

LENI O. CHOA, PETITIONER, VS. ALFONSO C. CHOA, RESPONDENT.*G.R. No. 143376. November 26, 2002*

Ponente: PANGANIBAN, J.

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Though interlocutory in character, an order denying a demurrer to evidence may be the subject of a certiorari proceeding, provided the petitioner can show that it was issued with grave abuse of discretion; and that appeal in due course is not plain, adequate or speedy under the circumstances. Indeed, when the plaintiff's evidence is utterly and patently insufficient to prove the complaint, it would be capricious for a trial judge to deny the demurrer and to require the defendant to present evidence to controvert a nonexistent case. Verily, the denial constitutes an unwelcome imposition on the court's docket and an assault on the defendant's resources and peace of mind. In short, such denial needlessly delays and, thus, effectively denies justice.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the March 16, 2000 Decision[1] and the May 22, 2000 Resolution[2] of the Court of Appeals (CA) in CA-GR SP No. 53100. The decretal portion of the Decision reads as follows:

“WHEREFORE, the instant Petition is hereby DISMISSED for lack of merit.”[3]

The assailed Resolution denied petitioner's Motion for Reconsideration.[4]

The Facts

Petitioner and respondent were married on March 15, 1981. Out of this union, two children were born, Cheryl Lynne and Albryan. On October 27, 1993, respondent filed before the Regional Trial Court (RTC) of Negros Occidental, Branch 51, a Complaint[5] for the annulment of his marriage to petitioner. The Complaint was docketed as Civil Case No. 93-8098. Afterwards he filed an Amended Complaint[6] dated November 8, 1993 for the declaration of nullity of his marriage to petitioner based on her alleged psychological incapacity.

The case went to trial with respondent presenting his evidence in chief. After his last witness testified, he submitted his Formal Offer of Exhibits[7] dated February 20, 1998. Instead of offering any objection to it, petitioner filed a Motion to Dismiss (Demurrer to Evidence)[8] dated May 11, 1998. The lower court then allowed a number of pleadings to be filed thereafter.

Finally, the RTC issued its December 2, 1998 Order[9] denying petitioner's Demurrer to Evidence. It held that “[respondent] established a quantum of evidence that the [petitioner] must controvert.”[10] After her Motion for Reconsideration[11] was denied in the March 22, 1999 Order,[12] petitioner elevated the case to the CA by way of a Petition for Certiorari,[13] docketed as CA-GR No. 53100.

Ruling of the Court of Appeals

The CA held that the denial of the demurrer was merely interlocutory; hence, certiorari under Rule 65 of the Rules

of Court was not available. The proper remedy was for the defense to present evidence; and if an unfavorable decision was handed down later, to take an appeal therefrom.[14] In any event, no grave abuse of discretion was committed by respondent judge in issuing the assailed Orders.[15]

The CA also ruled that “the propriety of granting or denying a demurrer to evidence rests on the sound exercise of the [trial] court’s discretion.”[16] Further, the “[p]etitioner failed to show that the issues in the court below [had] been resolved arbitrarily or without basis.”[17]

Hence, this Petition.[18]

The Issues

In her Memorandum,[19] petitioner submits the following issues for our consideration:

“1) Upon the denial of petitioner’s demurrer to evidence under Rule 33 of the 1997 Rules of Civil Procedure, is she under obligation, as a matter of inflexible rule, as what the Court of Appeals required of her, to present her evidence, and when an unfavorable [verdict] is handed down, appeal therefrom in the manner authorized by law, despite the palpably and patently weak and grossly insufficient or so inadequate evidence of the private respondent as plaintiff in the annulment of marriage case, grounded on psychological incapacity under Art. 36 of The Family Code? Or under such circumstances, can the extraordinary remedy of certiorari be directly and immediately resorted to by the petitioner; and

“2) In upholding the lower court’s denial of petitioner’s demurrer to evidence, did the Court of Appeals wantonly violate, ignore or disregard in a whimsical manner the doctrinal pronouncements of this Court in *Molina* (G.R. No. 108763, February 13, 1997, 268 SCRA 198) and *Santos* (G.R. No. 112019, January 14, 1995, 58 SCRA 17)?”[20]

Simply stated, the issues are: (1) is certiorari available to correct an order denying a demurrer to evidence? and (2) in its denial, did the RTC commit grave abuse of discretion by violating or ignoring the applicable law and jurisprudence?

The Court’s Ruling

The Petition is meritorious.

