

SILVINO A. LIGERALDE, PETITIONER, VS. MAY ASCENSION A. PATALINGHUG AND THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 168796. April 15, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This petition seeks to set aside the November 30, 2004 Decision[1] of the Court of Appeals (CA) which reversed the Decision[2] of the Regional Trial Court of Dagupan City (RTC) declaring the marriage between petitioner Silvino A. Ligeralde (Silvino) and private respondent May Ascension A. Patalinghug (May) null and void.

Silvino and May got married on October 3, 1984. They were blessed with four children. Silvino claimed that, during their marriage, he observed that May had several manifestations of a negative marital behavior. He described her as immature, irresponsible and carefree. Her infidelity, negligence and nocturnal activities, he claimed, characterized their marital relations.

Sometime in September 1995, May arrived home at 4:00 o'clock in the morning. Her excuse was that she had watched a video program in a neighboring town, but admitted later to have slept with her Palestinian boyfriend in a hotel. Silvino tried to persuade her to be conscientious of her duties as wife and mother. His pleas were ignored. His persuasions would often lead to altercations or physical violence.

In the midst of these, Silvino's deep love for her, the thought of saving their marriage for the sake of their children, and the commitment of May to reform dissuaded him from separating from her. He still wanted to reconcile with her.

The couple started a new life. A few months after, however, he realized that their marriage was hopeless. May was back again to her old ways. This was demonstrated when Silvino arrived home one day and learned that she was nowhere to be found. He searched for her and found her in a nearby apartment drinking beer with a male lover.

Later, May confessed that she had no more love for him. They then lived separately.

With May's irresponsible, immature and immoral behavior, Silvino came to believe that she is psychologically incapacitated to comply with the essential obligations of marriage.

Prior to the filing of the complaint, Silvino referred the matter to Dr. Tina Nicdao-Basilio for psychological evaluation. The psychologist certified that May was psychologically incapacitated to perform her essential marital obligations; that the incapacity started when she was still young and became manifest after marriage; and that the same was serious and incurable.[3]

On October 22, 1999, the RTC declared the marriage of Silvino and May null and void. Its findings were based on the Psychological Evaluation Report of Dr. Tina Nicdao-Basilio.

The Court of Appeals reversed the RTC decision. It ruled that private respondent's alleged sexual infidelity, emotional immaturity and irresponsibility do not constitute psychological incapacity within the contemplation of the Family Code and that the psychologist failed to identify and prove the root cause thereof or that the incapacity was medically or clinically permanent or incurable.

Hence, this petition for certiorari under Rule 65.

The core issue raised by petitioner Silvino Ligeralde is that "the assailed order of the CA is based on conjecture and, therefore, issued without jurisdiction, in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction." [4]

The Court required the private respondent to comment but she failed to do so. Efforts were exerted to locate her but to no avail.

Nevertheless, the petition is technically and substantially flawed. On procedural grounds, the Court agrees with the public respondent that the petitioner should have filed a petition for review on certiorari under Rule 45 instead of this petition for certiorari under Rule 65. For having availed of the wrong remedy, this petition deserves outright dismissal.

Substantially, the petition has no merit. In order to avail of the special civil action for certiorari under Rule 65 of the Revised Rules of Court, [5] the petitioner must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess in jurisdiction. By grave abuse of discretion is meant such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of certiorari to lie, there must be capricious, arbitrary or whimsical exercise of power. [6]

In this case at bench, the Court finds no commission of a grave abuse of discretion in the rendition of the assailed CA decision dismissing petitioner's complaint for declaration of nullity of marriage under Article 36 of the Family Code. Upon close scrutiny of the records, we find nothing whimsical, arbitrary or capricious in its findings.

A petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides:

ART. 36. 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.

Psychological incapacity required by Art. 36 must be characterized by (a) gravity, (b) juridical antecedence and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage. It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage. It must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved. [7] The Court likewise laid down the guidelines in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code, in *Republic v. Court of Appeals*. [8] Relevant to this petition are the following:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff; (2) the root cause of the psychological incapacity must be medically or clinically identified, alleged in the complaint, sufficiently proven by experts and clearly explained in the decision; (3) the incapacity must be proven to be existing at the "time of the celebration" of the marriage; (4) such incapacity must also be shown to be medically or clinically permanent or incurable; and (5) such illness must be grave enough to bring about the disability of the party to assume the

essential obligations of marriage.

Guided by these pronouncements, it is the Court's considered view that petitioner's evidence failed to establish respondent May's psychological incapacity.

Petitioner's testimony did not prove the root cause, gravity and incurability of private respondent's condition. Even Dr. Nicdao-Basilio failed to show the root cause of her psychological incapacity. The root cause of the psychological incapacity must be identified as a psychological illness, its incapacitating nature fully explained and established by the totality of the evidence presented during trial.[9]

More importantly, the acts of private respondent do not even rise to the level of the "psychological incapacity" that the law requires. Private respondent's act of living an adulterous life cannot automatically be equated with a psychological disorder, especially when no specific evidence was shown that promiscuity was a trait already existing at the inception of marriage. Petitioner must be able to establish that respondent's unfaithfulness is a manifestation of a disordered personality, which makes her completely unable to discharge the essential obligations of the marital state.[10]

Doubtless, the private respondent was far from being a perfect wife and a good mother. She certainly had some character flaws. But these imperfections do not warrant a conclusion that she had a psychological malady at the time of the marriage that rendered her incapable of fulfilling her marital and family duties and obligations.[11]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Magdangal M. De Leon, and concurred in by Justices Romeo A. Brawner and Mariano C. Del Castillo, promulgated on November 30, 2004, Rollo, pp. 18-24.

[2] Promulgated on October 22, 1999; id. at 37-40.

[3] Due to the negligence of May in her duties as homemaker, and due to her nocturnal activities with friends and business endeavors, heated altercations ensue, causing physical and verbal abuse on both parties. A more serious cause of arguments were May's admission of infidelity, making her leave their home, leaving the care of the children to an aunt.

[E]ven when client had forgiven her several times, and took her in so that they can start anew, May continued with her illicit relations with other men, causing much shame and humiliation on client Silvino in their community.

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In view of the above mentioned psychological findings, it is the opinion of the undersigned psychologist that to a certain extent, client's wife May Ascension is not psychologically capable of performing her duties and responsibilities as wife to her husband Silvino, and mother to their four children who are grossly neglected as a result of her behavior. (CA Decision, id. at 20)

[4] Petition for Review on Certiorari, id. at 9.

[5] Section 1, Rule 65 of the 1997 Rules of Civil Procedure 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.

[6] *Salma v. Hon. Miro*, G.R. No. 168362, January 25, 2007, 512 SCRA 724

[7] *Rodolfo A. Aspillaga v. Aurora A. Aspillaga*, G.R. No. 170925, October 26, 2009 citing *Santos v. Court of Appeals*, G.R. No. 112019, January 4, 1995, 240 SCRA 20.

[8] *Veronica Cabacungan Alcazar v. Rey C. Alcazar*, G.R. No. 174451, October 13, 2009.

[9] *Id*

[10] *Id*.

[11] *Navales v. Navales*, G.R. No. 167523, June 27, 2008, 556 SCRA 272.

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