



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

ROSANNA L. TAN-ANDAL,  
Petitioner,

G.R. No. 196359

Present:

-versus-

GESMUNDO, C.J.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,\*  
LOPEZ, M.V.  
DELOS SANTOS,  
GAERLAN,  
ROSARIO, and  
LOPEZ, J.Y., JJ.

MARIO VICTOR M. ANDAL,  
Respondent.

Promulgated:

May 11, 2021

X-----*Antonio L. Reyes*-----X

DECISION

LEONEN, J.:

Given the variability and intensity of intimate human relationships, Article 36 of the Family Code on psychological incapacity as a ground for declaration of nullity of marriage was intended to be humane and evolved on a case-to-case basis, but resilient in its application. However, diametrically opposed to this intent, this Court's interpretation of the provision—

\* no part

beginning with *Santos v. Court of Appeals*<sup>1</sup> and *Republic v. Court of Appeals and Molina*<sup>2</sup>—has proven to be restrictive, rigid, and intrusive on our rights to liberty, autonomy, and human dignity.

It is time to restate the current doctrine in light of the evolution of science, subsequent cases, and other contemporary circumstances.

This Court resolves the Petition for Review on Certiorari<sup>3</sup> assailing the Court of Appeals' Decision<sup>4</sup> and Resolution<sup>5</sup>. The Court of Appeals reversed and set aside the Decision<sup>6</sup> of the Regional Trial Court that voided the marriage between Rosanna L. Tan-Andal and Mario Victor M. Andal due to psychological incapacity. The trial court likewise awarded the sole custody of the parties' daughter, Ma. Samantha, to Rosanna.

Mario Victor M. Andal (Mario) and Rosanna L. Tan (Rosanna) married on December 16, 1995 at the Saints Peter and Paul Parish in Poblacion, Makati City.<sup>7</sup> On July 27, 1996, Rosanna gave birth to Ma. Samantha, the only child of the parties.<sup>8</sup> The family lived in a duplex in Parañaque City, with Rosanna's parents living in the other half of the duplex.<sup>9</sup>

After four years of marriage, Mario and Rosanna separated in 2000.<sup>10</sup> Rosanna has since kept the sole custody of Ma. Samantha.<sup>11</sup>

On December 18, 2001, Mario filed a Petition<sup>12</sup> for custody of Ma. Samantha before the Regional Trial Court. Mario argued that he and his wife had equal rights to the custody of Ma. Samantha, thus praying that he be allowed to exercise parental authority over his daughter.<sup>13</sup>

On August 6, 2003, Rosanna filed a Petition<sup>14</sup> for declaration of nullity of her marriage, claiming that Mario was psychologically

<sup>1</sup> 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

<sup>2</sup> 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

<sup>3</sup> *Rollo*, pp. 8–450.

<sup>4</sup> *Id.* at 71–90. The February 25, 2010 Decision was penned by Associate Justice Vicente S. E. Veloso and was concurred in by Associate Justices Francisco P. Acosta and Rodil V. Zalameda (now a Justice of this Court) of the Special Seventeenth Division, Court of Appeals, Manila.

<sup>5</sup> *Id.* at 92. The April 6, 2011 Resolution was penned by Associate Justice Vicente S. E. Veloso and was concurred in by Associate Justices Francisco P. Acosta and Rodil V. Zalameda (now a Justice of this Court) of the Former Special Seventeenth Division, Court of Appeals, Manila.

<sup>6</sup> *Id.* at 93–102. The May 9, 2007 Decision was penned by Presiding Judge Jaime M. Guray of the Regional Trial Court of Parañaque City, Branch 260.

<sup>7</sup> *Id.* at 73. Court of Appeals Decision.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 15–16. Petition for Review.

<sup>10</sup> *Id.* at 302. Psychiatric Evaluation.

<sup>11</sup> *Id.* at 108. Petition for Custody.

<sup>12</sup> *Id.* at 107–109. Petition for Custody, docketed as Civil Case No. 01-0228.

<sup>13</sup> *Id.* at 108.

<sup>14</sup> *Id.* at 138–164. Docketed as Civil Case No. 03-0384.

2

incapacitated to comply with his essential marital obligations to her.

The Regional Trial Court ordered the prosecutor to report on the parties' possible collusion in filing the Petition.<sup>15</sup> In a February 18, 2004 Report,<sup>16</sup> Prosecutor Gil V. SAVEDIA declared that he found no signs of collusion between Mario and Rosanna.

The cases for custody and declaration of nullity were then consolidated in a September 2, 2004 Order.<sup>17</sup>

According to Rosanna, she first met Mario in 1975 through the Legion of Mary at the Saints Peter and Paul Parish in Makati.<sup>18</sup> They wrote each other letters until 1978, when they lost contact with each other.<sup>19</sup>

The parties reconnected in 1995 when Mario sought out Rosanna through their childhood friends.<sup>20</sup> When they finally met again, Mario was in the Philippines for a two-month vacation from his work in Italy.<sup>21</sup> He then persisted in asking out Rosanna for a date. As Mario was set to leave in June 1995, Rosanna agreed to have dinner with him.<sup>22</sup>

Mario then courted Rosanna, declaring that he had been in love with her for the past 20 years.<sup>23</sup> Rosanna eventually fell in love with Mario and agreed to be his girlfriend.<sup>24</sup>

Mario did not leave for Italy in June, giving him more time to spend with Rosanna.<sup>25</sup> On June 17, 1995, Mario proposed and Rosanna agreed to marry him in December that year.<sup>26</sup>

While they were together, Rosanna noticed that there were times when Mario "would be unaccounted for a whole night or an entire day[.]"<sup>27</sup> When asked where he went, Mario would allegedly say that he was working.<sup>28</sup>

Mario also kept postponing his trip back to Italy. When asked why, Mario would either say that he was with friends or that he was "preparing

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<sup>15</sup> Id. at 182. Report.

<sup>16</sup> Id.

<sup>17</sup> Id. at 190.

<sup>18</sup> Id. at 138. Petition.

<sup>19</sup> Id. at 139.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

for [his and Rosanna's] future."<sup>29</sup> Since Mario was allegedly affectionate whenever they were together, Rosanna believed him.<sup>30</sup>

According to Rosanna, Mario once told her of a plan to blow up a ship to get back at a Taiwanese national who had cheated on his friend in a business deal.<sup>31</sup> Rosanna first thought that Mario had been joking, but when Mario appeared serious about his plan, she said that she did not want to get involved in any of his "shady deals."<sup>32</sup>

In July 1995, Mario finally left for Italy, promising Rosanna that he would be back by November for their December wedding.<sup>33</sup> However, Mario was back by September, barely two months after he had left. It turned out that Mario had quit his job.<sup>34</sup>

After Mario's return, Rosanna noticed that Mario always went out at night and would come back home at dawn, either alone or with his friends.<sup>35</sup> He also had difficulty in managing his finances, with his siblings allegedly calling Rosanna and telling her that their brother was financially incapable of supporting a family.<sup>36</sup> However, Rosanna was already deeply in love with Mario, so she told his sisters that she accepted Mario for who he was.<sup>37</sup>

Nevertheless, there were times when Mario would allegedly be extremely irritable and moody, causing Rosanna to have second thoughts about marrying him.<sup>38</sup> However, by November 1995, Rosanna was already pregnant with their child.<sup>39</sup> When Rosanna told Mario about it, he became more eager to marry her. He even gave Rosanna US\$1,000.00, the only money he had, before their wedding.<sup>40</sup>

Instead of spending the US\$1,000.00 for their wedding, Rosanna returned the money to Mario and encouraged him to open a current account for his personal expenses. Mario accepted the money back.<sup>41</sup> The parties eventually married on December 16, 1995.<sup>42</sup>

Since Mario had no work, Rosanna taught him to run Design and Construction Matrix, the construction firm she had set up before she married

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<sup>29</sup> Id. at 140.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id. at 141.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id. at 141-142.

<sup>39</sup> Id. at 142.

<sup>40</sup> Id.

<sup>41</sup> Id.

<sup>42</sup> Id. at 73.

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Mario. She also introduced Mario to firm clients and brought him with her to client meetings.<sup>43</sup>

Mario, however, continued with his “emotional immaturity, irresponsibility, irritability, and psychological imbalance.”<sup>44</sup> He would leave their house for several days without informing Rosanna of his whereabouts. Once he returned home, he would refuse to go out and would sleep for days.<sup>45</sup> Mario was also “hyper-active”<sup>46</sup> late at night.

Rosanna confronted Mario about his behavior. To Rosanna’s shock, Mario admitted that he was using marijuana, although he claimed that he was not addicted and that he could stop anytime.<sup>47</sup> He then promised to stop using it.<sup>48</sup>

Not keeping his promise, Mario continued with his drug use.<sup>49</sup>

The day after Rosanna gave birth to Ma. Samantha, Mario allegedly did not assist Rosanna. He left her in the hospital, knowing that she could not move until the effects of the spinal anesthesia had worn off. He only returned to the hospital later that evening to sleep.<sup>50</sup>

When Rosanna and Ma. Samantha were discharged from the hospital, Mario showed symptoms of paranoia. He thought everyone was out to attack him and, at times, would hide Ma. Samantha from those he thought were out to hurt them.<sup>51</sup>

Mario would also take large cash advances from Design and Construction Matrix every week.<sup>52</sup> Rosanna only learned of Mario’s numerous cash advances when an accounting personnel informed her that the firm could no longer pay the construction workers’ salaries.<sup>53</sup>

Rosanna eventually got tired of Mario. She left him, brought Ma. Samantha with her, and stayed in an inn. She called up Mario to tell him of her and Ma. Samantha’s whereabouts. Mario followed them to the inn and pleaded Rosanna to give him another chance. After Mario’s pleas, Rosanna returned home with Ma. Samantha.<sup>54</sup>

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<sup>43</sup> Id. at 143.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Id. at 143–144.

<sup>48</sup> Id. at 144.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id. at 144–145.

<sup>53</sup> Id. at 145.

<sup>54</sup> Id.

