

BERNARDINO S. ZAMORA, PETITIONER, VS. COURT OF APPEALS AND NORMA MERCADO ZAMORA, RESPONDENTS.

G.R. No. 141917. February 07, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is an appeal by certiorari under Rule 45 of the Rules of Court to annul and set aside the Decision and Resolution of the Court of Appeals (CA) dated August 5, 1999 and January 24, 2000 in CA-G.R. CV No. 53525, entitled "Bernardino S. Zamora v. Norma Mercado Zamora," which affirmed the dismissal of a complaint for declaration of nullity of marriage.

The facts^[1] are:

Petitioner and private respondent were married on June 4, 1970 in Cebu City. After their marriage, they lived together at No. 50-A Gorordo Avenue, Cebu City. The union did not produce any child. In 1972, private respondent left for the United States to work as a nurse. She returned to the Philippines for a few months, then left again in 1974. Thereafter, she made periodic visits to Cebu City until 1989, when she was already a U.S. citizen.

Petitioner filed a complaint for declaration of nullity of marriage anchored on the alleged "psychological incapacity" of private respondent, as provided for under Article 36 of the Family Code. To support his position, he alleged that his wife was "horrified" by the mere thought of having children as evidenced by the fact that she had not borne petitioner a child. Furthermore, he also alleged that private respondent abandoned him by living in the United States and had in fact become an American citizen; and that throughout their marriage they lived together for not more than three years.

On the other hand, private respondent denied that she refused to have a child. She portrayed herself as one who loves children as she is a nurse by profession and that she would from time to time borrow her husband's niece and nephews to care for them. She also faulted her husband for the breakup of their marriage, alleging that he had been unfaithful to her. He allegedly had two affairs with different women, and he begot at least three children with them.

On June 22, 1995, the trial court rendered its decision thus:

...

Plaintiff consented to defendant's trip to the United States in 1974. She [defendant] wanted to earn money there because she wanted to help her husband build a big house at the Beverly Hills, Cebu City. Defendant's testimony was corroborated by Paulina Martinez, a former househelp of the Zamoras. She always wanted to live in the Philippines before her husband committed infidelity.

One reason why defendant seldom saw her husband while she was in the Philippines was because of the infidelity committed by her husband. No less than plaintiff himself admitted that he has a child with a certain [x x x]. The court is also convinced that he has two children with a certain [y y y]. The infidelity on the part of

the plaintiff was one of the contributing factors which led to the estranged relationship between him and defendant.

... [N]othing in the evidence of plaintiff show[s] that the defendant suffered from any psychological incapacity or that she failed to comply with her essential marital obligations. There is no evidence of psychological incapacity on the part of defendant so that she could not carry out the ordinary duties required in married life. Neither has it been shown that there was an incurable defect on the part of defendant.

...

WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the complaint.

Without special pronouncement as to cost.

SO ORDERED.[2]

Petitioner appealed to the CA which rendered a Decision on August 5, 1999 affirming the ruling of the trial court. The pertinent portions of the CA decision read:

...

Without delving further into both parties' allegations, we must deny this appeal.

In the case of *Leouel Santos v. Court of Appeals*,^[3] the High Court ruled that, "psychological incapacity should refer to no less than a mental (not physical) incapacity x x x and that there is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality or inability to give meaning and significance to the marriage."

Also, in *Republic v. Court of Appeals and Molina*,^[4] it was held that "mere showing of 'irreconcilable differences' and 'conflicting personalities' in no wise constitutes psychological incapacity. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness."

This appeal does not fall in the category of "psychological incapacity" as defined in the aforementioned cases. The mere refusal of the appellee to bear a child is not equivalent to psychological incapacity, since even if such allegation is true, it is not shown or proven that this is due to psychological illness.

...

As correctly stated by the appellee in her brief, the appellant even failed to present any psychologist or other medical expert to prove the psychological incapacity of defendant-appellee. This WE feel is a fatal omission on the part of the appellant, considering the doctrine laid down in the *Santos* and *Molina* cases (*supra*).

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 13 of Cebu City is hereby AFFIRMED. Appeal DISMISSED.

SO ORDERED.[5]

Petitioner filed a motion for reconsideration but the same was denied by the CA in its Resolution dated January 24, 2000.