First Issue:

Resort to Certiorari

Petitioner argues that the RTC denied her Demurrer to Evidence despite the patent weakness and gross insufficiency of respondent’s evidence. Thus, she was entitled to the immediate recourse of the extraordinary remedy of certiorari. Echoing the CA, respondent counters that appeal in due course, not certiorari, is the proper remedy.

We clarify. In general, interlocutory orders are neither appealable nor subject to certiorari proceedings.

However, this rule is not absolute. In *Tadeo v. People*,[21] this Court declared that appeal -- not certiorari -- in due time was indeed the proper remedy, provided there was no grave abuse of discretion or excess of jurisdiction or oppressive exercise of judicial authority.

In fact, Rules 41 and 65 of the Rules of Court expressly recognize this exception and allow certiorari when the lower court acts with grave abuse of discretion in the issuance of an interlocutory order. Rule 41 provides:

“No appeal may be taken from:

x x x x x x x x

(c) An interlocutory order;

x x x x x x x x

“In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.” [22]

In turn, Section 1 of Rule 65 reads as follows:

“SEC. 1. Petition for certiorari -- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.”[23]

Thus, a denial of a demurrer that is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction may be assailed through a petition for certiorari.[24] In *Cruz v. People*, this exception was stressed by the Court in this wise:

“Admittedly, the general rule that the extraordinary writ of certiorari is not available to challenge interlocutory orders of the trial court may be subject to exceptions. When the assailed interlocutory orders are patently erroneous or issued with grave abuse of discretion, the remedy of certiorari lies.”[25]

Second Issue:

Denial of Demurrer to Evidence

Having established that a writ of certiorari may be issued in exceptional circumstances, this Court is now tasked to determine whether the present case falls under the exception; that is, whether the RTC indeed committed a “patent error” or grave abuse of discretion in denying petitioner’s Demurrer to Evidence.

A demurrer to evidence is defined as “an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.”[26] The demurrer challenges the sufficiency of the plaintiff’s evidence to sustain a verdict.[27] In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the indictment or to support a verdict of guilt.[28]

We have thoroughly reviewed the records of the present case, and we are convinced that the evidence against respondent (herein petitioner) is grossly insufficient to support any finding of psychological incapacity that would warrant a declaration of nullity of the parties’ marriage.

First. Respondent claims that the filing by petitioner of a series of charges against him are proof of the latter’s psychological incapacity to comply with the essential obligations of marriage. These charges included Complaints for perjury,[29] false testimony,[30] concubinage[31] and deportation.[32] According to him, the filing and the prosecution of these cases clearly showed that his wife (herein petitioner) wanted not only to put him behind bars, but also to banish him from the country. He contends that this “is very abnormal for a wife who, instead of protecting the name and integrity of her husband as the father of her children, had acted to the contrary.”[33]

We do not agree. The documents presented by respondent during the trial do not in any way show the alleged

psychological incapacity of his wife. It is the height of absurdity and inequity to condemn her as psychologically incapacitated to fulfill her marital obligations, simply because she filed cases against him. The evidence presented, even if taken as true, merely establishes the prosecution of the cases against him. To rule that the filings are sufficient to establish her psychological incapacity is not only totally erroneous, but also grave abuse of discretion bordering on absurdity.

Second. Neither is the testimony of respondent, taken by itself or in conjunction with his documentary offerings, sufficient to prove petitioner's alleged psychological incapacity. He testified in these words:

"Q Will you please tell us or explain to the Court what do you mean by 'psychologically incapacitated to comply with the essential obligations of marriage.' What do you mean by that?

A Because before our marriage she was already on the family way, so at that time she even want it aborted by taking pills. She was even immature, carefree, and she lacked the intention of procreative sexuality.[34]

X X X X X X X X

ATTY. CHUA:

And you consider her that she was carefree, she is psychologically incapacitated? Will you please elaborate on this what you mean by 'carefree' approximating psychologically incapacitated?

ATTY. MIRANO:

I think we better ask the witness what he means by 'carefree.'

ATTY. CHUA:

Okay.

COURT:

Witness may answer.

WITNESS:

She does not help in the household chores, she does not take care of the child, she wants me to hire an attendant in order to take care of the child. Even when the children were sick she does not bother to let the children see a doctor.[35]

X X X X X X X X

"STENOGRAPHER (reads back the question of Atty. Chua):

'ATTY. CHUA:

Now. From the time of courtship up to the time of your marriage to the defendant, did you notice any characteristic or traits which you consider as psychological incapacity?'

