

MANUEL G. ALMELOR, PETITIONER, VS. THE HON. REGIONAL TRIAL COURT OF LAS PIÑAS CITY, BRANCH 254, AND LEONIDA T. ALMELOR, RESPONDENT.

G.R. No. 179620. August 26, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

MARRIAGE, in its totality, involves the spouses' right to the community of their whole lives. It likewise involves a true intertwining of personalities.[1]

This is a petition for review on certiorari of the Decision[2] of the Court of Appeals (CA) denying the petition for annulment of judgment and affirming in toto the decision of the Regional Trial Court (RTC), Las Piñas, Branch 254. The CA dismissed outright the Rule 47 petition for being the wrong remedy.

The Facts

Petitioner Manuel G. Almolor (Manuel) and respondent Leonida Trinidad (Leonida) were married on January 29, 1989 at the Manila Cathedral.[3] Their union bore three children: (1) Maria Paulina Corinne, born on October 20, 1989; (2) Napoleon Manuel, born on August 9, 1991; and (3) Manuel Homer, born on July 4, 1994.[4] Manuel and Leonida are both medical practitioners, an anesthesiologist and a pediatrician, respectively.[5]

After eleven (11) years of marriage, Leonida filed a petition with the RTC in Las Piñas City to annul their marriage on the ground that Manuel was psychologically incapacitated to perform his marital obligations. The case, docketed as LP-00-0132 was raffled off to Branch 254.

During the trial, Leonida testified that she first met Manuel in 1981 at the San Lazaro Hospital where they worked as medical student clerks. At that time, she regarded Manuel as a very thoughtful person who got along well with other people. They soon became sweethearts. Three years after, they got married.[6]

Leonida averred that Manuel's kind and gentle demeanor did not last long. In the public eye, Manuel was the picture of a perfect husband and father. This was not the case in his private life. At home, Leonida described Manuel as a harsh disciplinarian, unreasonably meticulous, easily angered. Manuel's unreasonable way of imposing discipline on their children was the cause of their frequent fights as a couple.[7] Leonida complained that this was in stark contrast to the alleged lavish affection Manuel has for his mother. Manuel's deep attachment to his mother and his dependence on her decision-making were incomprehensible to Leonida.[8]

Further adding to her woes was his concealment to her of his homosexuality. Her suspicions were first aroused when she noticed Manuel's peculiar closeness to his male companions. For instance, she caught him in an indiscreet telephone conversation manifesting his affection for a male caller.[9] She also found several pornographic homosexual materials in his possession.[10] Her worse fears were confirmed when she saw Manuel kissed another man on the lips. The man was a certain Dr. Nogales.[11] When she confronted Manuel, he denied everything. At this point, Leonida took her children and left their conjugal abode. Since then, Manuel stopped

giving support to their children.[12]

Dr. Valentina del Fonso Garcia, a clinical psychologist, was presented to prove Leonida's claim. Dr. del Fonso Garcia testified that she conducted evaluative interviews and a battery of psychiatric tests on Leonida. She also had a one-time interview with Manuel and face-to-face interviews with Ma. Paulina Corrinne (the eldest child).[13] She concluded that Manuel is psychologically incapacitated.[14] Such incapacity is marked by antecedence; it existed even before the marriage and appeared to be incurable.

Manuel, for his part, admitted that he and Leonida had some petty arguments here and there. He, however, maintained that their marital relationship was generally harmonious. The petition for annulment filed by Leonida came as a surprise to him.

Manuel countered that the true cause of Leonida's hostility against him was their professional rivalry. It began when he refused to heed the memorandum[15] released by Christ the King Hospital. The memorandum ordered him to desist from converting his own lying-in clinic to a primary or secondary hospital.[16] Leonida's family owns Christ the King Hospital which is situated in the same subdivision as Manuel's clinic and residence.[17] In other words, he and her family have competing or rival hospitals in the same vicinity.

Manuel belied her allegation that he was a cruel father to their children. He denied maltreating them. At most, he only imposed the necessary discipline on the children.