Later, an employee at the firm handed Rosanna a packet of shabu that the employee allegedly found among Mario's office belongings. When she checked, Rosanna herself found packets of shabu among Mario's possessions.<sup>55</sup>

When Rosanna again confronted Mario about his drug use, he explained that it was the only way he could normally function due to the heavy pressures of work at the firm.<sup>56</sup>

In October 1998, Ma. Samantha had dengue fever and had to be confined at the hospital. Mario was not home and could not be reached. He arrived at the hospital only later that evening. He would then run around the different floors of the hospital, checking the medications prescribed to other dengue fever patients. He would also prevent the nurses from administering the prescribed medications to Ma. Samantha. When Ma. Samantha vomited, Mario, who was just sleeping by his daughter's side, would not clean her up. He would instead ignore the ill child, turn to the other side, and continue sleeping.<sup>57</sup>

Having had enough of Mario, Rosanna drove him out of the house. After several days, Mario returned home and pleaded Rosanna for another chance. Rosanna accepted Mario back, but kept a close eye on him.<sup>58</sup>

Later in November, Mario allegedly asked one of their helpers to prepare some clothes, feeding bottles, and milk for Ma. Samantha. Ma. Samantha's nanny noticed the helper fixing the bag, so she asked Rosanna where they would take the child. Rosanna, who was then working in their home office, rushed to Mario and asked him where he was bringing Ma. Samantha. Mario replied that he would only bring the child to Manila Memorial Park.<sup>59</sup>

Rosanna prohibited Mario from bringing Ma. Samantha out. She then called up Mario's siblings for help. Mario got furious, threatened everyone in the house, and left without returning home.<sup>60</sup>

After he had left, Mario made purchases using his supplementary credit card. Rosanna discovered that Mario used up the ₱10,000.00 credit limit of his Citibank Mastercard and the ₱8,000.00 credit limit of his Bank of the Philippine Islands card. Mario also purchased an ₱11,000.00 necklace

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<sup>55</sup> Id. at 145-146.

<sup>56</sup> Id. at 146.

<sup>57</sup> Id. at 146-147.

<sup>58</sup> Id. at 147.

<sup>59</sup> Id. at 147-148.

<sup>60</sup> Id. at 148.

at the Landmark Department Store in Makati.<sup>61</sup>

Several days after he had left home, Mario tried to return, but Rosanna turned him away. Mario banged the door, shouting, "*Buksan niyo ito kundi sisirain ko ito!*"<sup>62</sup> Fearing Mario, Rosanna called her parents and beeped Mario's sisters for help. When Rosanna's parents and Mario's sisters arrived, however, Mario had already left.<sup>63</sup>

Later that day, Mario was found loitering near the house. With him were some travel documents, cash, and a checklist of European countries with the respective visa requirements for entry of a child for each country.<sup>64</sup>

After the door-banging incident, Mario's siblings brought him to the Medical City for detoxification. On November 29, 1998, Mario was committed for treatment at the Medical City for 14 days. After conducting tests on Mario, the doctors found him positive for drug use. Mario's siblings were then advised to commit him to a drug rehabilitation center for treatment. However, defying the doctor's orders, they had him discharged from the hospital without bringing him to a drug rehabilitation facility.<sup>65</sup>

Rosanna eventually closed Design and Construction Matrix due to financial losses. Mario's access to the company funds for his drug use allegedly used up the funds.<sup>66</sup> To sustain her and her family's needs, Rosanna searched for a job and eventually worked as an executive assistant at the Government Service Insurance System Financial Center.<sup>67</sup>

Rosanna decided to have a duplex built on a lot in Parañaque City that her aunt, Rita M. Tan, had donated on August 25, 1998.<sup>68</sup> Rosanna, Mario, and Ma. Samantha would live in one apartment, and Rosanna's parents would live in the other apartment.<sup>69</sup>

To save rent on the Makati apartment where they used to live, Mario, Rosanna, and Ma. Samantha moved into the unfinished Parañaque duplex. At first, Mario hesitated to move in, but he eventually agreed and asked that a four-square meter room at the back of the duplex be constructed. The small room would allegedly be Ma. Samantha's playroom. Rosanna opposed Mario as the room would be too small to be a playroom, but Mario

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<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id. at 149.

<sup>66</sup> Id.

<sup>67</sup> Id. at 297. Psychiatric Evaluation.

<sup>68</sup> Id. at 150. Petition. See also Deed of Donation of Real Property and Acceptance Thereof, *rollo*, pp. 268-271.

<sup>69</sup> Id. at 150. Petition.

insisted on its construction.<sup>70</sup>

The four-square meter room was eventually constructed, and Mario had an air conditioning unit installed inside. He also brought in a television set, a computer table, and some personal belongings into the room. He would then spend days in the room alone and, at times, would even bring Ma. Samantha with him. He even tinkered with the electrical wires of the duplex.<sup>71</sup>

In July 1999, an electrician working on the wires of the house opened the door to the small room. He found Mario and Ma. Samantha inside, with the room filled with smoke that did not quite smell of cigarettes. The electrician informed Rosanna of what he saw, and Rosanna knew that Mario relapsed into his drug use.<sup>72</sup>

Rosanna confronted Mario and pleaded with him to get treated. However, Mario got furious and Ma. Samantha, who saw her parents fighting, started crying. To protect Ma. Samantha, Rosanna brought the child to her parents on the other side of the duplex.<sup>73</sup>

Mario followed them to his parents-in-laws' house, forcing himself in to get Ma. Samantha. Rosanna had to call for police assistance to pacify Mario.<sup>74</sup>

Mario eventually calmed down when the police arrived. The police then searched Mario, finding packets of shabu in his person. They were about to bring Mario to the police station for detention when Rosanna pleaded with them not to take Mario. The police agreed, but they released Mario to his sister, Ma. Socorro.<sup>75</sup>

The next day, Rosanna tried to call Ma. Socorro to ask about Mario, but her calls were unanswered. Rosanna later learned that Mario had escaped from Ma. Socorro's house earlier that morning.<sup>76</sup>

It was after these incidents that Rosanna petitioned<sup>77</sup> the Regional Trial Court to voluntarily commit Mario for drug rehabilitation at the National Bureau of Investigation Treatment and Rehabilitation Center, and, eventually, at the Seagulls Flight Foundation (Seagulls).<sup>78</sup>

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<sup>70</sup> Id. at 150–151.

<sup>71</sup> Id. at 151.

<sup>72</sup> Id.

<sup>73</sup> Id. at 151–152.

<sup>74</sup> Id. at 152.

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id. at 126. Petition for Confinement of a Drug Dependent in a Center.

<sup>78</sup> Id. at 128. July 28, 1999 Letter.



On February 14, 2000, Mario escaped from Seagulls,<sup>79</sup> returning home and pleading with Rosanna to take him in again. Rosanna took her husband in, but Mario would again relapse into his drug use. He was also jobless and could not support his family.<sup>80</sup>

In June 2000, Ma. Samantha had to be rushed to the hospital for frequent vomiting. Mario, who was at home, did nothing, and Rosanna had to absent herself from work to rush the child to the hospital. Rosanna, who had no money with her that time, had to borrow money from Ma. Samantha's nanny. Rosanna's parents and siblings also shared in the child's hospital bills.<sup>81</sup>

In August 2000, Ma. Samantha again had severe upper respiratory tract infection and frequent vomiting. When her nanny was about to give her medicine, Mario prevented the nanny from doing so, saying that mangoes would cure Ma. Samantha.<sup>82</sup>

Two days later, Mario insisted on bringing Ma. Samantha to Makati Medical Center. Rosanna suggested that they instead bring Ma. Samantha together the next day, which was a Saturday. Mario suddenly yelled out, "*Magnanakaw!*" Rosanna, already exasperated, drove Mario out of the house. Mario, however, dashed to the second floor, still yelling, "*Magnanakaw! Magnanakaw!*"<sup>83</sup>

Police officers later arrived at their home, having been called by Rosanna and Mario's neighbors who had heard the screams coming from their house. Rosanna explained that it was her husband who was yelling and that he was a drug dependent who failed to complete his rehabilitation program. The police then brought Mario to the police station for questioning.<sup>84</sup>

Ma. Samantha saw her father screaming and the police taking him with them. The child cried and had to be brought to her grandparents' house to be pacified.<sup>85</sup>

Already at a loss with what to do, Rosanna phoned the director of Seagulls, who recommended that Mario be recommitted to the rehabilitation center to complete his rehabilitation program.<sup>86</sup>

<sup>79</sup> Id. at 130. August 4, 2000 Order.

<sup>80</sup> Id. at 154–155. Petition.

<sup>81</sup> Id. at 156.

<sup>82</sup> Id. at 157.

<sup>83</sup> Id. at 157–158.

<sup>84</sup> Id. at 158.

<sup>85</sup> Id.

<sup>86</sup> Id.

Thus, Rosanna informed the trial court of Mario's relapse, causing the trial court to order<sup>87</sup> Mario's recommitment to Seagulls. Mario remained confined there until December 24, 2000, when the rehabilitation center released Mario without completing his rehabilitation program.<sup>88</sup>

Rosanna wrote the trial court as to Mario's premature release from the rehabilitation center.<sup>89</sup> Since Mario's release on December 24, 2000, Rosanna and Mario had separated and had not lived together. Mario also failed to give support to Rosanna and Ma. Samantha.<sup>90</sup>

These events, according to Rosanna, showed Mario's psychological incapacity to comply with his essential marital obligations to her. Rosanna contended that Mario's drug use was the manifestation of a grave personality disorder "deeply rooted within [Mario's] adaptive system."<sup>91</sup> She thus prayed that the trial court nullify their marriage and that she be declared the sole and absolute owner of the parcel of land donated to her by her aunt as well as the duplex built on it.<sup>92</sup>

To prove Mario's psychological incapacity, Rosanna presented Dr. Valentina Del Fonso Garcia (Dr. Garcia), a physician-psychiatrist, as expert witness.

In her Judicial Affidavit,<sup>93</sup> Dr. Garcia declared that she interviewed Rosanna and gathered data on Rosanna's family, educational, and employment history. She likewise conducted mental status examinations on Rosanna.

For data on Mario's social, sexual, and marital history, Dr. Garcia interviewed Rosanna, Ma. Samantha, and Jocelyn Genevieve L. Tan (Jocelyn Genevieve), Rosanna's sister.<sup>94</sup>

After evaluating the data, Dr. Garcia found Rosanna "psychologically capacitated to comply with her essential marital obligations."<sup>95</sup> According to Dr. Garcia, Rosanna "has adequate social, interpersonal and occupational functioning."<sup>96</sup>

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<sup>87</sup> Id. at 130. August 4, 2000 Order.

<sup>88</sup> Id. at 158. Petition.

<sup>89</sup> Id. at 131. January 11, 2001 Letter.

<sup>90</sup> Id. at 159. Petition.

<sup>91</sup> Id. at 160.

<sup>92</sup> Id. at 163.

<sup>93</sup> Id. at 283-288.

<sup>94</sup> Id. at 296-297. Psychiatric Evaluation.

<sup>95</sup> Id. at 286. Judicial Affidavit.

<sup>96</sup> Id.

