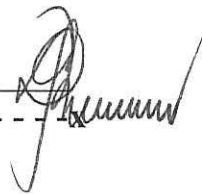


G.R. No. 212717 — REPUBLIC OF THE PHILIPPINES, *petitioner,*
versus ARIEL S. CALINGO and CYNTHIA MARCELLANA-
CALINGO, *respondents.*

Promulgated:

MAR 11 2020



x-----

CONCURRING OPINION

CAGUIOA, J.:

I concur.

Article 36 of the Family Code details the concept of psychological incapacity in the context of marriage. It reads:

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.

In *Republic v. Molina*¹ (*Molina*), the Court set the guidelines for the application and interpretation of the foregoing provision on the basis of the discussions and written memoranda of *amici curiae* Reverend Oscar V. Cruz and Justice Ricardo C. Puno, thus:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it “as the foundation of the nation.” It decrees marriage as legally “inviolable,” thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be “protected” by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence, inviolability* and *solidarity*.

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or

¹ 335 Phil. 664 (1997)



knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) **The incapacity must be proven to be existing at “the time of the celebration” of the marriage.** The evidence must show that the illness was existing when the parties exchanged their “I do’s.” The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) **Such incapacity must also be shown to be medically or clinically permanent or incurable.** Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) **Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage.** Thus, “mild characterological peculiarities, mood changes, occasional emotional outbursts” cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is 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.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

“The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.”

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive



weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.² (Emphasis supplied)

As the nomenclature suggests, the *Molina* guidelines only serve as a guide in determining the existence of psychological incapacity. The *Molina* guidelines are *not* meant to “straightjacket all petitions for declaration of nullity of marriage.”³ **To stress, actions for declaration of nullity filed under Article 36 should be resolved “on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of Church tribunals which, although not binding on the civil courts, may be given persuasive effect since [Article 36] was taken from Canon Law.”⁴**

Verily, an allegation of psychological incapacity, like any other allegation, must be supported by proof. Proof, in turn, requires the presentation of sufficient evidence. In this regard, actions filed under Article 36 must be resolved through the evaluation of the totality of evidence on record. When the totality of evidence fails to establish that the alleged psychological incapacity is characterized by gravity, incurability and juridical antecedence, it does not assume the nature of psychological incapacity which Article 36 contemplates. These guidelines, “strict” as they are, stem from the law itself. Courts and litigants are thus bound to respect these guidelines until a subsequent law is passed espousing a contrary legislative intent.

Here, the totality of evidence presented by petitioner Ariel S. Calingo (Ariel) is not sufficient to sustain a finding that his wife, Cynthia

² Id.

³ *Republic v. Javier*, G.R. No. 210518, April 18, 2018.

⁴ Alicia V. Sempio-Diy, *HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES* (1998), p. 37.

Marcellana-Calingo (Cynthia) suffers from psychological incapacity to fulfill the essential obligations of marriage.

Ariel's petition for declaration of nullity is based on the psychological evaluation and testimony of Dr. Arnulfo Lopez (Dr. Lopez), and Ariel's own testimony alluding to Cynthia's unfaithfulness and hostile tendencies.

The psychological evaluation of Dr. Lopez states that Cynthia is afflicted with Borderline Personality Disorder with Histrionic Personality Disorder Features. In assessing the sufficiency of these findings, a distinction must be made between the credibility of Dr. Lopez's medical assessment and the credibility of the facts upon which such assessment is based.

To recall, Dr. Lopez found that Cynthia suffers from Borderline Personality Disorder with Histrionic Personality Features rooted on her disorderly filial relationship as she was subjected to physical abuse and abandonment.

That disorderly filial relationship may give rise to Borderline Personality Disorder is an established fact that is not disputed in this case, inasmuch as this finding falls well within the expertise of Dr. Lopez as an expert in the field of psychology. However, Cynthia's alleged disorderly relationship with her parents and exposure to physical abuse and abandonment do not appear to be supported by the evidence on record. **While these circumstances were relayed by Ariel and the couple's friends, Francisca Bilaso and Ruben Kalaw, during the course of Dr. Lopez's assessment, none of them claim to have personal knowledge of Cynthia's childhood circumstances and filial relationship. In the absence of corroborating evidence, the information relayed by Dr. Lopez's informants cannot be taken as established facts, but merely uncorroborated allegations.**

Moreover, as aptly observed by the *ponencia*, Ariel's allegations of marital infidelity and hostile tendencies, even if true, do not serve as sufficient basis to warrant the severance of his marriage with Cynthia.

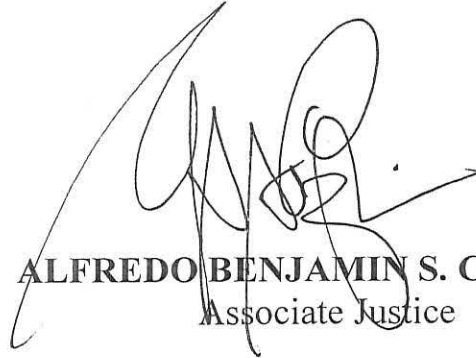
Time and again, the Court has ruled that sexual infidelity, by itself, is not sufficient proof of psychological incapacity. It must be shown that the acts of unfaithfulness are manifestations of a disordered personality which render the party completely unable to discharge the essential obligations of marriage.⁵ Moreover, "irreconcilable differences x x x, emotional immaturity and irresponsibility, and the like, do not by themselves warrant a finding of psychological incapacity, as [these] may only be due to a person's difficulty, refusal, or neglect to undertake the obligations of marriage that is

⁵ See generally *Villalon v. Villalon*, 512 Phil. 219 (2005).



not rooted in some psychological illness that Article 36 of the Family Code addresses.”⁶

For these reasons, I vote to **GRANT** the Petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁶ See generally *Republic v. Tecag*, G.R. No. 229272, November 19, 2018, citing *Toring v. Toring*, 640 Phil. 434 (2010).

