OFFICIAL GAZETTE · SECOND DIVISION · JANUARY 19, 2011

# ALAIN M. DIÑO, PETITIONER, VS. MA. CARIDAD L. DIÑO, RESPONDENT.

*G.R. No. 178044, January 19, 2011*

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The Case

Before the Court is a petition for review[1] assailing the 18 October 2006 Decision[2] and the 12 March 2007 Order[3] of the Regional Trial Court of Las Piñas City, Branch 254 (trial court) in Civil Case No. LP-01-0149.

The Antecedent Facts

Alain M. Diño (petitioner) and Ma. Caridad L. Diño (respondent) were childhood friends and sweethearts. They started living together in 1984 until they decided to separate in 1994. In 1996, petitioner and respondent decided to live together again. On 14 January 1998, they were married before Mayor Vergel Aguilar of Las Piñas City.

On 30 May 2001, petitioner filed an action for Declaration of Nullity of Marriage against respondent, citing psychological incapacity under Article 36 of the Family Code. Petitioner alleged that respondent failed in her marital obligation to give love and support to him, and had abandoned her responsibility to the family, choosing instead to go on shopping sprees and gallivanting with her friends that depleted the family assets. Petitioner further alleged that respondent was not faithful, and would at times become violent and hurt him.

Extrajudicial service of summons was effected upon respondent who, at the time of the filing of the petition, was already living in the United States of America. Despite receipt of the summons, respondent did not file an answer to the petition within the reglementary period. Petitioner later learned that respondent filed a petition for divorce/dissolution of her marriage with petitioner, which was granted by the Superior Court of California on 25 May 2001. Petitioner also learned that on 5 October 2001, respondent married a certain Manuel V. Alcantara.

On 30 April 2002, the Office of the Las Piñas prosecutor found that there were no indicative facts of collusion between the parties and the case was set for trial on the merits.

Dr. Nedy L. Tayag (Dr. Tayag), a clinical psychologist, submitted a psychological report establishing that respondent was suffering from Narcissistic Personality Disorder which was deeply ingrained in her system since her early formative years. Dr. Tayag found that respondent's disorder was long-lasting and by nature, incurable.

In its 18 October 2006 Decision, the trial court granted the petition on the ground that respondent was psychologically incapacited to comply with the essential marital obligations at the time of the celebration of the marriage.

The Decision of the Trial Court

The trial court ruled that based on the evidence presented, petitioner was able to establish respondent's psychological incapacity. The trial court ruled that even without Dr. Tayag's psychological report, the allegations in the complaint, substantiated in the witness stand, clearly made out a case of psychological incapacity against respondent. The trial court found that respondent committed acts which hurt and embarrassed petitioner and the rest of the family, and that respondent failed to observe mutual love, respect and fidelity required of her under



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Article 68 of the Family Code. The trial court also ruled that respondent abandoned petitioner when she obtained a divorce abroad and married another man.

The dispositive portion of the trial court's decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> Declaring the marriage between plaintiff ALAIN M. DIÑO and defendant MA. CARIDAD L. DIÑO on January 14, 1998, and all its effects under the law, as NULL and VOID from the beginning; and
>
> Dissolving the regime of absolute community of property.
>
> A DECREE OF ABSOLUTE NULLITY OF MARRIAGE shall only be issued upon compliance with Article[s] 50 and 51 of the Family Code.
>
> Let copies of this Decision be furnished the parties, the Office of the Solicitor General, Office of the City Prosecutor, Las Piñas City and the Office of the Local Civil Registrar of Las Piñas City, for their information and guidance.
>
> SO ORDERED.[4]

Petitioner filed a motion for partial reconsideration questioning the dissolution of the absolute community of property and the ruling that the decree of annulment shall only be issued upon compliance with Articles 50 and 51 of the Family Code.

In its 12 March 2007 Order, the trial court partially granted the motion and modified its 18 October 2006 Decision as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> 1) Declaring the marriage between plaintiff ALAIN M. DIÑO and defendant MA. CARIDAD L. DIÑO on January 14, 1998, and all its effects under the law, as NULL and VOID from the beginning; and
>
> 2) Dissolving the regime of absolute community of property.
>
> A DECREE OF ABSOLUTE NULLITY OF MARRIAGE shall be issued after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code.
>
> Let copies of this Order be furnished the parties, the Office of the Solicitor General, the Office of the City Prosecutor of Las Piñas City and the Local Civil Registrar of Las Piñas City, for their information and guidance.[5]

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the trial court erred when it ordered that a decree of absolute nullity of marriage shall only be issued after liquidation, partition, and distribution of the parties' properties under Article 147 of the Family Code.

The Ruling of this Court

The petition has merit.

Petitioner assails the ruling of the trial court ordering that a decree of absolute nullity of marriage shall only be issued after liquidation, partition, and distribution of the parties' properties under Article 147 of the Family Code. Petitioner argues that Section 19(1) of the Rule on Declaration of Absolute Nullity of Null Marriages and


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Annulment of Voidable Marriages[6] (the Rule) does not apply to Article 147 of the Family Code.

We agree with petitioner.

The Court has ruled in Valdes v. RTC, Branch 102, Quezon City that in a void marriage, regardless of its cause, the property relations of the parties during the period of cohabitation is governed either by Article 147 or Article 148 of the Family Code.[7] Article 147 of the Family Code applies to union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void,[8] such as petitioner and respondent in the case before the Court.

