

MA. PAZ FERNANDEZ KROHN, PETITIONER, VS. COURT OF APPEALS AND EDGAR KROHN, JR., RESPONDENTS.*G.R. No. 108854. June 14, 1994*

Ponente: BELLOSILLO, J.

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A confidential psychiatric evaluation report is being presented in evidence before the trial court in a petition for annulment of marriage grounded on psychological incapacity. The witness testifying on the report is the husband who initiated the annulment proceedings, not the physician who prepared the report.

The subject of the evaluation report, Ma. Paz Fernandez Krohn, invoking the rule on privileged communication between physician and patient, seeks to enjoin her husband from disclosing the contents of the report. After failing to convince the trial court and the appellate court, she is now before us on a petition for review on certiorari.

On 14 June 1964, Edgar Krohn, Jr., and Ma. Paz Fernandez were married at the Saint Vincent de Paul Church in San Marcelino, Manila. The union produced three children, Edgar Johannes, Karl Wilhelm and Alexandra. Their blessings notwithstanding, the relationship between the couple developed into a stormy one. In 1971, Ma. Paz underwent psychological testing purportedly in an effort to ease the marital strain. The effort however proved futile. In 1973, they finally separated in fact.

In 1975, Edgar was able to secure a copy of the confidential psychiatric report on Ma. Paz prepared and signed by Drs. Cornelio Banaag, Jr., and Baltazar Reyes. On 2 November 1978, presenting the report among others, he obtained a decree ("Conclusion") from the Tribunal Metropolitano Matrimoniale in Manila nullifying his church marriage with Ma. Paz on the ground of "incapacitas assumendi onera conjugalia due to lack of due discretion existent at the time of the wedding and thereafter." [1] On 10 July 1979, the decree was confirmed and pronounced "Final and Definite." [2]

Meanwhile, on 30 July 1982, the then Court of First Instance (now Regional Trial Court) of Pasig, Br. II, issued an order granting the voluntary dissolution of the conjugal partnership.

On 23 October 1990, Edgar filed a petition for the annulment of his marriage with Ma. Paz before the trial court. [3] In his petition, he cited the Confidential Psychiatric Evaluation Report which Ma. Paz merely denied in her Answer as "either unfounded or irrelevant." [4]

At the hearing on 8 May 1991, Edgar took the witness stand and tried to testify on the contents of the Confidential Psychiatric Evaluation Report. This was objected to on the ground that it violated the rule on privileged communication between physician and patient. Subsequently, Ma. Paz filed a Manifestation expressing her "continuing objection" to any evidence, oral or documentary, "that would thwart the physician-patient privileged communication rule," [5] and thereafter submitted a Statement for the Record asserting among others that "there is no factual or legal basis whatsoever for petitioner (Edgar) to claim 'psychological incapacity' to annul their

marriage, such ground being completely false, fabricated and merely an afterthought.”[6] Before leaving for Spain where she has since resided after their separation, Ma. Paz also authorized and instructed her counsel to oppose the suit and pursue her counterclaim even during her absence.

On 29 May 1991, Edgar opposed Ma. Paz' motion to disallow the introduction of the confidential psychiatric report as evidence,[7] and afterwards moved to strike out Ma. Paz' Statement for the Record.[8]

On 4 June 1991, the trial court issued an Order admitting the Confidential Psychiatric Evaluation Report in evidence and ruling that -

x x x the Court resolves to overrule the objection and to sustain the Opposition to the respondent's Motion; first, because the very issue in this case is whether or not the respondent had been suffering from psychological incapacity; and secondly, when the said psychiatric report was referred to in the complaint, the respondent did not object thereto on the ground of the supposed privileged communication between patient and physician. What was raised by the respondent was that the said psychiatric report was irrelevant. So, the Court feels that in the interest of justice and for the purpose of determining whether the respondent as alleged in the petition was suffering from psychological incapacity, the said psychiatric report is very material and may be testified to by petitioner (Edgar Krohn, Jr.) without prejudice on the part of the respondent to dispute the said report or to cross-examine first the petitioner and later the psychiatrist who prepared the same if the latter will be presented.[9]

On 27 November 1991, the trial court denied the Motion to Reconsider Order dated June 4, 1991, and directed that the Statement for the Record filed by Ma. Paz be stricken off the record. A subsequent motion for reconsideration filed by her counsel was likewise denied.

Counsel of Ma. Paz then elevated the issue to respondent Court of Appeals. In a Decision promulgated 30 October 1992, the appellate court dismissed the petition for certiorari.[10] On 5 February 1993, the motion to reconsider the dismissal was likewise denied. Hence, the instant petition for review.