He also defended his show of affection for his mother. He said there was nothing wrong for him to return the love and affection of the person who reared and looked after him and his siblings. This is especially apt now that his mother is in her twilight years.[18] Manuel pointed out that Leonida found fault in this otherwise healthy relationship because of her very jealous and possessive nature.[19]

This same overly jealous behavior of Leonida drove Manuel to avoid the company of female friends. He wanted to avoid any further misunderstanding with his wife. But, Leonida instead conjured up stories about his sexual preference. She also fabricated tales about pornographic materials found in his possession to cast doubt on his masculinity.[20]

To corroborate his version, he presented his brother, Jesus G. Almelor. Jesus narrated that he usually stayed at Manuel's house during his weekly trips to Manila from Iriga City. He was a witness to the generally harmonious relationship between his brother Manuel and sister-in-law, Leonida. True, they had some quarrels typical of a husband and wife relationship. But there was nothing similar to what Leonida described in her testimony.[21]

Jesus further testified that he was with his brother on the day Leonida allegedly saw Manuel kissed another man. He denied that such an incident occurred. On that particular date,[22] he and Manuel went straight home from a trip to Bicol. There was no other person with them at that time, except their driver.[23]

Manuel expressed his intention to refute Dr. del Fonso Garcia's findings by presenting his own expert witness. However, no psychiatrist was presented.

RTC Disposition

By decision dated November 25, 2005, the RTC granted the petition for annulment, with the following disposition:

WHEREFORE, premised on the foregoing, judgment is hereby rendered:

- Declaring the marriage contracted by herein parties on 29 January 1989 and all its effects under the law null and void from the beginning;

- Dissolving the regime of community property between the same parties with forfeiture of defendant's share thereon in favor of the same parties' children whose legal custody is awarded to plaintiff with visitorial right afforded to defendant;
- Ordering the defendant to give monthly financial support to all the children; and
- Pursuant to the provisions of A.M. No. 02-11-10-SC:
- Directing the Branch Clerk of this Court to enter this Judgment upon its finality in the Book of Entry of Judgment and to issue an Entry of Judgment in accordance thereto; and
- Directing the Local Civil Registrars of Las Piñas City and Manila City to cause the registration of the said Entry of Judgment in their respective Books of Marriages.

Upon compliance, a decree of nullity of marriage shall be issued.

SO ORDERED.[24] (Emphasis supplied)

The trial court nullified the marriage, not on the ground of Article 36, but Article 45 of the Family Code. It ratiocinated:

x x x a careful evaluation and in-depth analysis of the surrounding circumstances of the allegations in the complaint and of the evidence presented in support thereof (sic) reveals that in this case (sic) there is more than meets the eyes (sic).

Both legally and biologically, homosexuality x x x is, indeed, generally incompatible with hetero sexual marriage. This is reason enough that in this jurisdiction (sic) the law recognizes marriage as a special contract exclusively only between a man and a woman x x x and thus when homosexuality has trespassed into marriage, the same law provides ample remedies to correct the situation [Article 45(3) in relation to Article 46(4) or Article 55, par. 6, Family Code]. This is of course in recognition of the biological fact that no matter how a man cheats himself that he is not a homosexual and forces himself to live a normal heterosexual life, there will surely come a time when his true sexual preference as a homosexual shall prevail in haunting him and thus jeopardizing the solidity, honor, and welfare of his own family.[25]

Manuel filed a notice of appeal which was, however, denied due course. Undaunted, he filed a petition for annulment of judgment with the CA.[26]

Manuel contended that the assailed decision was issued in excess of the lower court's jurisdiction; that it had no jurisdiction to dissolve the absolute community of property and forfeit his conjugal share in favor of his children.