Article 147 of the Family Code provides:

> Article 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.
>
> In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.
>
> Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.
>
> When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

For Article 147 of the Family Code to apply, the following elements must be present:

> (1) The man and the woman must be capacitated to marry each other;
>
> (2) They live exclusively with each other as husband and wife; and
>
> (3) Their union is without the benefit of marriage, or their marriage is void.[9]

All these elements are present in this case and there is no question that Article 147 of the Family Code applies to the property relations between petitioner and respondent.

We agree with petitioner that the trial court erred in ordering that a decree of absolute nullity of marriage shall be issued only after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code. The ruling has no basis because Section 19(1) of the Rule does not apply to cases governed under Articles 147 and 148 of the Family Code. Section 19(1) of the Rule provides:

> Sec. 19. Decision. - (1) If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.

The pertinent provisions of the Family Code cited in Section 19(1) of the Rule are:


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> Article 50. The effects provided for in paragraphs (2), (3), (4) and (5) of Article 43 and in Article 44 shall also apply in proper cases to marriages which are declared void ab initio or annulled by final judgment under Articles 40 and 45.[10]
>
> The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.
>
> All creditors of the spouses as well as of the absolute community of the conjugal partnership shall be notified of the proceedings for liquidation.
>
> In the partition, the conjugal dwelling and the lot on which it is situated, shall be adjudicated in accordance with the provisions of Articles 102 and 129.
>
> Article 51. In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.
>
> The children of their guardian, or the trustee of their property, may ask for the enforcement of the judgment.
>
> The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.

It is clear from Article 50 of the Family Code that Section 19(1) of the Rule applies only to marriages which are declared void ab initio or annulled by final judgment under Articles 40 and 45 of the Family Code. In short, Article 50 of the Family Code does not apply to marriages which are declared void ab initio under Article 36 of the Family Code, which should be declared void without waiting for the liquidation of the properties of the parties.

Article 40 of the Family Code contemplates a situation where a second or bigamous marriage was contracted. Under Article 40, "[t]he absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void." Thus we ruled:

> x x x where the absolute nullity of a previous marriage is sought to be invoked for purposes of contracting a second marriage, the sole basis acceptable in law, for said projected marriage to be free from legal infirmity, is a final judgment declaring a previous marriage void.[11]

Article 45 of the Family Code, on the other hand, refers to voidable marriages, meaning, marriages which are valid until they are set aside by final judgment of a competent court in an action for annulment.[12] In both instances under Articles 40 and 45, the marriages are governed either by absolute community of property[13] or conjugal partnership of gains[14] unless the parties agree to a complete separation of property in a marriage settlement entered into before the marriage. Since the property relations of the parties is governed by absolute community of property or conjugal partnership of gains, there is a need to liquidate, partition and distribute the properties before a decree of annulment could be issued. That is not the case for annulment of marriage under Article 36 of the Family Code because the marriage is governed by the ordinary rules on co-ownership.

In this case, petitioner's marriage to respondent was declared void under Article 36[15] of the Family Code and not under Article 40 or 45. Thus, what governs the liquidation of properties owned in common by petitioner and respondent are the rules on co-ownership. In Valdes, the Court ruled that the property relations of parties in a void marriage during the period of cohabitation is governed either by Article 147 or Article 148 of the Family

Code.[16] The rules on co-ownership apply and the properties of the spouses should be liquidated in accordance with the Civil Code provisions on co-ownership. Under Article 496 of the Civil Code, "[p]artition may be made by agreement between the parties or by judicial proceedings. x x x." It is not necessary to liquidate the properties of the spouses in the same proceeding for declaration of nullity of marriage.

WHEREFORE, we AFFIRM the Decision of the trial court with the MODIFICATION that the decree of absolute nullity of the marriage shall be issued upon finality of the trial court's decision without waiting for the liquidation, partition, and distribution of the parties' properties under Article 147 of the Family Code.

**SO ORDERED.**

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 28-34. Penned by Presiding Judge Gloria Butay Aglugub.

[3] Id. at 45-46.

[4] Id. at 34.

[5] Id. at 46.

[6] A.M. No. 02-11-10-SC, effective 15 March 2003.

[7] 328 Phil. 1289 (1996).

[8] Mercado-Fehr v. Bruno Fehr, 460 Phil. 445 (2003).

[9] Id.

[10] Article 43. The termination of the subsequent marriage referred to in the preceding Article shall produce the following effects:

(1) The children of the subsequent marriage conceived prior to its termination shall be considered legitimate and their custody and support in case of dispute shall be decided by the court in a proper proceeding;

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

(3) Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;

(4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

(5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.

Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.


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Article 45. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife;

(2) That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

(3) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

(4) That the consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;

(5) That either party was physically incapable of consummating the marriage with the other and such incapacity continues and appears to be incurable; or

(6) That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.

[11] Nicdao Cariño v. Yee Cariño, 403 Phil. 861 (2001).

[12] Suntay v. Cojuangco-Suntay, 360 Phil. 932 (1998).

[13] Article 88 of the Family Code.

[14] Article 105 of the Family Code.

[15] Article 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.

[16] Supra note 7.


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