As for Mario, Dr. Garcia diagnosed him with narcissistic antisocial personality disorder and substance abuse disorder with psychotic features. Dr. Garcia characterized the disorder as:

. . . an abnormality in behavior known to have a pervasive pattern of grandiosity in fantasy or behavior, need for admiration, and lack of empathy, beginning by early childhood. People suffering from this disorder may have a grandiose sense of self-importance or may be preoccupied with fantasies of unlimited success and power. They likewise believe that they are special and can be understood or should associate with high-status people. They also require excessive admiration, have a sense of entitlement and are envious of others or believe that others envy them.<sup>97</sup>

Mario's narcissistic antisocial personality disorder, which Dr. Garcia found to be grave, with juridical antecedence, and incurable, allegedly rendered Mario psychologically incapacitated to comply with his essential marital obligations to Rosanna. Dr. Garcia testified that Mario's personality disorder was grave and "deeply rooted" in his character.<sup>98</sup> Dr. Garcia added that persons suffering from personality disorders are "impermeable to any form of psychiatric therapeutic modality"<sup>99</sup> because of "the presence of denial and cognizance on the basic pathology of the person [suffering from the disorder]."<sup>100</sup>

As to the juridical antecedence of Mario's personality disorder, Dr. Garcia said that Mario "does not have enough ego strength to effectively self-regulate and face the marital task and relational stressors"<sup>101</sup> and "there were substrates in [Mario's] development which made him feel inadequate and bitter."<sup>102</sup> Mario allegedly "[needed] to have power over others to save face."<sup>103</sup> Dr. Garcia thus recommended that the trial court void Mario and Rosanna's marriage due to Mario's psychological incapacity.

On cross-examination, Dr. Garcia admitted that the data she gathered all came from Rosanna, Ma. Samantha, and Jocelyn Genevieve. She likewise admitted diagnosing Mario without interviewing him,<sup>104</sup> because, despite several invitations from Dr. Garcia, Mario did not appear for an interview.<sup>105</sup>

Countering Rosanna, Mario contended that it was she who was psychologically incapacitated to comply with her essential marital

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<sup>97</sup> Id.

<sup>98</sup> Id. at 287.

<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> CA *rollo*, pp. 1286 and 1292-1293. Original Transcript of Stenographic Notes.

<sup>105</sup> Id. at 1281-1282.

obligations.

Mario alleged that he had worked in Switzerland, Germany, and Italy before returning to the Philippines in April 1995. In May 1995, he was issued a Canadian visa set to expire in September that year.<sup>106</sup>

While on vacation in the Philippines, he met his childhood friend, Rosanna, whom he had not seen in 17 years. They then frequently went out, dining and drinking in bars, and would go to Rosanna's office afterward to "spend the night and share intimate moments[.]"<sup>107</sup>

In August 1995, Mario went back to Italy to resign from his job as he had already decided to work in Canada.<sup>108</sup>

When Mario returned to the Philippines a month later, Rosanna told him that she was pregnant and was planning to abort their child. Mario believed her, as Rosanna allegedly had an abortion in 1991. To prevent Rosanna from undergoing abortion, he proposed to her. They were married on December 16, 1995.<sup>109</sup>

The spouses then loaned ₱500,000.00 from the Elena P. Tan Foundation to increase the capital of Design and Construction Matrix, a one-year-old construction firm under Rosanna's name. Part of the loaned amount was used as down payment for a Mitsubishi FB L300 van.<sup>110</sup>

By January 1996, the spouses were already frequently fighting. According to Mario, Rosanna would box and kick him whenever they argued. To avoid any untoward incident, Mario would leave the house to keep his cool.<sup>111</sup>

In 1997, Rosanna allegedly became uncontrollable. She would bang her head on tables, doors, concrete walls, and closets, and would even inflict corporal punishment on Ma. Samantha.<sup>112</sup>

Opposing Rosanna's claim, Mario said that he worked to support the family. He worked as the operations manager of Design and Construction Matrix, and his duties included hiring and supervising firm employees, and procuring construction materials, tools, and equipment. Because of his hard work at the firm, he and Rosanna were able to pay their ₱500,000.00 loan

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<sup>106</sup> *Rollo*, p. 166. Answer.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 166-167.

<sup>110</sup> *Id.* at 167.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 168.

and save money for the construction of their conjugal home.<sup>113</sup>

Mario claimed that he always went home and never slept out, except that one time in December 1998, when he and Rosanna had a big fight. Mario maintained that he was a good father to Ma. Samantha such that, when the child was confined in the hospital for dengue fever, he took care of her. One time, when the nurse on duty failed to replace Ma. Samantha's empty dextrose bottle, Mario voluntarily asked the nurse to replace it with a new one. He and Ma. Samantha would also spend quality time together, going to malls and visiting relatives.<sup>114</sup>

Sometime in 1998, Mario, Rosanna, and Rosanna's parents jointly loaned ₱2,500,000.00 from the Elena P. Tan Foundation. They deposited the amount in Metrobank-Legaspi Branch in Makati under the name of Rosanna and her father, Rodolfo M. Tan. The loaned amount would serve as funds for the construction of the duplex house in Parañaque.<sup>115</sup>

In December 1998, Mario and Rosanna fought again and this time, Rosanna drove Mario out of the house. Since he had no cash with him, Mario used up the credit limits of his credit cards totaling ₱40,000.00. When he returned home, Mario allegedly returned the ₱40,000.00 to Rosanna.<sup>116</sup>

By 1999, when the duplex was semi-finished, Mario, Rosanna, and Ma. Samantha moved in. Since construction was still ongoing, Mario insisted that a four-square meter room be constructed to protect Ma. Samantha from construction dust and debris.<sup>117</sup>

Mario denied that he was ever a threat to Rosanna and Ma. Samantha. He voluntarily committed himself for detoxification at the Medical City and completed his six-month rehabilitation in Seagulls. When he returned home, however, Rosanna remained violent and would always drive Mario out of the house.<sup>118</sup>

Between him and Rosanna, Mario argued that it was his wife who was psychologically incapacitated to comply with her essential marital obligations to him. Rosanna insisted on living with her parents despite having her own family, resulting in her parents constantly intruding into their marital life.<sup>119</sup>

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<sup>113</sup> Id.

<sup>114</sup> Id. at 168-169.

<sup>115</sup> Id. at 169.

<sup>116</sup> Id.

<sup>117</sup> Id. at 169-170.

<sup>118</sup> Id. at 170-171.

<sup>119</sup> Id. at 170.

As to the parcel of land allegedly donated by Rita M. Tan, Mario claimed that the donation was a “manipulative device” to make it appear that Rosanna exclusively owned the lot.<sup>120</sup>

In sum, Mario prayed that the trial court nullify his marriage to Rosanna due to her psychological incapacity, and that the properties they had acquired during their cohabitation be divided equally between them. He, however, prayed that the custody of Ma. Samantha be awarded to him.<sup>121</sup>

In its May 9, 2007 Decision,<sup>122</sup> the Regional Trial Court found that Rosanna discharged the burden of proving Mario’s psychological incapacity:

It was clearly shown from [Mario’s] actuations that he never really cared about the well-being of his family. He never commiserated with [Rosanna] during her difficult times. Despite [Rosanna’s efforts] to keep the marriage intact, [Mario] showed no interest in mending his ways. These acts, to the mind of the Court, manifested [Mario’s] total disregard of the basic tenets of marriage.<sup>123</sup>

The trial court thus voided Mario and Rosanna’s marriage. It awarded the custody of Ma. Samantha to Rosanna, with Mario having visitation rights. As to the Parañaque duplex, the trial court declared Rosanna as its sole and absolute owner, including the parcel of land on which it was built. The dispositive portion of the May 9, 2007 Decision reads:

**WHEREFORE**, finding merit to the petition, judgment is hereby rendered:

1. Declaring *null and void ab initio* the marriage between **ROSANNA L. TAN-ANDAL** and **MARIO VICTOR M. ANDAL** solemnized on **DECEMBER 16, 1995** in Makati City on the ground of psychological incapacity of the respondent;
2. Ordering the Local Civil Registrars of Makati City and the National Statistics Office to cancel the marriage between the petitioner and the respondent as appearing in their respective Registry of Marriage;
3. Allowing petitioner to resume the use of her maiden name;
4. Awarding petitioner the absolute custody of the parties’ only child, Ma. Samantha T. Andal, with visitation rights given to the respondent; and
5. Declaring the petitioner to be the sole and absolute owner of the parcel of land with improvements covered by TCT No.

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<sup>120</sup> Id. at 171.

<sup>121</sup> Id. at 172–173.

<sup>122</sup> Id. at 93–102.

<sup>123</sup> Id. at 99–100.

139811.

On the matter of suspension of respondent's parental authority over Ma. Samantha T. Andal, the Court holds that there is no sufficient ground in granting the same.

Let copies of this Decision be furnished the Local Civil Registrars of Makati City and Parañaque City, the Office of the Solicitor General, the Office of the Civil Register General (National Statistics Office) and the Office of the City Prosecutor, Parañaque City.

SO ORDERED.<sup>124</sup> (Emphasis in the original)

Mario moved<sup>125</sup> for reconsideration, which the trial court denied in its August 29, 2007 Order.<sup>126</sup>

Reversing the trial court's ruling, the Court of Appeals found Dr. Garcia's psychiatric evaluation of Mario to be "unscientific and unreliable"<sup>127</sup> since she diagnosed Mario without interviewing him. The Court of Appeals ruled that Dr. Garcia "was working on pure suppositions and second-hand information fed to her by one side."<sup>128</sup>

On the trial court's finding that Rosanna exclusively owned the house and lot in Parañaque, the Court of Appeals held that the trial court violated Article VIII, Section 14 of the Constitution, which states that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." To the Court of Appeals, the trial court did not state the facts and the law on which it based its ruling that Rosanna solely owned the house and lot.<sup>129</sup>

Thus, the Court of Appeals declared Mario and Rosanna's marriage valid and subsisting. The dispositive portion of its February 25, 2010 Decision<sup>130</sup> reads:

**WHEREFORE**, the instant appeal is **GRANTED**. The assailed May 09, 2007 decision is **SET ASIDE**, and the marriage between Mario Victor M. Andal and Rosanna L. Tan-Andal is hereby declared as **VALID** and **SUBSISTING**.

SO ORDERED.<sup>131</sup> (Emphasis in the original)

Rosanna moved<sup>132</sup> for reconsideration, which the Court of Appeals

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<sup>124</sup> Id. at 100–101.

<sup>125</sup> Id. at 331–336.

<sup>126</sup> Id. at 370–371.

<sup>127</sup> Id. at 84.

<sup>128</sup> Id.

<sup>129</sup> Id. at 86 and 88.

<sup>130</sup> Id. at 71–90.