CA Disposition

On July 31, 2007, the CA denied the petition, disposing as follows:

WHEREFORE, the present Petition for Annulment of Judgment is hereby DENIED. The Court AFFIRMS in toto the Decision (dated November 25, 2005) of the Regional Trial Court (Branch 254), in Las Piñas City, in Civil Case No. LP-00-0132. No costs.[27]

The CA stated that petitioner pursued the wrong remedy by filing the extraordinary remedy of petition for annulment of judgment. Said the appellate court:

It is obvious that the petitioner is questioning the propriety of the decision rendered by the lower Court. But the remedy assuming there was a mistake is not a Petition for Annulment of Judgment but an ordinary appeal. An error of judgment may be reversed or corrected only by appeal.

What petitioner is ascribing is an error of judgment, not of jurisdiction, which is properly the subject of an

ordinary appeal.

In short, petitioner admits the jurisdiction of the lower court but he claims excess in the exercise thereof. "Excess" assuming there was is not covered by Rule 47 of the 1997 Rules of Civil Procedure. The Rule refers the lack of jurisdiction and not the exercise thereof.[28]

Issues

Petitioner Manuel takes the present recourse via Rule 45, assigning to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT TREATING THE PETITION FOR ANNULMENT OF JUDGMENT AS A PETITION FOR REVIEW IN VIEW OF THE IMPORTANCE OF THE ISSUES INVOLVED AND IN THE INTEREST OF JUSTICE;

II

THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT AS REGARDS THE ORDER DECLARING THE MARRIAGE AS NULL AND VOID ON THE GROUND OF PETITIONER'S PSYCHOLOGICAL INCAPACITY;

III

THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT AS REGARDS THE ORDER TO FORFEIT THE SHARE OF PETITIONER IN HIS SHARE OF THE CONJUGAL ASSETS.[29]

Our Ruling

I. The stringent rules of procedures may be relaxed to serve the demands of substantial justice and in the Court's exercise of equity jurisdiction

Generally, an appeal taken either to the Supreme Court or the CA by the wrong or inappropriate mode shall be dismissed.[30] This is to prevent the party from benefiting from one's neglect and mistakes. However, like most rules, it carries certain exceptions. After all, the ultimate purpose of all rules of procedures is to achieve substantial justice as expeditiously as possible.[31]

Annulment of judgment under Rule 47 is a last remedy. It can not be resorted to if the ordinary remedies are available or no longer available through no fault of petitioner.[32] However, in *Buenaflor v. Court of Appeals*,[33] this Court clarified the proper appreciation for technical rules of procedure, in this wise:

Rules of procedures are intended to promote, not to defeat, substantial justice and, therefore, they should not be applied in a very rigid and technical sense. The exception is that while the Rules are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied. As an exception to the exception, these rules have sometimes been relaxed on equitable considerations. Also, in some cases the Supreme Court has given due course to an appeal perfected out of time where a stringent application of the rules would have denied it, but only when to do so would serve the demands of substantial justice and in the exercise of equity jurisdiction of the Supreme Court.[34] (Emphasis and underscoring supplied)

For reasons of justice and equity, this Court has allowed exceptions to the stringent rules governing appeals.[35] It has, in the past, refused to sacrifice justice for technicality.[36]

After discovering the palpable error of his petition, Manuel seeks the indulgence of this Court to consider his petition before the CA instead as a petition for certiorari under Rule 65.

A perusal of the said petition reveals that Manuel imputed grave abuse of discretion to the lower court for

annulling his marriage on account of his alleged homosexuality. This is not the first time that this Court is faced with a similar situation. In *Nerves v. Civil Service Commission*,^[37] petitioner Delia R. Nerves elevated to the CA a Civil Service Commission (CSC) decision suspending her for six (6) months. The CSC ruled Nerves, a public school teacher, is deemed to have already served her six-month suspension during the pendency of the case. Nevertheless, she is ordered reinstated without back wages. On appeal, Nerves stated in her petition, *inter alia*:

- This is a petition for certiorari filed pursuant to Article IX-A, Section 7 of the Constitution of the Philippines and under Rule 65 of the Rules of Court.
- But per Supreme Court Revised Administrative Circular No. 1-95 (Revised Circular No. 1-91) petitioner is filing the instant petition with this Honorable Court instead of the Supreme Court.^[38] (Underscoring supplied)

