

ELENITA SOCO TOMARONG, PETITIONER-APPELLEE, VS. MELVIN TOMARONG, RESPONDENT-APPELLEE,

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Decision[1] dated April 18, 2011 and Order[2] dated July 6, 2011 of the Regional Trial Court of Lapu-Lapu City, Branch 54, in Civil Case No. R-LLP-08-03075-CV, which declared the marriage of Elenita Soco Tomarong to her husband Melvin Tomarong as null and void on the basis of the latter's psychological incapacity and which denied oppositor-appellant Republic's Motion for Reconsideration, respectively.

The relevant facts of the case follow.

Elenita Soco Tomarong and Melvin Tomarong were married on January 29, 1994 in Talisay, Cebu. The two were blessed with three children.

Elenita claims that at the time she contracted marriage with Melvin, she did not know that the latter was psychologically incapacitated to assume and comply with the essential marital obligations of marriage. She alleges that her husband's psychological incapacity manifested after their marriage as she found out that he is irresponsible as a husband and as a father to their children.[3]

Elenita, in her testimony,[4] narrated that she solely supports their children because Melvin never helps in their financial needs. He never gives money to her nor to his children. At one point, Elenita had to go to Melvin's parents to convince the latter to talk to their son and persuade him to give support to his family. His parents, however, was not able to help her as they told her that Melvin likewise never gave money to them.

Elenita likewise narrated that she was humiliated by her husband in public and that she was punched by him on the face during one altercation. She also recounted that her husband kicked her when she refused to have sex with him. She also claimed that her husband verbally abused her, that he berrated and blamed her for coming back to the country after she worked abroad.

Aside from physical and verbal abuse that she experienced with her husband, Elenita claimed that Melvin was a drunkard and a gambler. She said that these vices have caused their quarrels and would result in Melvin mauling her if he was drunk or had lost in his gambling activities. She remembered that he was first hit by her husband in 1995, when their first child was still one-year old. At that time, Melvin hit her because he was jealous with regard to the nature of her work which necessitated overtime work.

Not only that Melvin was irresponsible and abusive husband, but also, according to Elenita, he is a womanizer. In fact, in February 2006, Melvin left Elenita and their children to live with his paramour. She narrated that when she was still working abroad, she already heard stories about her husband being a womanizer, and when she came back to the country and confronted her husband about his alleged womanizing, the latter admitted the same.

Elenita also narrated that she was once hit by Melvin before they got married and that she already knew about his

vices and his relationships with other women even before they were married. She said that before their marriage, Melvin changed, so she just tolerated his vices as she was very forgiving and patient. But, she could no longer bear the pain in her heart, so she decided to file a case for the declaration of nullity of their marriage.

Aside from Elenita's testimony, her friend, Astela Bayta, testified[5] before the trial court as regards her knowledge that Elenita's husband Melvin left his wife and children for another woman, that she saw Melvin and his paramour in a mall in Mactan, and that she often saw Melvin, when he was still staying with his wife, verbally and physically abusing his wife.

To prove that Melvin's acts would constitute as manifestations of his psychological incapacity, Dr. Andres Gerong, a clinical psychologist, testified as regards his psychologist report evaluating the personality of Melvin.

Dr. Gerong's psychologist report[6] and testimony[7] stated that Melvin is suffering from Antisocial Personality Disorder and Narcissistic Disorder. According to his report and testimony, Melvin's acts of abandoning his wife and children for another woman; failing to support his family as a result of his affair with another woman; physically and verbally abusing his wife; and his lack of care for his children, would manifest his antisocial personality disorder. He testified that Melvin's personality disorder is not treatable or curable and is very serious and grave. He further testified that Melvin's personality disorder was rooted in his own dysfunctional family as his father was a drunkard and was abusive, and that his material and emotional deprivation during childhood was the cause of his personality disorder.

While the proceedings before the trial court ensued, Melvin never appeared and participated in the proceedings despite due notice.