<sup>131</sup> Id. at 89.

denied in its April 6, 2011 Resolution.<sup>133</sup>

On May 25, 2011, Rosanna filed a Petition for Review on Certiorari<sup>134</sup> before this Court. Mario filed his Comment,<sup>135</sup> to which Rosanna filed her Reply.<sup>136</sup>

In the August 20, 2019 Resolution,<sup>137</sup> this Court resolved to set the case for oral arguments. However, the oral arguments were postponed indefinitely,<sup>138</sup> and the parties were instead ordered to file their respective memoranda.<sup>139</sup> Further, Dean Sylvia Estrada-Claudio, M.D., Ph.D.,<sup>140</sup> Dean Melencio S. Sta. Maria, Jr.,<sup>141</sup> and Fr. Adolfo Dacanay, S.J.,<sup>142</sup> were appointed *amici curiae*, and they were all required to submit their *amicus curiae* briefs.<sup>143</sup>

The parties<sup>144</sup> and the Republic of the Philippines, represented by the Office of the Solicitor General,<sup>145</sup> have all filed the required Memoranda. The *amici curiae*, to whom this Court is grateful for their expertise and invaluable insights on the important issues for resolution here, have each submitted their respective *Amicus Curiae* Briefs.

The issues for this Court's resolution are:

First, whether or not the marriage between Mario and Rosanna is void due to psychological incapacity. Subsumed in this issue are the following:

a. Whether or not the guidelines for deciding cases for declaration of nullity of marriage due to psychological incapacity, as laid down in *Republic v. Court of Appeals and Molina*,<sup>146</sup> violate the right to liberty, personal autonomy, and human dignity of Filipinos;

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<sup>132</sup> CA *rollo*, pp. 251–286.

<sup>133</sup> *Rollo*, p. 92.

<sup>134</sup> *Id.* at 8–450.

<sup>135</sup> *Id.* at 463–478.

<sup>136</sup> *Id.* at 479–494.

<sup>137</sup> *Id.* at 523–524.

<sup>138</sup> *Id.* at 557–558. September 24, 2019 Resolution.

<sup>139</sup> *Id.* at 567–570, November 5, 2019 Resolution.

<sup>140</sup> Dean Estrada-Claudio is the Dean of the University of the Philippines College of Social Work and Community Development.

<sup>141</sup> Professor Sta. Maria is the Dean of the Far Eastern University Institute of Law and Professor of Civil Law at the Ateneo Law School.

<sup>142</sup> Fr. Dacanay is a Doctor of Canon Law and Judge of the Metropolitan Tribunal of the Archdiocese of Manila.

<sup>143</sup> *Rollo*, pp. 567–570. November 5, 2019 Resolution.

<sup>144</sup> *Id.* at 849–921, Memorandum for Petitioner, and pp. 691–721 Memorandum for Respondent.

<sup>145</sup> *Id.* at 591–681.

<sup>146</sup> 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].



b. Whether or not, as characterized in *Santos v. Court of Appeals*,<sup>147</sup> psychological incapacity has juridical antecedence and its root cause medically or clinically identifiable at the time of the celebration of the marriage. If it is so identifiable, then:

i. should it be grounded on a particular psychological illness;

ii. may it be established without a psychological assessment or clinical diagnosis;

iii. may it be established on the basis of testimonial evidence attesting to the behavioral pattern of the spouse with the psychological incapacity during the marriage;

c. Whether or not, as characterized in *Santos*, psychological incapacity is truly incurable. If it is, must it be shown to be medically or clinically permanent or incurable to warrant a declaration of nullity of marriage under Article 36 of the Family Code;

d. Whether or not Article 36 of the Family Code is violative of the separation of Church and State;

e. Whether or not the expert opinion on a party's psychological incapacity is competent evidence if it is solely based on collateral information from the other spouse;

f. Whether or not the existence of grounds for legal separation precludes a finding of psychological incapacity on the part of one or both of the spouses;

g. Whether or not psychological incapacity may be relative to each couple.

Second, whether or not half of the duplex and the lot on which it is situated are community properties of Mario and Rosanna; and

Third, whether or not Ma. Samantha's custody was rightfully awarded to Rosanna.

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<sup>147</sup> 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

Rosanna maintains that the Court of Appeals gravely erred in reversing the trial court's Decision, claiming that the totality of evidence she presented was sufficient to prove Mario's psychological incapacity. With respect to Dr. Garcia's findings, Rosanna claims that they are reliable, having been subjected to cross-examination by Mario's counsel and were based on documents written by Mario himself, among others.<sup>148</sup> Citing *Suazo v. Suazo*,<sup>149</sup> Rosanna adds that the person to be declared psychologically incapacitated need not be personally interviewed by the clinician or psychiatrist for a court to nullify the marriage. So long as the totality of evidence presented proves that the spouse is psychologically incapacitated, as in this case, she insists that a decree of nullity of marriage should be issued.<sup>150</sup>

Rosanna concedes this Court's good intention behind imposing the *Molina* guidelines, which was to prevent parties from filing frivolous or capricious petitions for declaration of nullity. However, Rosanna argues, the guidelines have unintentionally made "it complicated and burdensome for a party to be released from a marriage that has legitimately broken down."<sup>151</sup> For Rosanna, the State's protection of the institution of marriage "should not be ruthless nor unjustifiably intrude into a person's rights to autonomy and human dignity."<sup>152</sup>

Psychological incapacity need not be grounded on a particular psychological illness, argues Rosanna, as this is allegedly more consistent with psychological incapacity being a "liberal ground"<sup>153</sup> for nullifying marriages. She cites cases<sup>154</sup> where this Court held that competent evidence, not necessarily expert opinion, may establish psychological incapacity, and that what matters is the totality of evidence presented.

Rosanna adds that psychological incapacity is incurable, but not necessarily in a medical or clinical sense. For her, incurability is manifested by ingrained behavior manifested during the marriage by the psychologically incapacitated spouse.<sup>155</sup>

As to whether Article 36 violates the Constitution on the separation of Church and State, Rosanna argues that the provision does not. She cites *Molina*, where this Court explained that the provision is meant to harmonize

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<sup>148</sup> Id. at 28–34. Petition.

<sup>149</sup> 629 Phil. 157 (2010) [Per J. Brion, Second Division].

<sup>150</sup> *Rollo*, pp. 882–883 and 876–877, Memorandum for Petitioner.

<sup>151</sup> Id. at 890. Memorandum for Petitioner.

<sup>152</sup> Id. at 893.

<sup>153</sup> Id. at 895.

<sup>154</sup> *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31 (2017) [Per J. Leonen, Second Division]; *Mendoza v. Republic*, 698 Phil. 241 (2012) [Per J. Bersamin, First Division]; *Camacho-Reyes v. Reyes*, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; *Ting v. Velez-Ting*, 601 Phil. 676 (2009) [Per J. Nachura, Third Division].

<sup>155</sup> *Rollo*, p. 899. Memorandum for Petitioner.

our civil laws with the religious faith of the majority of Filipinos.<sup>156</sup>

Rosanna submits that even if solely based on collateral information, expert opinion on a spouse's psychological incapacity may be considered as competent evidence. An expert "does not accept the information relayed by a party about his/her spouse 'as is'."<sup>157</sup> A psychological evaluation is only made after a "verification process is conducted by the psychologist/psychiatrist," assuring that the expert opinion is reliable.<sup>158</sup>

Rosanna adds that the existence of grounds for legal separation does not preclude a finding of psychological incapacity on the part of one or both of the spouses. Citing *Republic v. Mola Cruz*,<sup>159</sup> she demonstrates that a ground for legal separation may be considered a symptom or manifestation of psychological incapacity.<sup>160</sup>

With respect to psychological incapacity being relative, Rosanna again cites *Molina*, where this Court said that the "incurability [of the psychological incapacity] may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against every one of the same sex."<sup>161</sup>

On the duplex that served as the family home, Rosanna argues that the house, though it may be considered community property, should still be exclusively retained by Rosanna as Mario made no contribution for its construction. As for the lot on which the duplex was built, Rosanna maintains that it is her exclusive property, having been donated solely to her.<sup>162</sup>

Countering Rosanna, Mario maintains that she failed to prove that his past drug use was a manifestation of a personality disorder which rendered him psychologically incapacitated.<sup>163</sup> Mario argues that his past drug use is, at best, only a ground for legal separation,<sup>164</sup> not for nullity of marriage due to psychological incapacity.<sup>165</sup>

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<sup>156</sup> Id. at 899–900.

<sup>157</sup> Id. at 900.

<sup>158</sup> Id. at 900–903.

<sup>159</sup> 836 Phil. 1266 (2018) [Per J. Gesmundo, Third Division].

<sup>160</sup> *Rollo*, pp. 902–903. Memorandum for Petitioner.

<sup>161</sup> Id. at 903–904.

<sup>162</sup> Id. at 904–912.

<sup>163</sup> Id. at 466–468, Comment, and pp. 702–712, Memorandum for Respondent.

<sup>164</sup> FAMILY CODE, art. 55(5) provides:

Art. 55. A petition for legal separation may be filed on any of the following grounds:

....

(5) Drug addiction or habitual alcoholism of the respondent[.]

<sup>165</sup> *Rollo*, pp. 466–468, Comment, and pp. 708–709, Memorandum for Respondent.

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As to whether Article 36 of the Family Code can be violative of the right of Filipinos to liberty, personal autonomy, and human dignity, Mario failed to respond to this specific issue. However, echoing this Court's pronouncement in *Molina*, Mario argues that psychological incapacity is truly incurable, which means it is medically or clinically permanent.<sup>166</sup>

In addition, Mario submits that Article 36 is not violative of the separation of Church and State. For him, Article 36 is "an example of the government pursuing an important state policy, i.e. protection of the family."<sup>167</sup>

Like Rosanna, Mario argues that the expert opinion on a party's psychological incapacity may be considered as competent evidence even if based solely on collateral information. Citing *Marcos v. Marcos*<sup>168</sup> and *Rumbaua v. Rumbaua*,<sup>169</sup> Mario submits that in proving psychological incapacity, what is essential is the totality of evidence presented.<sup>170</sup> Similarly, he argues that the existence of a ground for legal separation does not preclude a finding of psychological incapacity if the ground is shown to be a "manifestation of some other serious psychological illness which . . . renders the party unable to comply with his [or her] essential marital obligations."<sup>171</sup>

Mario contends that psychological incapacity is absolute, consistent with it being incurable. He submits that "a party's incapacity should relate not only to the present relationship with his [or her] spouse but should also continue to any relationship he [or she] may subsequently enter into."<sup>172</sup>

Considering that the Court of Appeals found his marriage to Rosanna valid and subsisting, Mario argues that the house and lot in Parañaque is community property, having been acquired during the marriage.<sup>173</sup>

This Petition must be granted. With clear and convincing evidence, Rosanna proved that Mario was psychologically incapacitated to comply with his essential marital obligations to her. Their marriage is void *ab initio*.