WITNESS:

Sometimes when I cannot visit at her house she gets mad at me, and she won't talk to me when I call her up by telephone. So, all she wanted for me to visit her everytime and even at the time when I am busy with some other things. So, I think that is all."[36]

Even if taken as true, the testimony of respondent basically complains about three aspects of petitioner's personality; namely, her alleged (1) lack of attention to their children, (2) immaturity and (3) lack of an "intention

of procreative sexuality.” None of these three, singly or collectively, constitutes “psychological incapacity.” Far from it.

In *Santos v. CA*,^[37] this Court clearly explained that “psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence and (c) incurability.”^[38] Said the Court:

“It should be obvious, looking at all the foregoing disquisitions, including, and most importantly, the deliberations of the Family Code Revision Committee itself, that the use of the phrase ‘psychological incapacity’ under Article 36 of the Code has not been meant to comprehend all such possible cases of psychoses as, likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity, and like circumstances (cited in *Fr. Artemio Baluma's ‘Void and Voidable Marriages in the Family Code and their Parallels in Canon Law,’* quoting from the *Diagnostic Statistical Manual of Mental Disorder* by the American Psychiatric Association; *Edward Hudson's ‘Handbook II for Marriage Nullity Cases’*). Article 36 of the Family Code cannot be taken and construed independently of but must stand in conjunction with, existing precepts in our law on marriage. Thus correlated, ‘psychological incapacity’ 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 which, as so expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. 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 disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. This psychologic condition must exist at the time the marriage is celebrated.”^[39]

Furthermore, in *Republic v. Molina*,^[40] we ruled that the psychological incapacity must be more than just a “difficulty,” a “refusal” or a “neglect” in the performance of some marital obligations. We stressed that a mere showing of irreconcilable differences and conflicting personalities in no wise constitutes psychological incapacity.

In the case at bar, the evidence adduced by respondent merely shows that he and his wife could not get along with each other. There was absolutely no showing of the gravity or juridical antecedence or incurability of the problems besetting their marital union.

Sorely lacking in respondent’s evidence is proof that the psychological incapacity was grave enough to bring about the disability of a party to assume the essential obligations of marriage. In *Molina*, we affirmed that “mild characterological peculiarities, mood changes and occasional emotional outbursts cannot be accepted as root causes of psychological incapacity. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there should be 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.”^[41]

Respondent’s pious peroration that petitioner “lacked the intention of procreative sexuality” is easily belied by the fact that two children were born during their union. Moreover, there is absolutely no showing that the alleged “defect” was already existing at the time of the celebration of the marriage.

Third. Most telling is the insufficiency, if not incompetency, of the supposed expert testimony presented by respondent. His witness, Dr. Antonio M. Gauzon, utterly failed to identify and prove the root cause of the alleged psychological incapacity. Specifically, his testimony did not show that the incapacity, if true, was medically or clinically permanent or incurable. Neither did he testify that it was grave enough to bring about the disability of the party to assume the essential obligations of marriage. The pertinent portions of his testimony are quoted thus:

“ATTY. CHUA:

And then finally and ultimately you reached the conclusion that both parties, meaning the husband and the wife in the present case have a personality which is normal. That is your conclusion?

WITNESS:

They are normal, but they cannot mix together.

Q. So as a general proposition, both of them are of normal personality, only that they are not compatible with each other?

A. Yes.

Q. And by normal personality, you mean that neither of them suffer from any personality disorder, bordering on abnormality?

A. Yes.

Q. But Doctor, is not a fact or a fact of life, that no couple could be or are perfectly match?

A. Precisely, if there is a problem, marital problem, there should be somebody who knows how to handle marriage, that should try to intervene.

Q. You mean expert advise or services should be needed by the couple?

A. Yes.

Q. Now, if the couple are mature enough and each of them practises what we call maximum tolerance and give and take, will that serve the purpose?

A. That would served the purpose of getting well.

Q. Yes?

A. Yes.

Q. Meaning to say that the incompatibility could be harmonized?

A. Yes, because they are supposedly normal, but both of them are personally disordered. It cannot be harmonized. So this case, if only they have tried professional help to take care of their marital problem, it could have been solved.

Q. Or the situation could have been remedied?

A. Yes. But I would like to say that it must be somebody who is an expert. Not just any from Tom, Dick and Harry could handle this. That means from the very beginning they have personalities which they were incompatible. So if anybody would handle that, they will not mix, they will be always quarreling with each other. They should not have got married.[42]

x x x x x x x x

Q. Yes. So in this present case, your expert opinion was sought by the plaintiff, and you found out that both are normal?