On April 18, 2011, the trial court rendered its assailed Decision[8] granting the petition of Elenita and declaring her marriage to Melvin null and void by reason of the latter's psychological incapacity. The decretal portion of the said Decision reads:

“WHEREFORE, premises considered, the Court hereby renders judgement declaring the marriage between Elenita Soco Tomarong and respondent Melvin Tomarong VOID AB INITIO, by reason of the psychological incapacity of respondent to comply with the essential marital obligations of marriage pursuant to Article 36 of the Family Code of the Philippines.

The Court shall forthwith issue the corresponding decree of absolute nullity upon the finality of the Decision subject to pertinent rules considering that the parties have no properties.

xxxx

xxxx.”[9]

The Republic, through the Office of the Solicitor General moved for a reconsideration[10] of the above Decision, but the same was denied in the assailed Order[11] of the trial court.

Hence, this appeal.

The Republic, as oppositor-appellant, raised this sole error on appeal:

“THE TRIAL COURT ERRED IN GRANTING THE NULLITY OF MARRIAGE CONSIDERING THAT PETITIONER FAILED TO PROVE THE REQUIREMENTS PROVIDED UNDER ARTICLE 36.”[12]

For the Republic, Elenita failed to prove the gravity, incurability and juridical antecedence of her husband's supposed psychological incapacity as required by law and jurisprudence.

As such, We resolve this sole issue: is the evidence presented sufficient to establish the alleged psychological

incapacity of Elenita's husband Melvin?

In granting the petition for declaration of nullity of marriage on the ground of psychological incapacity, the trial court relied heavily on the psychological report and testimony of the expert witness, Dr. Gerong, which convinced the trial court that Melvin is suffering from antisocial personality disorder by reason of which he could not carry out the essential marital obligations of marriage. On the bases of Dr. Gerong's testimony and report, the trial court held that Melvin's antisocial personality disorder is attended by gravity, incurability, and juridical antecedence.[13]

In this appeal, the Republic argues that the basis on which the evidence and diagnosis of the alleged psychological incapacity of Melvin was not shown, and that it may have solely come from the self-serving testimony of Elenita without any further relevant, material and independent evidence or information.[14]

We find for the Republic.

We hold that the evidence presented by Elenita fell short to prove the alleged psychological incapacity of her husband which would render her marriage to him a nullity.

We quote with approval the observation of the OSG, thus:

“While the expertise of the psychologist is not being disputed, his prognosis as to the alleged psychological incapacity of respondent could not be considered as conclusive or reliable, given the source of his information. Considering the importance of his analysis of the psychological make-up of respondent[-appellee Melvin], the psychologist should have stated whether he has exerted effort in gathering relevant, material and reliable information in order to get an accurate psychological evaluation of the subject xxxx.”[15]

Indeed, the case of *Marcos v. Marcos*[16] asserted that there is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician, if the totality of evidence presented is enough to sustain a finding of psychological incapacity. However, it is equally controlling that the presentation of expert testimony is important to establish the precise cause of a party's psychological incapacity, and to show that it existed at the inception of the marriage.[17]

Clearly, before the courts declare a marriage null and void on the ground of psychological incapacity, even with or without expert testimony of a psychologist, “the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.”[18]

Hence, if an expert witness is presented, it is noted and emphasized by jurisprudence that the “presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.”[19]

What it means to have an in-depth analysis, Associate Justice Eduardo Nachura, in the case of *Te v. Te*,[20] quotes the Psychological Extension Evaluation Research Services (PEERS) which enumerates the segments of the psychological evaluation report for psychological incapacity, to wit:

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“Identifying Data: Personal Information

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Referral Question: Data coming from informants and significant others (psychologists, psychiatrists, physicians, parents, brothers, sisters, relatives, friends, etc.).

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Test Administered (Dates): List by name

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Background Information:

Current Life Situation: Presenting complaint (personal and marital conflict), history of problem, and consequences in client's life.

Life History Information: Childhood development, educational history, vocational history, medical history, sexual and marital history, personal goals.

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Behavior Observations: Description of client, relationship with examiner, and test related behaviors.

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Interpretation of Test Results:

Intellectual Functioning: Wechsler tests, Stanford-Binet, etc. Obtained IQ scores and specific strengths and deficits.