The CA dismissed Nerves' petition for certiorari for being the wrong remedy or the inappropriate mode of appeal.^[39] The CA opined that "under the Supreme Court Revised Administrative Circular No. 1-95 x x x appeals from judgments or final orders or resolutions of CSC is by a petition for review."^[40]

This Court granted Nerves petition and held that she had substantially complied with the Administrative Circular. The Court stated:

That it was erroneously labeled as a petition for certiorari under Rule 65 of the Rules of Court is only a minor procedural lapse, not fatal to the appeal. x x x

More importantly, the appeal on its face appears to be impressed with merit. Hence, the Court of Appeals should have overlooked the insubstantial defects of the petition x x x in order to do justice to the parties concerned. There is, indeed, nothing sacrosanct about procedural rules, which should be liberally construed in order to promote their object and assist the parties in obtaining just, speedy, and inexpensive determination of every action or proceeding. As it has been said, where the rigid application of the rules would frustrate substantial justice, or bar the vindication of a legitimate grievance, the courts are justified in exempting a particular case from the operation of the rules.^[41] (Underscoring supplied)

Similarly, in the more recent case of *Tan v. Dumarpa*,^[42] petitioner Joy G. Tan availed of a wrong remedy by filing a petition for review on certiorari instead of a motion for new trial or an ordinary appeal. In the interest of justice, this Court considered the petition, *pro hac vice*, as a petition for certiorari under Rule 65.

This Court found that based on Tan's allegations, the trial court *prima facie* committed grave abuse of discretion in rendering a judgment by default. If uncorrected, it will cause petitioner great injustice. The Court elucidated in this wise:

Indeed, where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the Rules, we will not hesitate to relax the same in the interest of substantial justice.^[43] (Underscoring supplied)

Measured by the foregoing yardstick, justice will be better served by giving due course to the present petition and treating petitioner's CA petition as one for certiorari under Rule 65, considering that what is at stake is the validity or non-validity of a marriage.

In *Salazar v. Court of Appeals*,^[44] citing *Labad v. University of Southeastern Philippines*, this Court reiterated:

x x x The dismissal of appeals on purely technical grounds is frowned upon. While the right to appeal is a statutory, not a natural right, nonetheless it is an essential part of our judicial system and courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the amplest opportunity for the proper and just disposition of his cause, free from the constraints of technicalities.^[45]

Indeed, it is far better and more prudent for a court to excuse a technical lapse and afford the parties a review of the case on the merits to attain the ends of justice.[46]

Furthermore, it was the negligence and incompetence of Manuel's counsel that prejudiced his right to appeal. His counsel, Atty. Christine Dugenio, repeatedly availed of inappropriate remedies. After the denial of her notice of appeal, she failed to move for reconsideration or new trial at the first instance. She also erroneously filed a petition for annulment of judgment rather than pursue an ordinary appeal.

These manifest errors were clearly indicative of counsel's incompetence. These gravely worked to the detriment of Manuel's appeal. True it is that the negligence of counsel binds the client. Still, this Court has recognized certain exceptions: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty and property; or (3) where the interest of justice so require.[47]

The negligence of Manuel's counsel falls under the exceptions. Ultimately, the reckless or gross negligence of petitioner's former counsel led to the loss of his right to appeal. He should not be made to suffer for his counsel's grave mistakes. Higher interests of justice and equity demand that he be allowed to ventilate his case in a higher court.

