the life of the petitioner; or
- (10) **Abandonment of petitioner by respondent without justifiable cause for more than one year.**

For purposes of this Article, the term “child” shall include a child by nature or by adoption. (Emphasis supplied)

^[45] Supra note 24.

^[46] Id. at 678; See also *Republic v. Quintero-Hamano*, G.R. No. 149498, May 20, 2004, 428 SCRA 735, 743; *Choa v. Choa*, 441 Phil. 175, 187 (2002).

^[47] *Marcos v. Marcos*, supra note 36, at 852.

^[48] Id. at 850.

Date created: September 04, 2014