Cognitive Functioning: Rorschach, TAT, MMPI, etc. Perception of reality or perceptual efficiency, conceptual organization, psychological needs, conflicts, preoccupations, suspiciousness, hallucinations, or delusions.

Emotional Functioning (MMPI, Rorschach, etc.): Liability of emotions, impulse control, predominant concerns like aggression, anxiety, depression, guilt, dependency, and hostility.

Relationship Patterns (MMPI, Rorschach, TAT, etc.): Problem areas in work or school, friendships, intimate relationships, difficulties such as immaturity, irresponsibility, cooperativeness, sociability, introversion, impulsivity, aggression, dangerousness to self or others.

Defenses and compensations: Evidence of any strength, any coping mechanisms, or any useful compensation that might be helping the client maintain himself/herself.

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Integration of Test Results with Life History: Presenting a clinical picture of the client as a total person against the background of his marital discords and life circumstances. Hypotheses posed through the referral question and generated and integrated via test results and other reliable information.

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Summary, Conclusion, Diagnosis, Prognosis:

Summary: Emphasis should be on conciseness and accuracy so that the reader can quickly find the essential information and overall impression.

Conclusion: Integrating the material (data) into a more smoothly stated conceptualization of the client's personality and problem areas as regards root causes and characteristics as ground for nullity of marriage.

Diagnosis: Diagnostic impression is evolved from the data obtained, formed impression of personality disorders, and classified mental disorders based on the criteria and multi axial system of the DSM IV.

Prognosis: Predicting the behavior based on the data obtained that are relevant to the current functioning of the client, albeit under ideal conditions.

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Recommendation: Providing a careful specific recommendation is based on the referral sources and obtained data in dealing with a particular client that may be ameliorative, remedial, or unique treatment/intervention approaches. As to psychological incapacity, specific recommendation on the nullity of marriage based on Article 36 of the Family Code and expertise and clinical judgment of the Clinical Psychologist should be given emphasis. (Ng, Apruebo & Lepiten, Legal and Clinical Bases of Psychological Incapacity, 2006 ed. pp. 179-181.)"

Taking cue from the pronouncement of Te, the Supreme Court in *Suazo v. Suazo*[21] evaluated the expert evidence therein whether the same would constitute an in-depth assessment of the parties by the psychologist or expert, in order to come up with a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.

In the case of *Suazo*, concluding that the psychologist's testimony and the psychological report did not conclusively show the root cause, gravity and incurability of respondent Angelito's alleged psychological condition, the Supreme Court ratiocinated, thus:

"We first note a critical factor in appreciating or evaluating the expert opinion evidence – the psychologist's testimony and the psychological evaluation report – that Jocelyn presented. Based on her declarations in open court, the psychologist evaluated Angelito's psychological condition only in an indirect manner – she derived all her conclusions from information coming from Jocelyn whose bias for her cause cannot of course be doubted. Given the source of the information upon which the psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above, i.e., that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.

In saying this, we do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming from persons intimately related to him (such as the party's close relatives and friends) may be helpful. This is an approach in the application of Article 36 that allows flexibility, at the same time that it avoids, if not totally obliterate, the credibility gaps spawned by supposedly expert opinion based entirely on doubtful sources of information.

From these perspectives, we conclude that the psychologist, using meager information coming from a directly interested party, could not have secured a complete personality profile and could not have conclusively formed an objective opinion or diagnosis of Angelito's psychological condition. While the report or evaluation may be conclusive with respect to Jocelyn's psychological condition, this is not true for Angelito's. The methodology employed simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder. In short, this is not the psychological report that the Court can rely on as basis for the conclusion that psychological incapacity exists.

Other than this credibility or reliability gap, both the psychologist's report and testimony simply provided a general description of Angelito's purported anti-social personality disorder, supported by the characterization of this disorder as chronic, grave and incurable. The psychologist was conspicuously silent, however, on the bases for her conclusion or the particulars that gave rise to the characterization she gave. These particulars are simply not in the Report, and neither can they be found in her testimony.