In *Apex Mining, Inc. v. Court of Appeals*,[48] this Court explained thus:

It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. However, where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground. In the instant case, higher interests of justice and equity demand that petitioners be allowed to present evidence on their defense. Petitioners may not be made to suffer for the lawyer's mistakes. This Court will always be disposed to grant relief to parties aggrieved by perfidy, fraud, reckless inattention and downright incompetence of lawyers, which has the consequence of depriving their clients, of their day in court.[49] (Emphasis supplied)

Clearly, this Court has the power to except a particular case from the operation of the rule whenever the demands of justice require it. With more conviction should it wield such power in a case involving the sacrosanct institution of marriage. This Court is guided with the thrust of giving a party the fullest opportunity to establish the merits of one's action.[50]

The client was likewise spared from counsel's negligence in *Government Service Insurance System v. Bengson Commercial Buildings, Inc.*[51] and *Ancheta v. Guersey-Dalaygon*. [52] Said the Court in *Bengson*:

But if under the circumstances of the case, the rule deserts its proper office as an aid to justice and becomes a great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a miscarriage of justice. In other words, the court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.[53]

II. Concealment of homosexuality is the proper ground to annul a marriage, not homosexuality per se.

Manuel is a desperate man determined to salvage what remains of his marriage. Persistent in his quest, he fought back all the heavy accusations of incapacity, cruelty, and doubted masculinity thrown at him.

The trial court declared that Leonida's petition for nullity had "no basis at all because the supporting grounds relied upon can not legally make a case under Article 36 of the Family Code." It went further by citing *Republic v. Molina*: [54]

Indeed, mere allegations of conflicting personalities, irreconcilable differences, incessant quarrels and/or beatings, unpredictable mood swings, infidelities, vices, abandonment, and difficulty, neglect, or failure in the performance of some marital obligations do not suffice to establish psychological incapacity.[55]

If so, the lower court should have dismissed outright the petition for not meeting the guidelines set in *Molina*. What Leonida attempted to demonstrate were Manuel's homosexual tendencies by citing overt acts generally predominant among homosexual individuals.[56] She wanted to prove that the perceived homosexuality rendered Manuel incapable of fulfilling the essential marital obligations.

But instead of dismissing the petition, the trial court nullified the marriage between Manuel and Leonida on the ground of vitiated consent by virtue of fraud. In support of its conclusion, the lower court reasoned out:

As insinuated by the State (p. 75, TSN, 15 December 2003), when there is smoke surely there is fire. Although vehemently denied by defendant, there is preponderant evidence enough to establish with certainty that defendant is really a homosexual. This is the fact that can be deduced from the totality of the marriage life scenario of herein parties.

Before his marriage, defendant knew very well that people around him even including his own close friends doubted his true sexual preference (TSN, pp. 35-36, 13 December 2000; pp. 73-75, 15 December 2003). After receiving many forewarnings, plaintiff told defendant about the rumor she heard but defendant did not do anything to prove to the whole world once and for all the truth of all his denials. Defendant threatened to sue those people but nothing happened after that. There may have been more important matters to attend to than to waste time and effort filing cases against and be effected by these people and so, putting more premiums on defendant's denials, plaintiff just the same married him. Reasons upon reasons may be advanced to either exculpate or nail to the cross defendant for his act of initially concealing his homosexuality to plaintiff, but in the end, only one thing is certain - even during his marriage with plaintiff, the smoke of doubt about his real preference continued and even got thicker, reason why obviously defendant failed to establish a happy and solid family; and in so failing, plaintiff and their children became his innocent and unwilling victims.

Yes, there is nothing untoward of a man if, like herein defendant, he is meticulous over even small details in the house (sic) like wrongly folded bed sheets, etc. or if a man is more authoritative in knowing what clothes or jewelry shall fit his wife (pp. 77-81, TSN, 15 December 2003); but these admissions of defendant taken in the light of evidence presented apparently showing that he had extra fondness of his male friends (sic) to the extent that twice on separate occasions (pp. 4-7, TSN, 14 February 2001) he was allegedly seen by plaintiff kissing another man lips-to-lips plus the homosexual magazines and tapes likewise allegedly discovered underneath his bed (Exhibits "L" and "M"), the doubt as to his real sex identity becomes stronger. The accusation of plaintiff versus thereof of defendant may be the name of the game in this case; but the simple reason of professional rivalry advanced by the defendant is certainly not enough to justify and obscure the question why plaintiff should accuse him of such a very untoward infidelity at the expense and humiliation of their children and family as a whole.[57]

Evidently, no sufficient proof was presented to substantiate the allegations that Manuel is a homosexual and that he concealed this to Leonida at the time of their marriage. The lower court considered the public perception of Manuel's sexual preference without the corroboration of witnesses. Also, it took cognizance of Manuel's peculiarities and interpreted it against his sexuality.