## I

Psychological incapacity as a ground for voiding marriages is provided in Article 36 of the Family Code:

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<sup>166</sup> Id. at 712–713, Memorandum for Respondent.

<sup>167</sup> Id. at 714.

<sup>168</sup> 397 Phil. 840 (2000) [Per J. Panganiban, Third Division].

<sup>169</sup> 612 Phil. 1061, 1078 (2009) [Per J. Brion, Second Division].

<sup>170</sup> *Rollo*, pp. 714–715. Memorandum for Respondent.

<sup>171</sup> Id. at 715–716.

<sup>172</sup> Id. at 716.

<sup>173</sup> Id. at 472, Comment, and 716–718, Memorandum for Respondent.

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.

Article 36 was first interpreted in *Santos v. Court of Appeals*,<sup>174</sup> a case where the wife, after three years of marriage, left for the United States, never to return to her husband and son. Despite the wife's abandonment of the family, this Court in *Santos* refused to void the marriage after outlining the history of the provision and defining the term "psychological incapacity."

This Court initially noted how the Family Code Revision Committee (Code Committee) deliberately refused to define psychological incapacity "to allow some resiliency"<sup>175</sup> in applying the provision. Article 36 provides no examples of psychological incapacity so that "the applicability of the provision [would not be limited] under the principle of *ejusdem generis*."<sup>176</sup>

After reviewing the Code Committee deliberations, this Court determined that psychological incapacity should mean "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."<sup>177</sup> It added that "psychological incapacity" must refer to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."<sup>178</sup>

In reference to the Catholic roots of Article 36, it being derived from the New Canon Law, this Court cited the work of Dr. Gerardo Veloso (Dr. Veloso), a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila. Dr. Veloso was of the opinion that psychological incapacity "must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability."<sup>179</sup>

Building on these three criteria, this Court promulgated *Republic v. Court of Appeals and Molina*<sup>180</sup> in 1997. *Molina* involved a wife who, after five years of marriage, filed a case for declaration of its nullity due to her husband's psychological incapacity. In her petition, she alleged that her husband preferred to spend his time and money on his friends, failing to support the family. If the husband had any money, it was because he

<sup>174</sup> 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

<sup>175</sup> Id. at 36.

<sup>176</sup> Id., citing *Salita v. Magtolis*, G.R. No. 106429, June 13, 1994. See also *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 677 (1997) [Per J. Panganiban, En Banc].

<sup>177</sup> Id. at 40.

<sup>178</sup> Id.

<sup>179</sup> Id. at 39.

<sup>180</sup> 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

allegedly depended on his parents for aid. The husband eventually left her and their child when she had to resign from work.

It was in *Molina* where this Court laid down the guidelines for interpreting and applying Article 36. In formulating the guidelines, this Court invited two *amici curiae*: Rev. Oscar V. Cruz, Vicar Judicial or Presiding Judge of the National Appellate Matrimonial Tribunal of the Philippine Catholic Church; and Justice Ricardo C. Puno, a member of the Family Code Revision Committee. The *Molina* guidelines are as follows:

(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 physically ill to such an extent that the person could not have known the obligations he was assuming, or 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.<sup>181</sup> (Emphasis in the original, citations omitted)

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<sup>181</sup> Id. at 676–679. The eighth guideline on the certification from the Solicitor General briefly stating his or her reasons for agreeing or opposing the petition for declaration of nullity of marriage on the ground of psychological incapacity has been dispensed with under A.M. No. 02-11-10-SC (*Re: Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriage*). See *Padilla Rumbaua v. Rumbaua*, 612 Phil. 1061, 1078 (2009) [Per J. Brion, Second Division]; *Navales v. Navales*, 578 Phil. 826, 839 (2008) [Per J. Austria-Martinez, Third Division]; *Tongol v. Tongol*, 562 Phil. 725, 735 (2007) [Per J. Austria-Martinez, Third Division]; *Antonio v. Reyes*, 519 Phil. 337, 358 (2006) [Per J. Tinga, Third Division]; *Carating-Siayngco v. Siayngco*, 484 Phil. 396, 410 (2004) [Per J. Chico-Nazario, Second Division].

The *Molina* guidelines were applied in subsequent cases.<sup>182</sup> Since *Molina*'s promulgation in 1997 until 2008, only *Antonio v. Reyes*<sup>183</sup> was found to have satisfied *all* the requirements of *Molina*.<sup>184</sup> *Antonio* involved a wife whose pathological lying rendered her psychologically incapacitated to comply with her essential marital obligations.

Because of the restrictive interpretation resulting from the application of the *Molina* guidelines, this Court pronounced in the 2009 case of *Ngo Te v. Yu-Te*<sup>185</sup> that “jurisprudential doctrine has unnecessarily imposed a perspective by which psychological incapacity should be viewed,” a view that is “totally inconsistent with the way the concept was formulated[.]”<sup>186</sup> In *Ngo Te*, this Court remarked that the *Molina* guidelines worked like a “strait-jacket” in which psychological incapacity cases are forced to fit:

In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the [Office of the Solicitor General's] exaggeration of Article 36 as the “most liberal divorce procedure in the world.” The unintended consequences of *Molina*, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying *Molina*, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage.<sup>187</sup> (Citations omitted)

In its 2015 Resolution in *Kalaw v. Fernandez*,<sup>188</sup> this Court made a similar statement:

<sup>182</sup> *Navales v. Navales*, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Navarro, Jr. v. Cecilio-Navarro*, 549 Phil. 632 (2007) [Per J. Quisumbing, Second Division]; *Tongol v. Tongol*, 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; *Republic v. Tanyag-San Jose*, 545 Phil. 725 (2007) [Per J. Carpio Morales, Second Division]; *Antonio v. Reyes*, 519 Phil. 337 (2006) [Per J. Tinga, Third Division]; *Republic v. Iyoy*, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Quintero-Hamano*, G.R. No. 149498, May 20, 2004 [Per J. Corona, Third Division]; *Ancheta v. Ancheta*, 468 Phil. 900 (2004) [Per J. Callejo, Sr., Second Division]; *Choa v. Choa*, 441 Phil. 175 (2002) [Per J. Panganiban, Third Division]; *Pesca v. Pesca*, 408 Phil. 713 (2001) [Per J. Vitug, Third Division]; *Republic v. Dagdag*, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; *Marcos v. Marcos*, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]; *Hernandez v. Court of Appeals*, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division].

<sup>183</sup> 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

<sup>184</sup> Another case where the parties successfully obtained a decree of nullity of marriage due to psychological incapacity was *Chi Ming Tsoi v. Court of Appeals*, 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division]. However, *Chi Ming Tsoi* was not decided under the *Molina* guidelines. This Court had yet to promulgate *Molina* when *Chi Ming Tsoi* was decided. In *Chi Ming Tsoi*, this Court ruled that “[a party’s] refusal [to consummate his or her marriage] is . . . psychological incapacity,” procreation being “the basic end of marriage.”

<sup>185</sup> 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

<sup>186</sup> *Id.* at 669.

<sup>187</sup> *Id.* at 695–696.

<sup>188</sup> 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].



The [*Molina*] guidelines have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of “less specificity” obviously to enable “some resiliency in its application.” Instead, every court should approach the issue of nullity “not on the basis of a priori assumptions, predilections or generalizations, but according to its own facts” in recognition of the verity that no case would be on “all fours” with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every “trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court.”<sup>189</sup> (Citation omitted)

This Court’s statements in *Ngo-Te* and *Kalaw* notwithstanding, the tendency to rigidly apply the *Molina* guidelines continued. Apart from *Chi Ming Tsoi v. Court of Appeals*,<sup>190</sup> *Antonio v. Reyes*,<sup>191</sup> *Ngo Te v. Yu-Te*,<sup>192</sup> and *Kalaw v. Fernandez*,<sup>193</sup> only the parties in *Azcueta v. Republic*,<sup>194</sup> *Halili v. Santos-Halili*,<sup>195</sup> *Camacho-Reyes v. Reyes*,<sup>196</sup> *Aurelio v. Aurelio*,<sup>197</sup> *Tani-De La Fuente v. De La Fuente*,<sup>198</sup> *Republic v. Javier*,<sup>199</sup> and *Republic v. Mola Cruz*<sup>200</sup> were granted a decree of nullity by this Court via a signed decision or resolution since the Family Code was signed into law.<sup>201</sup> That only a few

<sup>189</sup> Id. at 499–500.

<sup>190</sup> 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division].

<sup>191</sup> 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

<sup>192</sup> 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

<sup>193</sup> 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].

<sup>194</sup> 606 Phil. 177 (2009) [Per J. Leonardo-de Castro, First Division].

<sup>195</sup> 607 Phil. 1 (2009) [Per J. Corona, Special First Division].

<sup>196</sup> 642 Phil. 602 (2010) [Per J. Nachura, Second Division].

<sup>197</sup> 665 Phil. 693 (2011) [Per J. Peralta, Second Division].

<sup>198</sup> 807 Phil. 31 (2017) [Per J. Leonen, Second Division].

<sup>199</sup> G.R. No. 210518, April 18, 2018 [Per J. Reyes, Jr. Second Division].

<sup>200</sup> G.R. No. 236629, July 23, 2018 [Per J. Gesmundo, Third Division].