For instance, the psychologist testified that Angelito's personality disorder is chronic or incurable; Angelito has long been afflicted with the disorder prior to his marriage with Jocelyn or even during his early developmental stage, as basic trust was not developed. However, she did not support this declaration with any factual basis. In her Report, she based her conclusion on the presumption that Angelito apparently grew up in a dysfunctional family. Quite noticeable, though, is the psychologist's own equivocation on this point – she was not firm in her conclusion for she herself may have realized that it was simply conjectural. The veracity, too, of this finding is highly suspect, for it was based entirely on Jocelyn's assumed knowledge of Angelito's family background and upbringing.

Additionally, the psychologist merely generalized on the questions of why and to what extent was Angelito's personality disorder grave and incurable, and on the effects of the disorder on Angelito's awareness of and his capability to undertake the duties and responsibilities of marriage.

The psychologist therefore failed to provide the answers to the more important concerns or requisites of psychological incapacity, all of which are critical to the success of Jocelyn's cause."

Verily, if the expert evidence is the basis of the trial court in holding that a party is psychologically incapacitated to perform the essential obligations of marriage, then such evidence must overcome the credibility or reliability gaps spawned by supposedly expert opinion based entirely on doubtful sources of information and must avoid generalizations without specific and factual bases.

In the case at bar, We hold that the evaluation of Dr. Gerong is not enough basis which We can rely on to declare that Elenita's marriage to her husband Melvin is void due to the latter's psychological incapacity.

We observe that the evaluation of psychological make-up of Melvin is based solely on the information coming from Elenita. It would seem that Melvin's personality was created on how Elenita would like him to appear. Using the very words of the Supreme Court, We "do not suggest that a personal examination of the party alleged to be psychologically incapacitated is mandatory; jurisprudence holds that this type of examination is not a mandatory requirement. While such examination is desirable, we recognize that it may not be practical in all instances given the oftentimes estranged relations between the parties. For a determination though of a party's complete personality profile, information coming from persons intimately related to him (such as the party's close relatives and friends) may be helpful." [22]

Likewise, a perusal of the psychology report would reveal that the same contains mere generalizations. It would appear that the conclusion that Melvin is suffering from antisocial personality disorder was merely based on his acts of abandoning his wife and children, failing to financially support his wife and children, and his being a womanizer. It was not clearly shown that his acts are manifestations of antisocial personality disorder and that his

acts are clearly linked to such personality disorder. Indeed, Dr. Gerong testified that Melvin's personality disorder is deeply rooted in his childhood considering that the latter came from a dysfunctional family with a father who was a drunkard and abusive. He also testified that Melvin's acts being a personality disorder is a result of his childhood being materially and emotionally deprived. However, this finding is questionable. His conclusion that Melvin came from a dysfunctional family is not reliable because the very idea of this dysfunctional family came only from the general narrations of Elenita.

It is also clear that the evaluation of seriousness and incurability of the alleged antisocial personality disorder of Melvin is very general. There were no particulars in Dr. Gerong's report, and when asked if the same is curable, his oversweeping answer was "I always have this strong advocacy that personality disorder is always difficult to deal with in terms of therapy." [23]

Further, a perusal of the testimony of Dr. Gerong and his report would show more of the discussion of the concept of antisocial personality disorder. He described a person with such disorder, but there was no in-depth discussion on how and why he considered Melvin to have been suffering from such personality disorder except the general claim that because he is an irresponsible father, an abusive husband, a gambler and a womanizer, he suffers from anti-social personality disorder.

It is not only the testimony and report of Dr. Gerong which created gaps in the cause of Elenita, but also her own testimony.

It would appear that Elenita generally claimed that her husband is an irresponsible father, an abusive husband, a gambler and a womanizer. Sure she cited some instances why she considered her husband as what she described him to be, but a thorough analysis of her testimony would reveal a substantial gap in her life with her husband. It is apparent that she became so much concerned of her husband's alleged personality disorder when she was left by her husband in February 2006. Except her testimony about her husband beating her once before their marriage and her testimony that her husband was already a drunkard and a womanizer prior their marriage, without any particulars, nothing is stated about her husband's personality or attitude prior their marriage and recently thereafter. She actually admitted that her husband changed before their marriage, but she never testified how long this change in the personality of her husband lasted.