Even assuming, *ex gratia argumenti*, that Manuel is a homosexual, the lower court cannot appreciate it as a ground to annul his marriage with Leonida. The law is clear - a marriage may be annulled when the consent of either party was obtained by fraud,[58] such as concealment of homosexuality.[59] Nowhere in the said decision was it proven by preponderance of evidence that Manuel was a homosexual at the onset of his marriage and that he deliberately hid such fact to his wife.[60] It is the concealment of homosexuality, and not homosexuality per

se, that vitiates the consent of the innocent party. Such concealment presupposes bad faith and intent to defraud the other party in giving consent to the marriage.

Consent is an essential requisite of a valid marriage. To be valid, it must be freely given by both parties. An allegation of vitiated consent must be proven by preponderance of evidence. The Family Code has enumerated an exclusive list of circumstances^[61] constituting fraud. Homosexuality per se is not among those cited, but its concealment.

This distinction becomes more apparent when we go over the deliberations^[62] of the Committees on the Civil Code and Family Law, to wit:

Justice Caguioa remarked that this ground should be eliminated in the provision on the grounds for legal separation. Dean Gupit, however, pointed out that in Article 46, they are talking only of "concealment," while in the article on legal separation, there is actuality. Judge Diy added that in legal separation, the ground existed after the marriage, while in Article 46, the ground existed at the time of the marriage. Justice Reyes suggested that, for clarity, they add the phrase "existing at the time of the marriage" at the end of subparagraph (4). The Committee approved the suggestion.^[63]

To reiterate, homosexuality per se is only a ground for legal separation. It is its concealment that serves as a valid ground to annul a marriage.^[64] Concealment in this case is not simply a blanket denial, but one that is constitutive of fraud. It is this fundamental element that respondent failed to prove.

In the United States, homosexuality has been considered as a basis for divorce. It indicates that questions of sexual identity strike so deeply at one of the basic elements of marriage, which is the exclusive sexual bond between the spouses.^[65] In *Crutcher v. Crutcher*,^[66] the Court held:

Unnatural practices of the kind charged here are an infamous indignity to the wife, and which would make the marriage relation so revolting to her that it would become impossible for her to discharge the duties of a wife, and would defeat the whole purpose of the relation. In the natural course of things, they would cause mental suffering to the extent of affecting her health.^[67]

However, although there may be similar sentiments here in the Philippines, the legal overtones are significantly different. Divorce is not recognized in the country. Homosexuality and its alleged incompatibility to a healthy heterosexual life are not sanctioned as grounds to sever the marriage bond in our jurisdiction. At most, it is only a ground to separate from bed and board.

What was proven in the hearings a quo was a relatively blissful marital union for more than eleven (11) years, which produced three (3) children. The burden of proof to show the nullity of the marriage rests on Leonida. Sadly, she failed to discharge this onus.

The same failure to prove fraud which purportedly resulted to a vitiated marital consent was found in *Villanueva v. Court of Appeals*.^[68] In *Villanueva*, instead of proving vitiation of consent, appellant resorted to baseless portrayals of his wife as a perpetrator of fraudulent schemes. Said the Court:

Factual findings of the Court of Appeals, especially if they coincide with those of the trial court, as in the instant case, are generally binding on this Court. We affirm the findings of the Court of Appeals that petitioner freely and voluntarily married private respondent and that no threats or intimidation, duress or violence compelled him to do so, thus -

Appellant anchored his prayer for the annulment of his marriage on the ground that he did not freely consent to be married to the appellee. He cited several incidents that created on his mind a reasonable and well-grounded fear of an imminent and grave danger to his life and safety. x x x