Petitioner now seeks to enjoin the presentation and disclosure of the contents of the psychiatric report and prays for the admission of her Statement for the Record to form part of the records of the case. She argues that since Sec. 24, par. (c), Rule 130, of the Rules of Court[11] prohibits a physician from testifying on matters which he may have acquired in attending to a patient in a professional capacity, "WITH MORE REASON should a third person (like respondent-husband in this particular instance) be PROHIBITED from testifying on privileged matters between a physician and patient or from submitting any medical report, findings or evaluation prepared by a physician which the latter has acquired as a result of his confidential and privileged relation with a patient." [12] She says that the reason behind the prohibition is -

x x x to facilitate and make safe, full and confidential disclosure by a patient to his physician of all facts, circumstances and symptoms, untrammelled by apprehension of their subsequent and enforced disclosure and publication on the witness stand, to the end that the physician may form a correct opinion, and be enabled safely and efficaciously to treat his patient.[13]

She further argues that to allow her husband to testify on the contents of the psychiatric evaluation report "will set a very bad and dangerous precedent because it abets circumvention of the rule's intent in preserving the sanctity, security and confidence to the relation of physician and his patient." [14] Her thesis is that what cannot be done directly should not be allowed to be done indirectly.

Petitioner submits that her Statement for the Record simply reiterates under oath what she asserted in her Answer, which she failed to verify as she had already left for Spain when her Answer was filed. She maintains that her "Statement for the Record is a plain and simple pleading and is not as it has never been intended to take the place

of her testimony;"[15] hence, there is no factual and legal basis whatsoever to expunge it from the records.

Private respondent Edgar Krohn, Jr., however contends that "the rules are very explicit: the prohibition applies only to a physician. Thus x x x x the legal prohibition to testify is not applicable to the case at bar where the person sought to be barred from testifying on the privileged communication is the husband and not the physician of the petitioner." [16] In fact, according to him, the Rules sanction his testimony considering that a husband may testify against his wife in a civil case filed by one against the other.

Besides, private respondent submits that privileged communication may be waived by the person entitled thereto, and this petitioner expressly did when she gave her unconditional consent to the use of the psychiatric evaluation report when it was presented to the Tribunal Metropolitanum Matrimoniale which took it into account among others in deciding the case and declaring their marriage null and void. Private respondent further argues that petitioner also gave her implied consent when she failed to specifically object to the admissibility of the report in her Answer where she merely described the evaluation report as "either unfounded or irrelevant." At any rate, failure to interpose a timely objection at the earliest opportunity to the evidence presented on privileged matters may be construed as an implied waiver.

With regard to the Statement for the Record filed by petitioner, private respondent posits that this in reality is an amendment of her Answer and thus should comply with pertinent provisions of the Rules of Court, hence, its exclusion from the records for failure to comply with the Rules is proper.

The treatise presented by petitioner on the privileged nature of the communication between physician and patient, as well as the reasons therefor, is not doubted. Indeed, statutes making communications between physician and patient privileged are intended to inspire confidence in the patient and encourage him to make a full disclosure to his physician of his symptoms and condition.[17] Consequently, this prevents the physician from making public information that will result in humiliation, embarrassment, or disgrace to the patient.[18] For, the patient should rest assured with the knowledge that the law recognizes the communication as confidential, and guards against the possibility of his feelings being shocked or his reputation tarnished by their subsequent disclosure.[19] The physician-patient privilege creates a zone of privacy, intended to preclude the humiliation of the patient that may follow the disclosure of his ailments. Indeed, certain types of information communicated in the context of the physician-patient relationship fall within the constitutionally protected zone of privacy,[20] including a patient's interest in keeping his mental health records confidential.[21] Thus, it has been observed that the psychotherapist-patient privilege is founded upon the notion that certain forms of antisocial behavior may be prevented by encouraging those in need of treatment for emotional problems to secure the services of a psychotherapist.

Petitioner's discourse while exhaustive is however misplaced. *Lim v. Court of Appeals*[22] clearly lays down the requisites in order that the privilege may be successfully invoked: (a) the privilege is claimed in a civil case; (b) the person against whom the privilege is claimed is one duly authorized to practice medicine, surgery or obstetrics; (c) such person acquired the information while he was attending to the patient in his professional capacity; (d) the information was necessary to enable him to act in that capacity; and, (e) the information was confidential and, if disclosed, would blacken the reputation (formerly character) of the patient."