It is apparent in Elenita's testimony that what she narrated is only a general picture of her husband constantly abusing her physically and verbally. Whether Melvin's personality existed before the marriage and continued before he left Elenita is not very clear. This created a glaring gap which Elenita failed to present to complete the total picture of her married life and the personality of Melvin. This clear evidentiary gap materially affects Elenita's cause, as the law and its related jurisprudence require that the psychological incapacity must exist at the time of the celebration of the marriage.

Suazo holds that "habitual drunkenness, gambling and refusal to find a job, while indicative of psychological incapacity, do not, by themselves, show psychological incapacity. All these simply indicate difficulty, neglect or mere refusal to perform marital obligations that, as the cited jurisprudence holds, cannot be considered to be constitutive of psychological incapacity in the absence of proof that these are manifestations of an incapacity rooted in some debilitating psychological condition or illness." [24]

The same can be said in this case, Melvin's acts of abandoning his wife and children for another woman; failing to support his family as a result of his affair with another woman; physically and verbally abusing his wife; lacking care to his children, do not by themselves show psychological incapacity.

It bears stressing that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the

performance of some marital obligations. Rather, it is essential that the concerned party was incapable of doing so, due to some psychological illness existing at the time of the celebration of the marriage.[25]

While We do not condone Melvin's acts, as We believe that he owes love, respect and fidelity to his wife Elenita, We cannot just sever their ties of marriage, which our Constitution seeks to protect, based solely on the evidence Elenita presented. Since evidence is Our only means to ascertain the truth respecting a matter of fact, then it is only on such evidence presented by the parties do We base Our judgments or decisions. Sadly, We find the totality of evidence presented by Elenita to be too inadequate to declare her husband psychologically unfit pursuant to Article 36 of the Family Code in order to give nullity to their marriage. Her prayer in her petition may not have been granted to her today, but, verily, We have laws which she can invoke to seek redress for the abuses her husband has done to her and her children.

To reiterate, the alleged psychological incapacity of Elenita's husband was not proven to be existing and that the same is attended with gravity, incurability, and juridical antecedence.

WHEREFORE, the instant appeal is GRANTED. The Decision dated April 18, 2011 and Order dated July 6, 2011 of the Regional Trial Court of Lapu-Lapu City, Branch 54, in Civil Case No. R-LLP-08-03075-CV are REVERSED and SET ASIDE. The Complaint for Declaration of Nullity of Marriage dated July 1, 2008 filed by herein petitioner-appellee Elenita Soco Tomarong is hereby DISMISSED.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, J., concur.

[1] Records, pp. 83-85.

[2] Records, p. 115.

[3] See Complaint dated July 1, 2008, Records, pp. 2-4.

[4] TSN dated March 2, 2010; TSN dated September 17, 2010; and TSN dated November 9, 2010.

[5] TSN dated February 15, 2011.

[6] Records, pp. 61-72.

[7] TSN dated December 7, 2010.

[8] Supra, note 1.

[9] Records, p. 85.

[10] Records, pp. 86-107.

[11] Supra, note 2.

[12] See Appellant's Brief, Rollo p. 34.

[13] See Decision dated April 18, 2011, Records, p. 84.

[14] See Appellant's Brief, Rollo, pp. 28-49.

[15] Rollo, p. 45.

[16] G.R. No. 136490, October 19, 2000.

[17] Hernandez v. Court of Appeals, G.R. No. 126010, December 8, 1999. See also Te v. Te, G.R. No. 161793, February 13, 2009.

[18] Suazo v. Suazo, G.R. No. 164493, March 10, 2010; Te v. Te, Supra.

[19] Ibid.

[20] Supra, note 17.

[21] Supra, note 18.

[22] Ibid.

[23] TSN dated December 7, 2010, p. 6.

[24] Supra, note 18.

[25] Marable v. Marable, G.R. No. 178741, January 17, 2011.

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