Hence, this petition raising the following issues:

- 1) Whether or not the Court of Appeals misapplied facts of weight and substance affecting the result of the present case;
- 2) Whether or not Article 68 of the Family Code is applicable to this case;

3) Whether or not the presentation of psychologists and/or psychiatrists is still desirable, if evidence in this case already shows the psychological incapacity of private respondent;

4) Whether or not the presentation of psychologists and/or psychiatrists is still desirable, considering that the private respondent is a resident of the United States and living far away from the Philippines for more than twenty (20) years:

5) Whether or not private respondent's refusal to live with petitioner under one roof for more than twenty (20) years, her refusal to bear children with petitioner, and her living a solitary life in the United States for almost three (3) decades are enough indications of psychological incapacity to comply with essential marital obligations under Article 36 of the Family Code.[6]

Briefly, the issue is whether there can be a declaration of nullity of the marriage between petitioner and private respondent on the ground of psychological incapacity.

Petitioner argues as follows:

First, there is nothing in *Santos v. CA*,[7] upon which private respondent relies, that requires as a *conditio sine qua non* the presentation of expert opinion of psychologists and psychiatrists in every petition filed under Article 36 of the Family Code. This Court merely said in that case that "[t]he well-considered opinions of psychiatrists, psychologists, and persons with expertise in psychological disciplines might be helpful or even desirable." However, no expert opinion is helpful or even desirable to determine whether private respondent has been living abroad and away from her husband for many years; whether she has a child; and whether she has made her residence abroad permanent by acquiring U.S. citizenship; and

Second, Article 36 of the Family Code provides that 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. Among the essential marital obligations embraced by Articles 68 to 71 of the same Code is to procreate children through sexual cooperation which is the basic end of marriage. To live together under one roof for togetherness spells the unity in marriage. The marriage had been existing for twenty four years when private respondent filed a legal separation case against petitioner. Throughout this period, private respondent deliberately and obstinately refused to comply with the essential marital obligation to live and cohabit with her husband.

This Court rules as follows:

It is true, as petitioner noted, that the case of *Santos v. CA*[8] did not specifically mention that the presentation of expert opinion is a vital and mandatory requirement in filing a petition for the declaration of nullity of marriage grounded on psychological incapacity referred to under Article 36 of the Family Code. Even in the subsequent case of *Republic v. Court of Appeals* [9] (also known as the *Molina case*[10]), wherein the Court laid down the guidelines[11] in the interpretation and application of the aforementioned article, examination of the person by a physician in order for the former to be declared psychologically incapacitated was likewise not considered a requirement.[12] What is important, however, as stated in *Marcos v. Marcos*,[13] is the presence of evidence that can adequately establish the party's psychological condition. If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

Likewise, Section 2(d) of A.M. No. 02-11-10-SC or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, which took effect on March 15, 2003, states:

(d) What to allege. - A petition under Article 36 of the Family Code shall specifically allege the complete facts

showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged.[14]

The rule is that the facts alleged in the petition and the evidence presented, considered in totality, should be sufficient to convince the court of the psychological incapacity of the party concerned. Petitioner, however, failed to substantiate his allegation that private respondent is psychologically incapacitated. His allegations relating to her refusal to cohabit with him and to bear a child was strongly disputed, as the records undeniably bear out. Furthermore, the acts and behavior of private respondent that petitioner cited occurred during the marriage, and there is no proof that the former exhibited a similar predilection even before or at the inception of the marriage.

Thus, based on the foregoing, the Court finds no reason to disturb the findings and conclusions reached by the trial court and the CA.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated August 5, 1999 and January 24, 2000, respectively, in CA-G.R. CV No. 53525 are AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo, pp. 23-23-b; CA Decision, pp. 1-2. References omitted.

[2] CA Rollo, pp. 50-51.

[3] 310 Phil. 21 (1995).

[4] Republic v. Court of Appeals, G.R. No. 108763, February 13, 1997, 268 SCRA 198.

[5] Rollo, pp. 23, 27.

[6] Id. at 15-16; Petition for Review on Certiorari, pp. 5-6.

[7] Supra note at 3.

[8] Id.

[9] Supra note 4, at pp. 209-212.

[10] The petitioning spouse and co-respondent in the case being Roridel O. Molina.

[11] The guidelines in Molina with respect to Article 36 of the Family Code are the following:

(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. . . .

(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,[11]

(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. 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.

Molina had provided for an additional requirement that the Solicitor General issue a certification stating his reasons for his agreement or opposition to the petition. This requirement, however, was dispensed with following the implementation of A.M. No. 02-11-10-SC or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages. Section 11 of the Rule only requires the public prosecutor to file a report confirming that no collusion exists between the parties. Still, Article 48 of the Family Code mandates that the appearance of the prosecuting attorney or fiscal assigned be on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed (*Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353, 375).

[12] *Marcos v. Marcos*, G.R. No. 136490, October 19, 2000, 343 SCRA 755, 764.

[13] *Id.*

[14] Emphasis supplied; Section 14(b) of the Rule likewise provides that: "In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the

advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the case."

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