

**JOSIELENE LARA CHAN, PETITIONER, VS. JOHNNY T. CHAN,
RESPONDENT.***G.R. No. 179786. July 24, 2013*

Ponente: ABAD, J.

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This case is about the propriety of issuing a subpoena duces tecum for the production and submission in court of the respondent husband's hospital record in a case for declaration of nullity of marriage where one of the issues is his mental fitness as a husband.

The Facts and the Case

On February 6, 2006 petitioner Josielene Lara Chan (Josielene) filed before the Regional Trial Court (RTC) of Makati City, Branch 144 a petition for the declaration of nullity of her marriage to respondent Johnny Chan (Johnny), the dissolution of their conjugal partnership of gains, and the award of custody of their children to her. Josielene claimed that Johnny failed to care for and support his family and that a psychiatrist diagnosed him as mentally deficient due to incessant drinking and excessive use of prohibited drugs. Indeed, she had convinced him to undergo hospital confinement for detoxification and rehabilitation.

Johnny resisted the action, claiming that it was Josielene who failed in her wifely duties. To save their marriage, he agreed to marriage counseling but when he and Josielene got to the hospital, two men forcibly held him by both arms while another gave him an injection. The marriage relations got worse when the police temporarily detained Josielene for an unrelated crime and released her only after the case against her ended. By then, their marriage relationship could no longer be repaired.

During the pre-trial conference, Josielene pre-marked the Philhealth Claim Form¹ that Johnny attached to his answer as proof that he was forcibly confined at the rehabilitation unit of a hospital. The form carried a physician's handwritten note that Johnny suffered from "methamphetamine and alcohol abuse." Following up on this point, on August 22, 2006 Josielene filed with the RTC a request for the issuance of a subpoena duces tecum addressed to Medical City, covering Johnny's medical records when he was there confined. The request was accompanied by a motion to "be allowed to submit in evidence" the records sought by subpoena duces tecum.^[2]

Johnny opposed the motion, arguing that the medical records were covered by physician-patient privilege. On September 13, 2006 the RTC sustained the opposition and denied Josielene's motion. It also denied her motion for reconsideration, prompting her to file a special civil action of certiorari before the Court of Appeals (CA) in CA-G.R. SP 97913, imputing grave abuse of discretion to the RTC.

On September 17, 2007 the CA^[3] denied Josielene's petition. It ruled that, if courts were to allow the production of medical records, then patients would be left with no assurance that whatever relevant disclosures they may have made to their physicians would be kept confidential. The prohibition covers not only testimonies, but also affidavits, certificates, and pertinent hospital records. The CA added that, although Johnny can waive the privilege, he did not do so in this case. He attached the Philhealth form to his answer for the limited purpose of

showing his alleged forcible confinement.

Question Presented

The central question presented in this case is:

Whether or not the CA erred in ruling that the trial court correctly denied the issuance of a subpoena duces tecum covering Johnny's hospital records on the ground that these are covered by the privileged character of the physician-patient communication.

The Ruling of the Court

Josielene requested the issuance of a subpoena duces tecum covering the hospital records of Johnny's confinement, which records she wanted to present in court as evidence in support of her action to have their marriage declared a nullity. Respondent Johnny resisted her request for subpoena, however, invoking the privileged character of those records. He cites Section 24(c), Rule 130 of the Rules of Evidence which reads:

SEC. 24. Disqualification by reason of privileged communication.— The following persons cannot testify as to matters learned in confidence in the following cases:

x x x x

(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient.

The physician-patient privileged communication rule essentially means that a physician who gets information while professionally attending a patient cannot in a civil case be examined without the patient's consent as to any facts which would blacken the latter's reputation. This rule is intended to encourage the patient to open up to the physician, relate to him the history of his ailment, and give him access to his body, enabling the physician to make a correct diagnosis of that ailment and provide the appropriate cure. Any fear that a physician could be compelled in the future to come to court and narrate all that had transpired between him and the patient might prompt the latter to clam up, thus putting his own health at great risk.[4]

1. The case presents a procedural issue, given that the time to object to the admission of evidence, such as the hospital records, would be at the time they are offered. The offer could be made part of the physician's testimony or as independent evidence that he had made entries in those records that concern the patient's health problems.

Section 36, Rule 132, states that objections to evidence must be made after the offer of such evidence for admission in court. Thus:

SEC. 36. Objection.— Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified.

Since the offer of evidence is made at the trial, Josielene's request for subpoena duces tecum is premature. She will have to wait for trial to begin before making a request for the issuance of a subpoena duces tecum covering

Johnny's hospital records. It is when those records are produced for examination at the trial, that Johnny may opt to object, not just to their admission in evidence, but more so to their disclosure. Section 24(c), Rule 130 of the Rules of Evidence quoted above is about non-disclosure of privileged matters.

2. It is of course possible to treat Josielene's motion for the issuance of a subpoena duces tecum covering the hospital records as a motion for production of documents, a discovery procedure available to a litigant prior to trial. Section 1, Rule 27 of the Rules of Civil Procedure provides:

SEC. 1. Motion for production or inspection; order.— Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just. (Emphasis supplied)

But the above right to compel the production of documents has a limitation: the documents to be disclosed are "not privileged."

