

**MARIA CZARINA MEJIA HIPOLITO, PLAINTIFF-APPELLANT, VS.
SHER JERRYMIUS DE LOS SANTOS HIPOLITO,
DEFENDANT-APPELLEE.**

Ponente: TIJAM, J.

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TIJAM, J.:

Plaintiff-Appellant Maria Czarina Hipolito appeals the Decision[1] dated June 6, 2011 of the Regional Trial Court (RTC) of Las Piñas City, Branch 254, which denied her Petition for Declaration of Nullity of Marriage[2] to Defendant-Appellee Sher Jerrymius De los Santos Hipolito based on the latter's psychological incapacity under Article 36 of the Family Code.

The petition contained the following averments:

Plaintiff-Appellant and Defendant-Appellee, an Australian citizen, met sometime in December 2003 while they were both working as front desk employees at the Hyatt Regency-Manila. They got along together and soon became friends until Defendant-Appellee courted Plaintiff-Appellant and eventually, they became sweethearts.[3] Plaintiff-Appellant became pregnant, forcing her to marry Defendant-Appellee in a civil rite ceremony held in Las Piñas City on September 28, 2004.[4]

Plaintiff-Appellant alleged that Defendant-Appellee was a divorcee and had a daughter who lives in Australia. He came to the Philippines to escape the prosecution of a case of fraud filed against him in Australia.

Plaintiff-Appellant also alleged that Defendant-Appellant was an irresponsible husband and father as manifested in the following ways: (1) Defendant-Appellee was jobless at the time of the marriage; (2) He lacked patience and it was easy for him to give up his job; (3) He had no plans for his family and resented questions on his responsibilities as husband and father; (4) He left his family without any plans to return as if he had no obligations to provide them moral and financial support; (5) He failed to give support, leaving his wife as the sole provider for their child's needs; and, (6) He never communicated to his daughter at all, even on special occasions like her birthdays.[5]

Sometime in April 2005, or 3 months after Plaintiff-Appellant gave birth to their daughter, Defendant-Appellee went to Australia. He promised to send financial support and even instructed Plaintiff-Appellant to fix all the papers needed for her and their daughter to migrate to Australia[6] but all his promises did not materialize.

Sometime in 2007, Plaintiff-Appellant received a telephone call from Defendant-Appellee telling her that he was in the Philippines and he needed to see her right away. When they met, Defendant-Appellee discussed with her his plan to file for divorce in Australia to dissolve their marriage.[7] That was their last meeting. She learned from her mother-in-law that Defendant-Appellee and his first wife were back with each other and were living together again in Australia.

Dr. Natividad Dayan,[8] a clinical psychologist, who conducted a psychological evaluation on the Plaintiff-Appellant testified that based on her evaluation, Plaintiff-Appellant had a dependent and histrionic

personality disorder.[9] Such disorder was shown when she agreed to marry Defendant-Appellee fully aware of his personality flaws and unpreparedness to enter into married life. On the other hand, Dr. Dayan found the Defendant-Appellee to be suffering from an anti-social personality disorder as shown by his being consistently irresponsible and a tendency to do illegal behavior. He also had a severe type of personality disorder that incapacitates him to perform his essential marital obligations.[10] The root cause of the personality disorder was his dysfunctional family life.[11] He had no intact family that could instill right values in him. At a young age, he left his family and lived with his relatives. Further, Dr. Dayan testified that Defendant-Appellee's psychological incapacity was grave and incurable.[12]

On the basis of the evidence presented, the trial court denied Plaintiff-Appellant's petition ruling that she failed to establish the requirements of gravity, juridical antecedence, and incurability of the Defendant-Appellee's psychological incapacity. What has been established by the evidence was a simple inadequacy in the personality of Defendant-Appellee, falling short of reasonable expectations of his wife. In other words, what has been proven was an unsatisfactory marriage. An unsatisfactory marriage is not null and void.[13] Thus:

"WHEREFORE, in view of the foregoing, the instant Petition for Declaration of Nullity of marriage is hereby DENIED. Accordingly, the same petition is hereby DISMISSED.

Furnish the Office of the Solicitor General, the Office of the City Prosecutor of Las Piñas City and the Civil Registry of Las Piñas City, with copies of this Decision, for their information and guidance.

Considering that respondent was summoned by publication, let the dispositive part of this Decision be published once in a newspaper of general circulation.