A. With different personalities. So that they were incompatible.

Q. Normal, simply incompatible.

A. Yes, with personalities different from each other, which I mentioned there in my last page. That they are like oil and water, immiscible. Like oil and water, they will not mix.

Q. You also mentioned that the plaintiff. Meaning to say the husband told you about the frequent quarrels had with the wife. Did he ever tell you that was a serious or major quarrel?

A. Actually there was no major quarrel. It was all petty quarrels.[43]

x x x x x x x x

Q. So the problem of this couple is fundamentally a conflicting personalities?

A. Yes.[44]

x x x x x x x x

Q. Now, you mentioned that you maybe able to make them reconcile?

A. Yes.

Q. You mean that given the time and opportunity, things could be worked out?

A. Yes.

Q. You mean reconciliation at this stage with expert services, and the advise of those who possess the necessary [expertise] could be worked out?

A. Yes, as I said it can be done by therapy. Family therapy.[45]

x x x x x x x x

Q. Doctor, you draw your conclusion that there is psychological incapacity existing in this case?

A. Yes.

Q. Because of the ...

A. The incompatibility.

Q. Incompatibility.

A. Yes.[46]

His testimony established merely that the spouses had an “incompatibility,” a “defect” that could possibly be treated or alleviated through psychotherapy. We need not expound further on the patent insufficiency of the expert testimony to establish the psychological incapacity of petitioner.

Furthermore, the assessment of petitioner by Dr. Gauzon was based merely on descriptions communicated to him by respondent. The doctor never conducted any psychological examination of her. Neither did he ever claim to have done so. In fact, his Professional Opinion[47] began with the statement “[I]f what Alfonso Choa said about his wife Leni is true, x x x.”[48] The expert witness testified thus:

“ATTY. CHUA

Q Doctor, in this professional opinion of yours, you gathered most of your material data from the plaintiff who is the husband?

WITNESS

A Yes. By the way, I requested the husband Alfonso, if it was possible for me to interview Leni, and he said, he doesn’t know.

ATTY. CHUA

Q He doesn't know. Now, Doctor if we were to request you to conduct the same personal interview and written psychological examination on the part of the wife, [w]ould you be willing to do that?

WITNESS

A Sure for a fee. I maybe able to make them reconcile.”[49]

Obviously, Dr. Gauzon had no personal knowledge of the facts he testified to, as these had merely been relayed to him by respondent. The former was working on pure suppositions and secondhand information fed to him by one side. Consequently, his testimony can be dismissed as unscientific and unreliable.

Dr. Gauzon tried to save his credibility by asserting that he was able to assess petitioner's character, not only through the descriptions given by respondent, but also through the former's at least fifteen hours[50] of study of the voluminous transcript of records of this case. Even if it took the good doctor a whole day or a whole week to examine the records of this case, we still find his assessment of petitioner's psychological state sorely insufficient and methodologically flawed.

As to respondent's argument -- that because Dr. Gauzon's testimony had never been objected to, the objection raised thereafter was deemed waived -- the Supreme Court has already ruled on the matter. It held that although the question of admissibility of evidence could not be raised for the first time on appeal, hearsay or unreliable evidence should be disregarded whether objected to or not, because it has no probative value.[51]

We are, of course, mindful of the ruling that a medical examination is not a *conditio sine qua non* to a finding of psychological incapacity, so long as the totality of evidence presented is enough to establish the incapacity adequately.[52] Here, however, the totality of evidence presented by respondent was completely insufficient to sustain a finding of psychological incapacity -- more so without any medical, psychiatric or psychological examination.

The trial court should have carefully studied and assessed the evidence presented by respondent and taken into account the prevailing jurisprudence on the matter. It could then have easily concluded, as we conclude now, that it was useless to proceed further with the tedious process of hearing contravening proof. His evidence was obviously, grossly and clearly insufficient to support a declaration of nullity of marriage based on psychological incapacity. Withal, it was grave abuse of discretion for the RTC to deny the Demurrer and to violate or ignore this Court's rulings in point. Indeed, continuing the process of litigation would have been a total waste of time and money for the parties and an unwelcome imposition on the trial court's docket.

We have already ruled that grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.[53] Any decision, order or resolution of a lower court tantamount to overruling a judicial pronouncement of the highest Court is unmistakably a very grave abuse of discretion.[54]

There is no reason to believe that an appeal would prove to be a plain, speedy or adequate remedy in the case at bar. An appeal would not promptly relieve petitioner from the injurious effects of the patently mistaken Orders maintaining the baseless action of respondent. It would only compel her to go needlessly through a protracted trial, which would further clog the court dockets with another futile case.[55]

WHEREFORE, the Petition is hereby GRANTED and the assailed CA Decision REVERSED and SET ASIDE. Respondent's Demurrer to Evidence is GRANTED, and the case for declaration of nullity of marriage based on the alleged psychological incapacity of petitioner is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.
Puno, (Chairman), J., abroad on official leave.