Josielene of course claims that the hospital records subject of this case are not privileged since it is the "testimonial" evidence of the physician that may be regarded as privileged. Section 24(c) of Rule 130 states that the physician "cannot in a civil case, without the consent of the patient, be examined" regarding their professional conversation. The privilege, says Josielene, does not cover the hospital records, but only the examination of the physician at the trial.

To allow, however, the disclosure during discovery procedure of the hospital records—the results of tests that the physician ordered, the diagnosis of the patient's illness, and the advice or treatment he gave him— would be to allow access to evidence that is inadmissible without the patient's consent. Physician memorializes all these information in the patient's records. Disclosing them would be the equivalent of compelling the physician to testify on privileged matters he gained while dealing with the patient, without the latter's prior consent.

3. Josielene argues that since Johnny admitted in his answer to the petition before the RTC that he had been confined in a hospital against his will and in fact attached to his answer a Philhealth claim form covering that confinement, he should be deemed to have waived the privileged character of its records. Josielene invokes Section 17, Rule 132 of the Rules of Evidence that provides:

SEC. 17. When part of transaction, writing or record given in evidence, the remainder admissible.— When part of an act, declaration, conversation, writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached act, declaration, conversation, writing or record is given in evidence, any other act, declaration, conversation, writing or record necessary to its understanding may also be given in evidence.

But, trial in the case had not yet begun. Consequently, it cannot be said that Johnny had already presented the Philhealth claim form in evidence, the act contemplated above which would justify Josielene into requesting an inquiry into the details of his hospital confinement. Johnny was not yet bound to adduce evidence in the case when he filed his answer. Any request for disclosure of his hospital records would again be premature.

For all of the above reasons, the CA and the RTC were justified in denying Josielene her request for the production in court of Johnny's hospital records.

ACCORDINGLY, the Court DENIES the petition and AFFIRMS the Decision of the Court of Appeals in CA-G.R. SP 97913 dated September 17, 2007.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, and Mendoza, JJ., concur.

Leonen, J., see separate concurring opinion.

July 30, 2013

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____July 24, 2013____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 30, 2013 at 2:20 p.m.

Very truly yours,

(SGD)

LUCITA ABJELINA SORIANO

Division Clerk of Court

[1] Annex “B.”

[2] Rollo, pp. 69-72.

[3] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

[4] Francisco, *The Revised Rules of Court of the Philippines*, Volume VII, Part I, 1997 ed., p. 282, citing *Will of Bruendi*, 102 Wis. 47, 78 N.W. 169. and *McRae v. Erickson*, 1 Cal. App. 326.

CONCURRING OPINION

LEONEN, J.

I concur but add the following points:

I agree that the hospital records of respondent Johnny Chan may not be produced in court without his/her consent. Issuance of a subpoena duces tecum for its production will violate the physician-patient privilege rule under Rule 130, Sec. 24(c)[1] of the Rules of Civil Procedure.

However, this privilege is not absolute. The request of petitioner for a copy of the medical records has not been properly laid.

Instead of a request for the issuance of a subpoena duces tecum, Josielene Lara Chan should avail of the mode of discovery under Rule 28 of the Rules of Civil Procedure.

Rule 28 pertains to the physical or mental examination of persons. This may be ordered by the court, in its discretion,[2] upon motion and showing of good cause[3] by the requesting party, in cases when the mental and/or physical condition of a party is in controversy.[4] Aside from showing good cause, the requesting party needs

only to notify the party to be examined (and all other parties) and specify the time, place, manner, conditions, and scope of the examination, including the name of the physician who will conduct the examination.[5]

The examined party may obtain a copy of the examining physician's report concerning his/her mental or physical examination.[6] The requesting party shall deliver this report to him/her.[7] After such delivery, however, the requesting party becomes entitled to any past or future medical report involving the same mental or physical condition.[8] Upon motion and notice, the court may order the examined party to deliver those medical reports to the requesting party if the examined party refuses to do so.[9]

Moreover, if the examined party requests a copy of the examining physician's report or if he/she takes the examining physician's deposition, the request waives the examined party's privileges when the testimony of any person who examined or will examine his/her mental or physical status is taken in the action or in any action involving the same controversy.[10]

Discovery procedures provide a balance between the need of the plaintiff or claimant to fully and fairly establish her case and the policy to protect to a certain extent - communications made between a patient and his doctor. Hence, the physician-patient privilege does not cover information discovered under Rule 28. This procedure is availed with the intention of making the results public during trial. Along with other modes of discovery, this would prevent the trial from being carried on in the dark.[11]

In view of the foregoing, vote to DENY the petition.

[1] RULES OF COURT, Rule 130, Sec. 24(c) provides:

A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient.

[2] RULES OF COURT, Rule 28, Sec. 1.

[3] RULES OF COURT, Rule 28, Sec. 2.

[4] RULES OF COURT, Rule 28, Sec. 1.

[5] RULES OF COURT Rule 28, Sec. 2.

[6] RULES OF COURT, Rule 28. Sec. 3.

[7] RULES OF COURT, Rule 28, Sec. 3.

[8] RULES OF COURT, Rule 28, Sec. 3.

[9] RULES OF COURT, Rule 28. Sec. 3.

[10] RULES OF COURT, Rule 28, Sec. 4.

[11] Republic v. Sandiganhayan, Tantoco and Santiago, G.R. No. 90478, November 21. 1991, 204 SCRA 212.

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