<sup>201</sup> As of date, the following are the cases on psychological incapacity resolved via a signed decision or signed resolution by this Court. *Simundac-Keppel v. Keppel*, G.R. No. 202039, August 14, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65677>> [Per C.J. Bersamin, First Division]; *Eliscupidez v. Eliscupidez*, G.R. No. 226907, July 22, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65547>> [Per J. Peralta, Third Division]; *Cahapisan-Santiago v. Santiago*, G.R. No. 241144, June 26, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Jun/2019/1>> [Per J. Perlas-Bernabe, Second Division]; *Cortez v. Cortez*, G.R. No. 224638, April 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65103>> [Per J. Peralta, Third Division]; *Go-Yu v. Yu*, G.R. No. 230443, April 3, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65062>> [Per J. Peralta, Third Division]; *Republic v. Deang*, G.R. No. 236279, March 25, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65071>> [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tecag*, G.R. No. 229272, November 19, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64764>> [Per J. Perlas-Bernabe, Second Division]; *Republic v. Mola Cruz*, G.R. No. 236629, July 23, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64585>> [Per J. Gesmundo, Third Division]; *Republic v. Javier*, 830 Phil. 213 (2018) [Per J. Reyes, Jr. Second Division]; *Espina-Dan v. Dan*, 829 Phil. 605 (2018) [Per J. Del Castillo, First Division]; *Republic v. Tobora-Tionglico*, 823 Phil. 672 (2018) [Per J. Tijam, First Division]; *Lontoc-Cruz v. Cruz*, 820 Phil. 62 (2017) [Per J. Del Castillo, First Division]; *Bakunawa III v. Bakunawa*, 816 Phil. 649 (2017) [Per J. Reyes, Jr., Third Division]; *Garlet v. Garlet*, 815 Phil. 268 (2017) [Per J. Leonardo-De Castro, First Division]; *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31 (2017) [Per J. Leonen, Second Division]; *Del Rosario v. Del Rosario*, 805 Phil. 978 (2017) [Per J. Perlas-Bernabe, First Division]; *Castillo v. Republic*, 805 Phil. 209 (2017) [Per J. Peralta, Second Division]; *Matudan v. Republic*, 799 Phil. 449 (2016) [Per J. Del Castillo,

cases were found to have satisfied the *Molina* guidelines is, supposedly, in accordance with the Constitution on the inviolability of marriage,<sup>202</sup> to the extent that this Court often reversed the factual findings of psychological incapacity by both the trial court and the Court of Appeals.<sup>203</sup>

## II

It is time for a comprehensive but nuanced interpretation of what truly

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Second Division]; *Republic v. Pangasinan*, 792 Phil. 808 (2016) [Per J. Velasco, Jr. Third Division]; *Republic v. Spouses Romero*, 781 Phil. 737 (2016) [Per J. Perlas-Bernabe, First Division]; *Mallilin v. Jamesolamin*, 754 Phil. 158 (2015) [Per J. Mendoza, Second Division]; *Viñas v. Parel-Viñas*, 751 Phil. 762 (2015) [Per J. Reyes, Third Division]; *Kalaw v. Fernandez*, 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division]; *Republic v. De Gracia*, 726 Phil. 502 (2014) [Per J. Perlas-Bernabe, Second Division]; *Republic v. Encelan*, 701 Phil. 192 (2013) [Per J. Brion, Second Division]; *Mendoza v. Republic and Mendoza*, 698 Phil. 241 (2012) [Per J. Bersamin, First Division]; *Republic v. The Hon. Court of Appeals (Ninth Division) and De Quintos, Jr.*, 698 Phil. 257 (2012) [Per J. Bersamin, First Division]; *Republic v. Galang*, 665 Phil. 658 (2011) [Per J. Brion, Third Division]; *Ochosa v. Alano and Republic*, 655 Phil. 512 (2011) [Per J. Leonardo-de Castro, First Division]; *Yambao v. Republic and Yambao*, 655 Phil. 346 (2011) [Per J. Nachura, Second Division]; *Marable v. Marable*, 654 Phil. 528 (2011) [Per J. Villarama, Jr., Third Division]; *Agraviador v. Amparo-Agraviador*, 652 Phil. 49 (2010) [Per J. Brion, Third Division]; *Baccay v. Baccay and Republic*, G651 Phil. 68 (2010) [Per J. Villarama, Jr., Third Division]; *Camacho-Reyes v. Reyes*, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; *Toring v. Toring and Republic*, 640 Phil. 434 (2010) [Per J. Brion, Third Division]; *Ligeralde v. Patalinghug*, 632 Phil. 326 (2010) [Per J. Mendoza, Third Division]; *Suazo v. Suazo*, 629 Phil. 157 (2010) [Per J. Brion, Second Division]; *Paz v. Paz*, 627 Phil. 1 (2010) [Per J. Carpio, Second Division]; *Lim v. Sta. Cruz-Lim*, 625 Phil. 407 (2010) [Per J. Nachura, Third Division]; *Aspillaga v. Aspillaga*, 619 Phil. 434 (2009) [Per J. Quisumbing, Second Division]; *Padilla-Rumbaua v. Rumbaua*, 612 Phil. 1061 (2009) [Per J. Brion, Second Division]; *Najera v. Najera*, 609 Phil. 316 (2009) [Per J. Peralta, Third Division]; *Halili v. Santos-Halili*, 607 Phil. 1 (2009) [Per J. Corona, Special First Division]; *So v. Valera*, 606 Phil. 309 (2009) [Per J. Brion, Second Division]; *Azcueta v. Republic*, 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division]; *Ting v. Velez-Ting*, 601 Phil. 676 (2009) [Per J. Nachura, Third Division]; *Ngo-Te v. Yu Te*, 598 Phil. 666 (2009) [Per J. Nachura, Third Division]; *Navales v. Navales*, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Navarro, Jr. v. Cecilio-Navarro*, 549 Phil. 632 (2007) [Per J. Quisumbing, Second Division]; *Tongol v. Tongol*, 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; *Republic v. Tanyag-San Jose*, 545 Phil. 725 (2007) [Per J. Carpio Morales, Second Division]; *Antonio v. Reyes*, 519 Phil. 337 (2006) [Per J. Tinga, Third Division]; *Republic v. Iyoy*, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Quintero-Hamano*, G.R. No. 149498, May 20, 2004 [Per J. Corona, Third Division]; *Dedel v. Court of Appeals*, 466 Phil. 226 (2004) [Per J. Ynares-Santiago, First Division]; *Pesca v. Pesca*, 408 Phil. 713 (2001) [Per J. Vitug, Third Division]; *Republic v. Dagdag*, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; *Marcos v. Marcos*, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]; *Hernandez v. Court of Appeals*, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division]; *Republic v. Court of Appeals and Molina*, 335 Phil. 664 (1997) [Per J. Panganiban, En Banc]; *Chi Ming Tsoi v. Court of Appeals*, 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division]; and *Santos v. Court of Appeals*, 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

<sup>202</sup> CONST., art. XV, sec. 2 provides:

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

<sup>203</sup> See *Republic v. Deang*, G.R. No. 236279, March 25, 2019 [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tecag*, G.R. No. 229272, November 19, 2018 [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tobora-Tionglico*, G.R. No. 21860, January 11, 2018 [Per J. Tijam, First Division]; *Republic v. Spouses Romero*, 781 Phil. 737 (2016) [Per J. Perlas-Bernabe, First Division]; *Republic v. De Gracia*, 726 Phil. 502 (2014) [Per J. Perlas-Bernabe, Second Division]; *Republic v. Pangasinan*, G.R. No. 214077, August 10, 2016 [Per J. Velasco, Jr. Third Division]; *Republic v. Encelan*, 701 Phil. 192 (2013) [Per J. Brion, Second Division]; *Republic v. Court of Appeals and De Quintos, Jr.*, 698 Phil. 258 (2012) [Per J. Bersamin, First Division]; *Republic v. Galang*, 665 Phil. 658 (2011) [Per J. Brion, Third Division]; *Navales v. Navales*, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Tongol v. Tongol*, 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; *Republic v. Quintero-Hamano*, 472 Phil. 807 (2004) [Per J. Corona, Third Division]; *Republic v. Dagdag*, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; *Republic v. Iyoy*, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Court of Appeals and Molina*, 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

constitutes psychological incapacity.

## II (A)

The first *Molina* guideline reiterates the fundamental rule in evidence that one who asserts a claim must prove it. Specifically, in psychological incapacity cases, it is the plaintiff-spouse who proves the existence of psychological incapacity.<sup>204</sup>

*Molina*, however, is silent on what quantum of proof is required in nullity cases. While there is opinion that a nullity case under Article 36 is like any civil case that requires preponderance of evidence,<sup>205</sup> we now hold that the plaintiff-spouse must prove his or her case with *clear and convincing evidence*. This is a quantum of proof that requires more than preponderant evidence but less than proof beyond reasonable doubt.<sup>206</sup>

The reason is that this jurisdiction follows the presumption of validity of marriages. As was held in the 1922 case of *Adong v. Cheong Seng Gee*:<sup>207</sup>

The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is “that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage.” (Sec. 334, No. 28.) *Semper praesumitur pro matrimonio* — Always presume marriage.<sup>208</sup> (Citation omitted)

As with any presumption—such as the presumption of regularity in the issuance of public documents,<sup>209</sup> regularity in the performance of duty,<sup>210</sup> of good faith,<sup>211</sup> or of sufficient consideration<sup>212</sup>—it can only be rebutted

<sup>204</sup> *Republic v. Court of Appeals and Molina*, 335 Phil. 664–693 (1997) [Per J. Panganiban, En Banc].

<sup>205</sup> *Antonio v. Reyes*, 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

<sup>206</sup> *See Spouses Manalo v. Roldan-Confesor*, 290 Phil. 311 (1992) [Per J. Bellosillo, First Division].

<sup>207</sup> 43 Phil. 438 (1922) [Per J. Malcolm, En Banc], *cited in* J. Perlas-Bernabe, Concurring Opinion, p. 34.

<sup>208</sup> *Id.* at 43–58.

<sup>209</sup> *Alcantara-Daus v. Spouses De Leon*, 452 Phil. 92 (2003) [Per J. Panganiban, Third Division], *cited in* J. Perlas-Bernabe’s Concurring Opinion, p. 34.

<sup>210</sup> *See Yap v. Lagtapon*, 803 Phil. 652 (2017) [Per J. Caguioa, First Division], *cited in* J. Perlas-Bernabe’s Concurring Opinion, p. 34.

<sup>211</sup> *See Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95 (2017), *cited in* J. Perlas-Bernabe’s Concurring Opinion, p. 35.

<sup>212</sup> *See Sepe v. Heirs of Kilang*, G.R. No. 199766, April 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65300>> [Per J. Caguioa, Second Division], *cited in* J. Perlas-Bernabe’s Concurring Opinion, p. 35.

with clear and convincing evidence.

In any case, inasmuch as the Constitution regards marriage as an inviolable social institution and the foundation of the family, courts must not hesitate to void marriages that are patently ill-equipped due to psychic causes inherent in the person of the spouses. In the past, marriages had been upheld solely for the sake of their permanence when, paradoxically, doing so destroyed the sanctity afforded to the institution. Courts are reminded of *Antonio*, where this Court said:

Now is also opportune time to comment on another common legal guide utilized in the adjudication of petitions for declaration of nullity under Article 36. All too frequently, this Court and lower courts, in denying petitions of the kind, have favorably cited Sections 1 and 2, Article XV of the Constitution, which respectively state that “[t]he State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total developmen[t],” and that “[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.” These provisions highlight the importance of the family and the constitutional protection accorded to the institution of marriage.