SO ORDERED."[14]

Plaintiff-Appellant filed a motion for a reconsideration of the trial court's ruling but it was denied. Hence, this appeal raising the following assignment of errors:

"I

THE RTC ERRED IN FINDING THAT THE IRRESPONSIBILITY OF APPELLEE AND HIS ACT OF ABANDONMENT WERE NOT PROVEN TO BE DUE TO SOME KIND OF PSYCHOLOGICAL ILLNESS EXISTING AT THE TIME OF THE CELEBRATION OF THE MARRIAGE.

II

THE RTC ERRED IN FINDING THAT DRA. DAYAN'S REPORT DID NOT CLEARLY SPECIFY THE ACTIONS OF APPELLEE INDICATIVE OF HIS PSYCHOLOGICAL INCAPACITY.

III

THE RTC ERRED IN FINDING THAT DRA. DAYAN FAILED TO ESTABLISH THE PROOF REQUIRED BY COURTS IN ORDER FOR THEM TO DECLARE A MARRIAGE NULL AND VOID ON THE GROUND OF PSYCHOLOGICAL INCAPACITY.

IV

THE RTC ERRED WHEN IT BELITTLED DRA. DAYAN'S CONCLUSION AS HAVING BEEN ARRIVED AT WITHOUT INTERVIEWING APPELLEE AND AS HAVING BEEN BASED ON INFORMATIONS FED BY APPELLANT.

V

THE RTC ERRED IN FINDING THAT WHAT HAS BEEN ESTABLISHED BY THE EVIDENCE IS A SIMPLE INADEQUACY IN THE PERSONALITY OF APPELLEE, AND/OR THAT WHAT HAS BEEN PROVEN WAS AN UNSATISFACTORY MARRIAGE THAT IS NOT SUPPOSEDLY NULL AND VOID.

VI

THE RTC ERRED IN DISMISSING THE PETITION AND IN NOT ORDERING APPELLEE TO PROVIDE SUPPORT AND PAY DAMAGES."[15]

Relying heavily on Dr. Dayan's clinical findings, Plaintiff-Appellant insists that Defendant-Appellee is psychologically incapacitated to comply with his marital obligations.

Surprisingly, nothing has been submitted to this Court to rebut the Plaintiff-Appellant's theory. The Office of the Solicitor General (OSG) has been directed to show cause why the appeal should not be deemed submitted for decision sans Appellee's Brief[16] but said office apparently failed to comply or simply ignored this Court's processes. Thus, as shown by this Court's Resolution dated February 14, 2013, this case was deemed submitted for decision sans Comment from the OSG.[17]

At any rate, this Court will decide the merits of the case based on the evidence, the law and jurisprudence.

The issue is whether or not there was sufficient evidence warranting the declaration of the nullity of Plaintiff-Appellant's marriage to Defendant-Appellee based on his psychological incapacity under Art. 36 of the Family Code.

We rule in the negative.

On many occasions, the Supreme Court declared that psychological incapacity must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. The defect 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. 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.[18]

On that note, definitive guidelines in the interpretation and application of Article 36 of the Family Code were laid down as follows:[19]

(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 the Constitution and the laws cherish the validity of marriage and unity of the family. Thus, the 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. . . .

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, mild characteriological 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. . .

(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.

It must be underscored that the grant of a petition for nullity of marriage based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[20]

Under the peculiar circumstances of this case, Defendant-Appellee cannot be declared as psychologically incapacitated to comply with his marital obligations. For one, the evidence of Plaintiff-Appellant does not, at the very least, suggest that the psychological incapacity of Defendant-Appellee is characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. For another, the psychological incapacity was not proven to be existing at the time of the celebration of the marriage of the parties. The evidence of the Plaintiff-Appellant, taken in its entirety, merely showed that (1) Defendant-Appellee was jobless or not gainfully employed during the marriage; (2) He lacked patience and it was easy for him to give up his job; (3) He had no plans for his family and resented questions on his responsibilities as husband and father; (4) He left his family without any plans to return as if he had no obligations to provide moral and financial support to his family; (5) He failed to give support, leaving Plaintiff-Appellant as the sole provider for their child's needs; and, (6) Defendant-Appellee never communicated to his daughter in the Philippines, even on special occasions like birthdays. At best, these behaviors of Defendant-Appellee can be described or characterized as emotional immaturity and irresponsibility.

Dr. Dayan tried to make it appear that the dysfunctional family and anti-social personality disorder of the Defendant-Appellee are the root causes of his being an irresponsible husband. In the testimony of Dr. Dayan, she opined that the Defendants-Appellee's failure to conform with the social norms, and his avoidance of his obligations and commitments are signs of an anti-social behavior that makes him psychologically incapacitated.[21] Moreover, his lack of care, love, and the incapacity to love are blatant signs of psychological incapacity.[22] However, these assertions are misplaced in view of settled jurisprudence holding that

psychological incapacity premised on respondent being jobless as well as inability to support a family and refusal or unwillingness to assume the essential obligations of marriage must be shown to be a malady or disorder rooted on some incapacitating or debilitating psychological condition.[23] Apparently, it was not established clearly and conclusively that Defendant-Appellee suffers from the malady and disorder as contemplated by law.