The Court is not convinced that appellant's apprehension of danger to his person is so overwhelming as to deprive him of the will to enter voluntarily to a contract of marriage. It is not disputed that at the time he was allegedly being harassed, appellant worked as a security guard in a bank. Given the rudiments of self-defense, or, at the very least, the proper way to keep himself out of harm's way. x x x

Appellant also invoked fraud to annul his marriage, as he was made to believe by appellee that the latter was pregnant with his child when they were married. Appellant's excuse that he could not have impregnated the appellee because he did not have an erection during their tryst is flimsy at best, and an outright lie at worst. The complaint is bereft of any reference to his inability to copulate with the appellee. x x x

x x x x

x x x The failure to cohabit becomes relevant only if it arises as a result of the perpetration of any of the grounds for annulling the marriage, such as lack of parental consent, insanity, fraud, intimidation, or undue influence x x x. Since the appellant failed to justify his failure to cohabit with the appellee on any of these grounds, the validity of his marriage must be upheld.[69]

Verily, the lower court committed grave abuse of discretion, not only by solely taking into account petitioner's homosexuality per se and not its concealment, but by declaring the marriage void from its existence.

This Court is mindful of the constitutional policy to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family.[70] The State and the public have vital interest in the maintenance and preservation of these social institutions against desecration by fabricated evidence.[71] Thus, any doubt should be resolved in favor of the validity of marriage.

III. In a valid marriage, the husband and wife jointly administer and enjoy their community or conjugal property

Article 96 of the Family Code, on regimes of absolute community property, provides:

Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance without the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

A similar provision, Article 124[72] prescribes joint administration and enjoyment in a regime of conjugal partnership. In a valid marriage, both spouses exercise administration and enjoyment of the property regime, jointly.

In the case under review, the RTC decreed a dissolution of the community property of Manuel and Leonida. In the same breath, the trial court forfeited Manuel's share in favor of the children. Considering that the marriage is upheld valid and subsisting, the dissolution and forfeiture of Manuel's share in the property regime is unwarranted. They remain the joint administrators of the community property.

WHEREFORE, the petition is GRANTED. The appealed Decision is REVERSED and SET ASIDE and the petition in the trial court to annul the marriage is DISMISSED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] See Separate Opinion of Justice Romero in Republic v. Court of Appeals, G.R. No. 108763, February 13, 1997, 268 SCRA 198.

[2] Rollo, pp. 22-42. Dated July 31, 2007. Penned by Associate Justice Jose L. Sabio, with Associate Justices Regalado E. Maambong and Arturo G. Tayag, concurring.

[3] Id. at 46.

[4] Id.

[5] Id.

[6] Id.

[7] Id.

[8] Id. at 26.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id. at 47.

[14] Id. x x x defendant x x x suffer(s) from Narcissistic Personality Disorder of lack of empathy or unresponsiveness to the needs and feelings of his spouse and children, sense of entitlements or expectations of automatic compliance, manipulative and deceit stance, grandiose sense of self-importance, the strong need to seek approval and recognition and to prove his self-worth with Anti-social Features of irritability, verbal and physical aggression and lack of genuine remorse. Rigidly pervasive and egosyntonic in nature and hence no effective psychiatric therapeutic modality could satisfactorily remedy his unremitting psychology, defendant's psychological incapacity has its antecedence as early as before his marriage. x x x

[15] Id. at 48. Dated October 27, 1998.

[16] Id.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id. at 47. Dated November 1, 2002.

[23] Id.

[24] Id. at 51-52.

[25] Id. at 49.

[26] Id. at 22. Docketed as CA-G.R. SP No. 93817. Penned by Associate Justice Jose L. Sabio, with Associate Justices Regalado E. Maambong and Arturo G. Tayag, concurring.

[27] Id. at 41.

[28] Id. at 36-37.

[29] Id. at 10.

[30] Supreme Court Circular No. 2-90 (1994).

[31] Gabionza v. Court of Appeals, G.R. No. 112547, July 18, 1994, 234 SCRA 192.