But the Constitution itself does not establish the parameters of state protection to marriage as a social institution and the foundation of the family. It remains the province of the legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it, based on whatever socio-political influences it deems proper, and subject of course to the qualification that such legislative enactment itself adheres to the Constitution and the Bill of Rights. This being the case, it also falls on the legislature to put into operation the constitutional provisions that protect marriage and the family. This has been accomplished at present through the enactment of the Family Code, which defines marriage and the family, spells out the corresponding legal effects, imposes the limitations that affect married and family life, as well as prescribes the grounds for declaration of nullity and those for legal separation. *While it may appear that the judicial denial of a petition for declaration of nullity is reflective of the constitutional mandate to protect marriage, such action in fact merely enforces a statutory definition of marriage, not a constitutionally ordained decree of what marriage is. Indeed, if circumstances warrant, Sections 1 and 2 of Article XV need not be the only constitutional considerations to be taken into account in resolving a petition for declaration of nullity.*

Indeed, Article 36 of the Family Code, in classifying marriages contracted by a psychologically incapacitated person as a nullity, should be deemed as an implement of this constitutional protection of marriage. Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life. Void *ab initio* marriages under Article 36 do not further the initiatives of the State concerning marriage and family, as they promote wedlock among persons who, for reasons independent of their will, are not capacitated to understand or comply with the essential

obligations of marriage.<sup>213</sup> (Emphasis supplied)

Reflecting a similar sentiment, this Court in *Ngo-Te*<sup>214</sup> said:

In dissolving marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage, because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. It may be stressed that the infliction of physical violence, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly are manifestations of a sociopathic personality anomaly. Let it be noted that in Article 36, there is no marriage to speak of in the first place, as the same is void from the very beginning. To indulge in imagery, the declaration of nullity under Article will simply provide a decent burial to a stillborn marriage.<sup>215</sup> (Citations omitted)

In the *Kalaw* Resolution,<sup>216</sup> this Court said that “[i]n declaring a marriage null and void *ab initio*, . . . the Courts really assiduously defend and promote the sanctity of marriage as an inviolable social institution. The foundation of our society is thereby made all the more strong and solid.”<sup>217</sup>

Further, as the “basic autonomous social institution,”<sup>218</sup> the family should be protected under the Constitution *regardless of its structure*. This means that a family can be founded, whether or not the parents choose to marry or subsequently choose to dissociate, and this arrangement should be equally entitled to State protection. The right to choose our intimate partners is part of our right to autonomy and liberty, an inherent part of human dignity. Ultimately, should the State interfere with these choices, it should do so only when public interest is imperiled:

The Family Code provides that the “nature, consequences, and incidents [of marriage] are governed by law and not subject to stipulation,” but this does not go as far as reaching into the choices of intimacy inherent in human relations. These choices form part of autonomy, protected by the liberty and human dignity clauses. Human dignity includes our choices of association, and we are as free to associate and identify as we are free not to associate or identify.

Our choices of intimate partners define us — inherent ironically in our individuality. Consequently, when the law speaks of the nature, consequences, and incidents of marriage governed by law, this refers to responsibility to children, property relations, disqualifications, privileges, and other matters limited to ensuring the stability of society. The state's

<sup>213</sup> *Antonio v. Reyes*, 519 Phil. 337, 371 (2006) [Per J. Tinga, Third Division].

<sup>214</sup> *Ngo-Te v. Yu Te*, 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

<sup>215</sup> *Id.* at 698–699 (2009) [Per J. Nachura, Third Division].

<sup>216</sup> 750 Phil. 482, 501 (2015) [Per J. Bersamin, Special First Division].

<sup>217</sup> *Id.* at 501.

<sup>218</sup> CONST., art. II, sec. 12.

interest should not amount to unwarranted intrusions into individual liberties.<sup>219</sup> (Citations omitted)

## II (B)

To recall, the term “psychological incapacity” was first defined by this Court in *Santos* as a “mental (not physical) incapacity”<sup>220</sup> to comply with the essential marital obligations. The term was confined to “the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.”<sup>221</sup> This characterization became the basis of the second *Molina* guideline, where parties to a nullity case are required to present evidence of the root cause of the psychological incapacity. In particular, this root cause must be medically or clinically identified and sufficiently proven by experts.

By equating psychological incapacity to a “mental incapacity” and to “personality disorders,” this Court went against the intent behind Article 36. The Code Committee was clear that psychological incapacity is not a mental incapacity. Among the earlier wordings of the provision on psychological incapacity included “mentally incapacitated,”<sup>222</sup> and “mentally” is obviously absent in the present Article 36. This means that for the Code Committee, “mental” is not synonymous with “psychological.”

The reason for deleting “mental” was given by Justice Eduardo P. Caguioa, a member of the Code Committee. He said that “mental” would give the wrong impression of psychological incapacity being a vice of consent.<sup>223</sup> If psychological incapacity was to be an acceptable alternative to divorce,<sup>224</sup> as was intended by the Code Committee, it cannot be a mere vice of consent. Psychological incapacity must consist in a lack of understanding of the essential obligations of marriage, making the marriage void *ab initio*.

Psychological incapacity is also not a personality disorder, as explained by *amicus curiae* Dean Sylvia Estrada-Claudio (Dean Estrada-Claudio). Psychological incapacity cannot be found in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental

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<sup>219</sup> J. Leonen, Dissenting Opinion in *Mallilin v. Jamesolamin*, 754 Phil. 158, 203–204 (2015) [Per J. Mendoza, Second Division].

<sup>220</sup> *Santos v. Court of Appeals*, 310 Phil. 21–49 (1995) [Per J. Vitug, En Banc].

<sup>221</sup> *Id.* at 40.

<sup>222</sup> *Id.* at 30. One of the earlier drafts of Article 36 read as follows:

Article 36. — . . .

(7) Those marriages contracted by any party who, at the time of the celebration, was wanting in the sufficient use of reason or judgment to understand the essential nature of marriage or was psychologically or mentally incapacitated to discharge the essential marital obligations, even if such lack of incapacity is made manifest after the celebration.

<sup>223</sup> *Id.* at 35.

<sup>224</sup> *Id.* at 34.

Disorders (DSM-V), the authoritative listing of various mental, including personality, disorders recognized by the scientific community.<sup>225</sup>

Yet, to comply with the second *Molina* guideline, psychologists and psychiatrists, when serving as expert witnesses, have been forced to assign a personality disorder and pathologize the supposedly psychologically incapacitated spouse.<sup>226</sup> This cruelty could not have been the intent of the Code Committee.

It took time before this Court, in the 2000 case of *Marcos v. Marcos*,<sup>227</sup> declared that “a medical examination of the person concerned need not be resorted to.”<sup>228</sup> Instead, as this Court said, “the totality of evidence presented is enough to sustain a finding of psychological incapacity[.]”<sup>229</sup>

This pronouncement seemed to do away with the requirement of expert opinion on the root cause of the psychological incapacity, but this Court was not categorical with this. It even said in *Marcos* that the “root cause may be ‘medically or *clinically* identified’”<sup>230</sup>—implying that although medical opinion may be done away with, a clinical identification, which is still expert opinion, must nevertheless be presented.

For this reason, this Court was inconsistent in requiring expert evidence in psychological incapacity cases. Not all cases promulgated after *Marcos* required the totality of evidence rule. Even as recent as 2019, this Court dismissed a nullity case because “[t]he root cause of [the respondent spouse’s] alleged psychological incapacity was not sufficiently proven by experts[.]”<sup>231</sup>

In light of the foregoing, this Court now categorically abandons the second *Molina* guideline. Psychological incapacity is *neither* a mental incapacity *nor* a personality disorder that must be proven through expert opinion. There must be proof, however, of the durable or enduring aspects of a person’s personality, called “personality structure,” which manifests itself through clear acts of dysfunctionality that undermines the family. The spouse’s personality structure must make it impossible for him or her to understand and, more important, to comply with his or her essential marital obligations.

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<sup>225</sup> *Amicus Curiae* Brief of Dean Estrada-Claudio, p. 1.

<sup>226</sup> *Id.* at 6.

<sup>227</sup> 397 Phil. 840 (2000) [Per J. Panganiban, Third Division].

<sup>228</sup> *Id.* at 850.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> See *Eliscupidez v. Eliscupidez*, G.R. No. 226907, July 22, 2019, 909 SCRA 607, 222 [Per J. Peralta, Third Division].

Proof of these aspects of personality need not be given by an expert. Ordinary witnesses who have been present in the life of the spouses before the latter contracted marriage may testify on behaviors that they have consistently observed from the supposedly incapacitated spouse. From there, the judge will decide if these behaviors are indicative of a true and serious incapacity to assume the essential marital obligations.

In this way, the Code Committee's intent to limit the incapacity to "psychic causes" is fulfilled. Furthermore, there will be no need to label a person as having a mental disorder just to obtain a decree of nullity. A psychologically incapacitated person need not be shamed and pathologized for what could have been a simple mistake in one's choice of intimate partner, a mistake too easy to make as when one sees through rose-colored glasses. A person's psychological incapacity to fulfill his or her marital obligations should not be at the expense of one's dignity, because it could very well be that he or she did not know that the incapacity existed in the first place.

## II (C)

Difficult to prove as it may be, a party to a nullity case is still required to prove juridical antecedence because it is an explicit requirement of the law. Article 36 is clear that the psychological incapacity must be existing "at the time of the celebration" of the marriage, "even if such incapacity becomes manifest only after its solemnization." This distinguishes psychological incapacity from divorce. Divorce severs a marital tie for causes, psychological or otherwise, that may have developed after the marriage celebration.

According to Dean Estrada-Claudio, "it is an accepted principle of all major and recognized theoretical schools within psychology that a person's behavior is determined by the interaction of certain genetic predispositions and by his or her environment, working in iterative loops of influence."<sup>232</sup> From this, proof of juridically antecedent psychological incapacity may consist of testimonies describing the environment where the supposedly incapacitated spouse lived that may have led to a particular behavior. For instance, violence against one's spouse and children can be a manifestation of juridically antecedent psychological incapacity when it is shown that the violent spouse grew up with domestic violence or had a history of abusive romantic relationships before the marriage.

The same can be said for child abuse. Trauma research shows that our past, if not properly healed, heavily affects our present.<sup>233</sup> As such, evidence

<sup>232</sup> *Amicus Curiae* Brief of Dean Sylvia Estrada-Claudio, p. 2.

<sup>233</sup> See B. VAN DER KOLK, M.D., *THE BODY KEEPS THE SCORE, BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (2014).



of the juridically antecedent psychological incapacity may consist of testimony on the spouse's past experiences that may have led him or her to become a child abuser.