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- [1] Annex “A” of the Petition; rollo, pp. 25-28; penned by Justice Romeo A. Brawner and concurred in by Justices Fermin A. Martin Jr. (Division chairman) and Andres B. Reyes Jr. (member).
- [2] Annex “C” of the Petition; rollo, p. 39.
- [3] CA Decision, p. 4; rollo, p. 27-A.
- [4] Annex “B” of the Petition; rollo, pp. 29-38.
- [5] Complaint dated October 27, 1993; records, pp. 13-21.
- [6] Records, pp. 25-33.
- [7] Id., pp. 239-261.
- [8] Id., pp. 377-389.
- [9] Id., pp. 442-445.
- [10] Order dated December 2, 1998; records, pp. 444-445.
- [11] Records, pp. 446-449.
- [12] Id., p. 461.
- [13] Petition dated June 3, 1999; CA rollo, pp. 2-22.
- [14] CA Decision, p. 3; rollo, p. 27.
- [15] Ibid.
- [16] Id., pp. 4 & 27-A.
- [17] Ibid.
- [18] The case was deemed submitted for decision on February 12, 2001, upon this Court’s receipt of the Memorandum for respondent signed by Attys. William N. Mirano and Gina H. Mirano of Mirano, Mirano & Mirano. Petitioner’s Memorandum, received on December 29, 2000, was signed by Atty. Joselito T. Bayatan.
- [19] Rollo, pp. 108-127.
- [20] Petitioner’s Memorandum, p. 9; rollo, p. 116.
- [21] 300 SCRA 744, December 29, 1998.
- [22] §1, Rule 41, 1997 Rules of Civil Procedure.
- [23] §1, Rule 65, 1997 Rules of Civil Procedure.
- [24] Ong v. People, 342 SCRA 372, October 9, 2000; Gutib v. CA, 312 SCRA 365, August 13, 1999.
- [25] 303 SCRA 533, 538, February 23, 1999, per Pardo, J.

- [26] Black's Law Dictionary, 6[th] ed. (1990), p. 433.
- [27] Ong v. People, supra; Gutib v. CA, supra.
- [28] Ibid.
- [29] As evidenced by Exhibits "D" to "M" and "FF" to "GG."
- [30] As evidenced by Exhibits "O" to "P."
- [31] As evidenced by Exhibits "Q" to "R."
- [32] As evidenced by Exhibits "HH" to "JJ."
- [33] Formal Offer of Exhibits, p. 3; records, p. 241.
- [34] TSN, February 28, 1996, p. 10.
- [35] Id., p. 15.
- [36] Id., p. 19.
- [37] 240 SCRA 20, January 4, 1995.
- [38] Id., p. 33, per Vitug, J.
- [39] Id., p. 34.
- [40] 268 SCRA 198, February 13, 1997, per Panganiban, J.
- [41] Id., pp. 211-212.
- [42] TSN, February 11, 1998, pp. 23-27.
- [43] Id., pp. 41-42.
- [44] Id., p. 46.
- [45] Id., pp. 49-50.
- [46] Id., pp. 62-63.
- [47] Exhibit "MM"; records, pp. 367-370.
- [48] Professional Opinion, p. 4; Exhibit "MM," records, p. 370.
- [49] TSN, February 11, 1998, pp. 48-49.
- [50] Id., pp. 14-15.
- [51] City Government of Davao v. Monteverde-Consunji, GR No. 136825, May 21, 2001; People v. Williams, 357 SCRA 124, April 20, 2001; Benguet Exploration, Inc. v. CA, 351 SCRA 445, February 9, 2001.
- [52] Marcos v. Marcos, 343 SCRA 755, October 19, 2000.
- [53] Republic v. COCOFED, GR Nos. 147062-64, December 14, 2001; Cuison v. CA, 289 SCRA 161, April 15, 1998.
- [54] Ibid.

[55] Emergency Loan Pawnshop, Inc. v. CA, 353 SCRA 89, February 28, 2001; Far East Bank and Trust Co. v. CA, 341 SCRA 485, September 29, 2000; MB Finance Corp. v. Abesamis, 195 SCRA 592, March 22, 1991.

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