The trial court is correct in so holding that what has been established by the evidence presented is a simple inadequacy in the personality of Defendant-Appellee, falling short of reasonable expectations of his wife. In other words, what has been proven was an unsatisfactory marriage. An unsatisfactory marriage is not null and void.[24]

To restate, the complained behaviors of Defendant-Appellee can be described or characterized as emotional immaturity and irresponsibility based on relevant jurisprudential rule. It cannot be directly linked to psychological incapacity as contemplated by law absent a conclusive findings to that effect. Such conclusive findings can only be made once a thorough test and examination on Defendant-Appellee has been conducted.

In *Yambao v. Republic, et al.*[25] the Supreme Court had the occasion to declare that —

"Article 36 contemplates incapacity or inability to take cognizance of and to assume basic marital obligations and not merely difficulty, refusal, or neglect in the performance of marital obligations or ill will. This incapacity consists of the following: (a) a true inability to commit oneself to the essentials of marriage; (b) this inability to commit oneself must refer to the essential obligations of marriage: the conjugal act, the community of life and love, the rendering of mutual help, the procreation and education of offspring; and (c) the inability must be tantamount to a psychological abnormality. 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 illness.

That respondent, according to petitioner, lack[ed] effective sense of rational judgment and responsibility does not mean he is incapable to meet his marital obligations. His refusal to help care for the children, his neglect for his business ventures, and his alleged unbearable jealousy may indicate some emotional turmoil or mental difficulty, but none have been shown to amount to a psychological abnormality.

Moreover, even assuming that respondent's faults amount to psychological incapacity, it has not been established that the same existed at the time of the celebration of the marriage."

As already indicated, the evidence adduced in this case does not support a conclusion that Defendant-Appellee is psychologically incapacitated based on the standards set forth by law and the guidelines established by jurisprudential rules elsewhere mentioned. To be sure, the testimonial evidence, as well as the report of Dr. Dayan, do not categorically show that Defendant-Appellee was suffering from a psychological condition so severe that he was unaware of his obligations to his wife and daughter.

In sum, We find no compelling reason to deviate from the findings and conclusion of the trial court. Hence, there is no ground to reverse the same.

WHEREFORE, premises considered, the appeal is hereby DISMISSED. The Decision dated June 6, 2011 of the Regional Trial Court of Las Piñas City, Branch 254, in Civil Case No. LP-09-0124, is hereby AFFIRMED.

SO ORDERED.

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

[1] Rollo, pp. 94-101.

[2] See Petition dated October 5, 2009; Record, pp. 2-18.

- [3] Petition, p. 3; Record, p. 4.
- [4] See Annex "A", Certificate of Marriage; Record, p. 19.
- [5] Id., pp. 7-8.
- [6] Petition, p. 6; Record, p. 7.
- [7] TSN, August 4, 2010, pp. 34-36.
- [8] She is a Clinical Psychologist by profession, married and a resident of No. 99 General Avenue, GSIS Village, Quezon City; TSN, August 25, 2010, p. 3.
- [9] Dr. Dayan administered the Million Clinical Multi-Axial Inventory III, Minnesota, Gram, and Marital Satisfaction Inventory tests to Plaintiff-Appellant; See TSN, August 25, 2010, pp. 22-24.
- [10] TSN, August 25, 2010, p. 29.
- [11] Id., p. 47.
- [12] See also Annex "B" of the Petition, the Clinical Report of Dr. Dayan; Record, pp. 20-47.
- [13] Decision, p. 8; Rollo, p. 101.
- [14] Id., p.101.
- [15] Brief for Plaintiff-Appellant, pp. 1-3; Rollo, pp. 42-44.
- [16] Id., p. 116.
- [17] Rollo, p. 117.
- [18] Rumbua v. Rumbua, citing Santos v. Court of Appeals, G.R. No. 112019, January 4, 1995.
- [19] Rumbua v. Rumbua, supra.
- [20] Rumbua v. Rumbua, supra.
- [21] TSN, August 25, 2010, p. 29.
- [22] Id., p. 30.
- [23] Republic v. Tanyag-San Jose, et al., G.R. No. 168328, February 28, 2007.
- [24] RTC Decision, p. 8; Record, p. 278.
- [25] G.R. No. 184063, January 24, 2011.

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