[32] Rules of Civil Procedure (1997), Rule 47, Sec. 1 provides:

Section 1. Coverage. - This Rule shall govern the annulment by the Court of appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.

[33] G.R. No. 142021, November 29, 2000, 346 SCRA 563.

[34] Buenaflor v. Court of Appeals, id. at 568.

[35] Siguenza v. Court of Appeals, G.R. No. L-44050, July 16, 1985, 137 SCRA 570.

[36] Gerales v. Court of Appeals, G.R. No. 85909, February 9, 1993, 218 SCRA 638; Teodoro v. Carague, G.R. No. 96004, February 21, 1992, 206 SCRA 429; Cabutin v. Amacio, G.R. No. 55228, February 28, 1989, 170 SCRA 750; American Express International, Inc. v. Intermediate Appellate Court, G.R. No. L-70766, November 9, 1988, 167 SCRA 209; Fonseca v. Court of Appeals, G.R. No. L-36035, August 30, 1988, 165 SCRA 40; Calasiao Farmers Cooperative Marketing Association, Inc. v. Court of Appeals, G.R. No. 50633, August 17, 1981, 106 SCRA 630; A-One Feeds, Inc. v. Court of Appeals, G.R. No. L-35560, October 30, 1980, 100 SCRA 590; Gregorio v. Court of Appeals, G.R. No. L-43511, July 28, 1976, 72 SCRA 120; Alonso v. Villamor, 16 Phil. 315 (1910).

[37] G.R. No. 123561, July 31, 1997, 276 SCRA 610.

[38] Nerves v. Civil Service Commission, id. at 613.

[39] Id. at 613-614.

[40] Id. at 614.

[41] Id. at 615.

[42] G.R. No. 138777, September 22, 2004, 438 SCRA 659.

[43] Tan v. Dumarpa, id. at 665.

[44] G.R. 142920, February 6, 2002, 376 SCRA 459.

[45] Salazar v. Court of Appeals, id. at 471.

[46] Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank, G.R. No. 143783, December 9, 2002, 393 SCRA

566.

[47] *Id.* at 574.

[48] G.R. No. 133750, November 29, 1999, 319 SCRA 456.

[49] *Apex Mining, Inc. v. Court of Appeals*, *id.* at 465.

[50] *Aguilar v. Court of Appeals*, G.R. No. 114282, November 28, 1995, 250 SCRA 371.

[51] G.R. No. 137448, January 31, 2002, 375 SCRA 431.

[52] G.R. No. 139868, June 8, 2006, 490 SCRA 140.

[53] *Government Service Insurance System v. Bengson Commercial Buildings, Inc.*, *supra* note 51, at 445.

[54] *Supra* note 1.

[55] *Rollo*, p. 49.

[56] *Id.*

[57] *Id.* at 49-50.

[58] Family Code, Art. 45(3).

[59] *Id.*, Art. 46(4).

[60] *Rollo*, pp. 49-51.

[61] Article 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

1)

Non-disclosure of previous conviction by final judgment of the other party of a crime involving moral turpitude;

2)

Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

3)

Concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or

4)

Concealment of drug addiction, habitual alcoholism, or homosexuality or lesbianism existing at the time of the marriage.

[62] Minutes of the 154th Meeting of the Civil Code and Family Law Committees held on September 6, 1986, 9:00 a.m. at the Conference Room, First Floor, Bacobo Hall, U.P. Law Complex, Diliman, Quezon City.

[63] *Id.* at 12.

[64] *Id.*

[65] 78 ALR 2d 807.

[66] 38 So. 337 (1905).

[67] *Crutcher v. Crutcher*, id. at 337.

[68] G.R. No. 132955, October 27, 2006, 505 SCRA 565.

[69] *Villanueva v. Court of Appeals*, id. at 569-570.

[70] Philippine Constitution (1987), Art. II, Sec. 12 provides:

Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x

Art. XV, Secs. 1-2 provides:

Sec. 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

[71] *Tolentino v. Villanueva*, G.R. No. L-23264, March 15, 1974, 56 SCRA 1.

[72] Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

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