In the instant case, the person against whom the privilege is claimed is not one duly authorized to practice medicine, surgery or obstetrics. He is simply the patient's husband who wishes to testify on a document executed by medical practitioners. Plainly and clearly, this does not fall within the claimed prohibition. Neither can his testimony be considered a circumvention of the prohibition because his testimony cannot have the force and effect of the testimony of the physician who examined the patient and executed the report.

Counsel or petitioner indulged heavily in objecting to the testimony of private respondent on the ground that it was privileged. In his Manifestation before the trial court dated 10 May 1991, he invoked the rule on privileged communications but never questioned the testimony as hearsay. It was a fatal mistake. For, in failing to object to the testimony on the ground that it was hearsay, counsel waived his right to make such objection and, consequently, the evidence offered may be admitted.

The other issue raised by petitioner is too trivial to merit the full attention of this Court. The allegations contained in the Statement for the Records are but refutations of private respondent's declarations which may be denied or disproved during the trial.

The instant appeal has taken its toll on the petition for annulment. Three years have already lapsed and private respondent herein, as petitioner before the trial court, has yet to conclude his testimony thereat. We thus enjoin the trial judge and the parties' respective counsel to act with deliberate speed in resolving the main action, and avoid any and all stratagems that may further delay this case. If all lawyers are allowed to appeal every perceived indiscretion of a judge in the course of trial and include in their appeals depthless issues, there will be no end to litigations, and the docket of appellate courts will forever be clogged with inconsequential cases. Hence, counsel should exercise prudence in appealing lower court rulings and raise only legitimate issues so as not to retard the resolution of cases. Indeed, there is no point in unreasonably delaying the resolution of the petition and prolonging the agony of the wedded couple who after coming out from a storm still have the right to a renewed blissful life either alone or in the company of each other.[23]

WHEREFORE, the instant petition for review is DENIED for lack of merit. The assailed Decision of respondent Court of Appeals promulgated on 30 October 1992 is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Annex "C," Comment, Rollo, p. 128.

[2] Annex "D," Comment, Rollo, p. 129.

[3] Regional Trial Court of Makati, Br. 144, Judge Candido P. Villanueva, presiding.

[4] Answer in Civil Case No. 90-2906, p. 3, par. 7, Rollo, p. 63.

[5] Manifestation, Annex "F," Rollo, pp. 74-78.

[6] Statement for the Record (Respondent's Confirmation and Verification of Her Answer with Special and Affirmative Defenses and Compulsory Counterclaim), p. 2, Annex "G," Rollo, p. 80.

[7] Annex "H," Rollo, pp. 83-85.

[8] Annex "I," Rollo, p. 86.

[9] Order of the trial court issued 4 June 1991; Rollo, p. 91.

[10] Decision penned by Associate Justice Salome A. Montoya and concurred in by Associate Justices Vicente V. Mendoza, Chairman, and Quirino D. Abad Santos, Special Third Division.

[11] Sec. 24. Disqualification by reason of privileged communication. - The following persons cannot testify as to matters learned in confidence in the following cases: x x x x (c) A surgeon authorized to practice medicine,

surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient.

[12] Memorandum of Petitioner, p. 7, Rollo, p. 189.

[13] Citing Will of Bruendi, 102 Wis. 47, 78 N.W. 169.

[14] Memorandum of Petitioner, p. 15, Rollo, p. 197.

[15] Id., p. 29, Id., p. 211.

[16] Memorandum of Private Respondent, p. 6, Rollo, p. 172.

[17] 81 Am. Jur. 2d 392, citing Massachusetts Mut. Life Ins. Co. v. Brei (CA2 NY) 311 F2d 463, 6 FR Sery 2d 5, 100 ALR2d 634; Binder v. Superior Court (5th Dist) 196 Cal App 3d 893, 242 Cal Rptr 231; and many others.

[18] Id., citing Post v. State (Alaska) 850 P2d 304; Binder v. Superior Court (5th Dist), see Note 17; Steinberg v. New York Life Ins. Co., 263 45, 188 NE 152, 90 ALR 642; and many others.

[19] Id., citing Binder v. Superior Court (5th Dist), see Note 18.

[20] 81 Am Jur 2d 393, citing Falcon v. Alaska Public Offices Com. (Alaska) 570 P2d 469.

[21] 81 Am Jur 2d 394, citing Mavroudis v. Superior Court of San Mateo County (1st Dist) 102 Cal App 3d 594, 162 Cal Rptr 724.

[22] G.R. No. 91114, 25 September 1992, 214 SCRA 273.

[23] Salita v. Judge Magtolis, G.R. No. 106429, 16 May 1994.

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