Furthermore, not being an illness in a medical sense, psychological incapacity is not something to be cured. And even if it were a mental disorder, it cannot be described in terms of being curable or incurable. Dean Estrada-Claudio explained that true mental disorders follow a probable course or outcome, called "prognosis," that can either be self-limited or remain "stable across time and consistent in situations."<sup>234</sup> If self-limited, the disorder is, in layperson's terms, "curable." If it has poor long-term prognosis, the disorder is said to be "incurable."<sup>235</sup>

That psychological incapacity is "incurable," but in a legal sense, is evident in the deliberations of the Code Committee. This was explained by Justice Eduardo P. Caguioa, when he said that "'incurable' has a different meaning in law and medicine."<sup>236</sup>

Associate Justice Mario V. Lopez, in his concurring opinion,<sup>237</sup> added that characterizing psychological incapacity as "incurable"<sup>238</sup> is antithetical, because the law does not prohibit a person whose former marriage had been nullified under Article 36 to remarry. If psychological incapacity were truly incurable, then remarriage should not be allowed as it would only result in another void marriage.<sup>239</sup>

Reading together the deliberations of the Code Committee and our rulings in *Santos* and *Molina*, we hold that the psychological incapacity contemplated in Article 36 of the Family Code is incurable, *not* in the medical, but in the legal sense; hence, the third *Molina* guideline is amended accordingly. This means that the incapacity is so enduring and persistent with respect to a specific partner, and contemplates a situation where the couple's respective personality structures are so incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage. "[A]n undeniable pattern of such persisting failure [to be a present, loving, faithful, respectful, and supportive spouse] must be established so as to demonstrate that there is indeed a psychological anomaly or incongruity in the spouse relative to the other."<sup>240</sup>

With respect to gravity, the requirement is retained, not in the sense that the psychological incapacity must be shown to be a serious or dangerous

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<sup>234</sup> Amicus Curiae Brief of Dean Estrada-Claudio, p. 4.

<sup>235</sup> Id. at 4.

<sup>236</sup> *Santos v. Court of Appeals*, 310 Phil. 21, 33 (1995) [Per J. Vitug, En Banc].

<sup>237</sup> J. M. V. Lopez, Concurring Opinion, p. 4.

<sup>238</sup> Id. at 5.

<sup>239</sup> Id.

<sup>240</sup> J. Perlas-Bernabe, Concurring Opinion, p. 26.

illness, but that “mild characterological peculiarities, mood changes, occasional emotional outbursts”<sup>241</sup> are excluded. The psychological incapacity cannot be mere “refusal, neglect[,] or difficulty, much less ill will.”<sup>242</sup> In other words, it must be shown that the incapacity is caused by a genuinely serious psychic cause.

## II (D)

*Molina* provides that the essential marital obligations are “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.”<sup>243</sup> These provisions are reproduced below for reference:

ARTICLE 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

ARTICLE 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

ARTICLE 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

ARTICLE 71. The management of the household shall be the right and the duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

.....

ARTICLE 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

(2) To give them love and affection, advice and counsel, companionship and understanding;

<sup>241</sup> *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 678 (1997) [Per J. Panganiban, En Banc].

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

- (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
- (4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
- (5) To represent them in all matters affecting their interests;
- (6) To demand from them respect and obedience;
- (7) To impose discipline on them as may be required under the circumstances; and
- (8) To perform such other duties as are imposed by law upon parents and guardians.

ARTICLE 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.

....

ARTICLE 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father's decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds P50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten per centum (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely supplementary except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply.



Justice Estela M. Perlas-Bernabe (Justice Perlas-Bernabe) makes an enlightening point in her opinion that the essential marital obligations are limited to those between the spouses, as these are the only provisions “relevant to the finding of a spouse’s psychological incapacity [with respect to] to his or her specific partner.”<sup>244</sup> She cites the legal definition of marriage, which is primarily a contract between a man and a woman. Therefore, according to her, if a marriage is to be declared void “due to psychological incapacity, it must be so primarily due to the failure to assume the essential marital obligations as a spouse, and only incidentally, as a father or mother.”<sup>245</sup>

It is true that marriage is a contract primarily between the spouses; but its cause remains to be the establishment of not just conjugal but also family life. The Constitution treats marriage as the foundation of the family.<sup>246</sup> Furthermore, Article 70 of the Family Code provides that the spouses are jointly responsible for the support of the family. As such, once the parties decide and do have children, their obligations to their children become part of their obligations to each other as spouses.

This interpretation is more consistent with the canonical concept of marriage and psychological incapacity from which Article 36 of the Family Code was drawn. For Article 36 to be a true accommodation,<sup>247</sup> as Justice Perlas-Bernabe submits,<sup>248</sup> the State, through this Court, might as well consider “the theoretical and operational system which . . . is inextricably and inherently . . . part of [the concept of psychological incapacity] – the Canon Law on Marriage.”<sup>249</sup>

Under Christian doctrine, specifically the teachings of St. Augustine, marriages embody three traditional values or *bonum matrimonii*: (1) *bonum fidei*, or “the faithful exclusiveness of the marital commitment”;<sup>250</sup> (2) *bonum sacramenti*,<sup>251</sup> which refers to the permanence of marriage; and (3) *bonum prolis*,<sup>252</sup> that is, that marriage is primarily for procreation or, at the very least, openness to having children. The Family Code definition of marriage reflects all of these Christian values, specifically, the exclusivity of a marital relation between “a man and a woman,” the characterization of marriage as a “permanent union,” and its purpose being “for the establishment of conjugal and family life.”<sup>253</sup>

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<sup>244</sup> J. Perlas-Bernabe, Concurring Opinion, p. 32.

<sup>245</sup> *Id.* at 26.

<sup>246</sup> CONST., art. XV, sec. 2.

<sup>247</sup> *See Estrada v. Escritor*, 455 Phil. 411 (2003) [Per J. Puno, En Banc].

<sup>248</sup> J. Perlas-Bernabe, Concurring Opinion, p. 3.

<sup>249</sup> M.A.C. Dizon, *Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent*, 75 P.L.J. 365 (2000).

<sup>250</sup> *Id.* at 367.

<sup>251</sup> *Id.* at 367–368.

<sup>252</sup> *Id.* at 368.

<sup>253</sup> FAMILY CODE, art. 1.

Both under canon and secular law, *bonum proliis* is as essential as *bonum fidei*. This only shows that the spouses' obligations to their children, once children are conceived, is as much a part of the spouses' obligations to each other. Failure to perform these obligations to their children may be a ground to nullify a spouse's marriage.

But not all kinds of failure to meet their obligations to their children will nullify the vinculum between the spouses. In each case, it must be clearly shown that it is of such grievous nature that it reflects on the capacity of one of the spouses for marriage. The easy cases are when one of the spouses sexually abuses one of their children; or, when unknown to the other spouse, a child is subjected to domestic violence; or when due to the spouse's refusal to go through counseling or rehabilitation, his or her substance abuse puts a child through a situation of neglect or outright danger. As in all cases, the context of the whole case, shown by clear and convincing evidence, should be taken into consideration.

## II (E)

The persuasive effect of the decisions of the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines on nullity cases pending before secular courts is retained.<sup>254</sup> Without prejudice to the *ponente's* view on the separation of Church and State,<sup>255</sup> the inescapable reality is that Article 36 of the Family Code was lifted from canon law, specifically, Canon 1095 of the New Code of Canon Law.<sup>256</sup> As such, Canon 1095 should be taken into account in interpreting Article 36 and in deciding psychological incapacity cases.

Canon 1095 provides:

Canon 1095. The following are incapable of contracting marriage:

- 1) those who lack the sufficient use of reason;
- 2) those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted;
- 3) those who are not able to assume the essential obligations of marriage for causes of a psychic nature.<sup>257</sup>

<sup>254</sup> This guideline only applies to spouses married under Catholic rites.

<sup>255</sup> See J. Leonen, Dissenting Opinion in *In Re: Letter of Valenciano, Holding of Religious Rituals at the Hall of Justice Bldg. in Q.C.*, 806 Phil. 786 (2017) [Per J. Mendoza, En Banc].

<sup>256</sup> *Santos v. Court of Appeals*, 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

<sup>257</sup> See Code of Canon Law, available at <[https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic\\_lib4-cann998-1165\\_en.html#TITLE\\_VII](https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib4-cann998-1165_en.html#TITLE_VII)> (last accessed on April 1, 2021).

This persuasive effect is especially true in cases where the Catholic Church had already voided the canonical marriage, because it is the explicit intent of the Code Committee to solve “the problem of marriages already annulled by the Catholic Church but still existent under civil law.”<sup>258</sup> In *Antonio*, this Court even reproached the Court of Appeals for failing to consider the prior church annulment of the parties’ marriage as indicative of the void nature of the secular marriage. This Court even called the error a “deliberate ignorance.”<sup>259</sup>

It is true that the wording of Article 36 of the Family Code was lifted almost verbatim from the third paragraph of Canon 1095, and there are views that only those decisions on canonical marriages voided under this paragraph should be considered persuasive by our secular courts.

A review of the deliberations of the Code Committee, however, reveals that lack of due discretion under the second paragraph of Canon 1095 is actually a part of the concept of psychological incapacity as envisioned by the Joint Committee. This was the subject of the article, *Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent (Exegesis)*.<sup>260</sup>

A canonical marriage, like a secular marriage, is special, albeit for a different reason. Under the teachings of the Catholic Church, a contract of marriage requires a special kind of consent, called “matrimonial consent,” to be valid.<sup>261</sup>

The New Code of Canon Law characterizes the “matrimonial covenant” as “a partnership of the whole life.”<sup>262</sup> Catholics believe that in marriage, the spouses “are no longer two, but one flesh”<sup>263</sup> and “render mutual help and service to each other through an intimate union of their persons and their actions.”<sup>264</sup> Hence, it is said that the subject and object of a contract of marriage are one and the same: the very persons of the spouses.<sup>265</sup> It is this concept of mutual self-giving for the establishment of a conjugal and family life that a party to a canonical marriage consents to.

Matrimonial consent, in turn, consists of three elements: (1) the cognitive element, which corresponds to truth;<sup>266</sup> (2) the volitive element,

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<sup>258</sup> *Antonio v. Reyes*, 519 Phil. 337, 354 (2006) [Per J. Tinga, Third Division].

<sup>259</sup> *Id.* at 371.

<sup>260</sup> M.A.C. Dizon, *Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent*, 75 P.L.J. 365 (2000).

<sup>261</sup> *Id.* at 366.

<sup>262</sup> *Id.* at 369.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.* at 376.

<sup>266</sup> *Id.* at 372.

which corresponds to freedom;<sup>267</sup> and (3) the psychosomatic element, which corresponds to maturity.<sup>268</sup> Canon 1095 refers to the psychosomatic or psychological element of matrimonial consent. The absence of any of these three elements renders a canonical marriage void.

The first paragraph of Canon 1095 refers to those who lack the sufficient use of reason due to a mental illness.<sup>269</sup> The second paragraph on lack of due discretion refers to “the lack of capacity to bind oneself to the rights and obligations of marriage.”<sup>270</sup> A person who lacks due discretion “[gives] the appearance of enjoying full use of his [or her] faculties, but . . . by reason of some psychic defect he [or she] may not be capable of assuming the obligations of marriage, even if he [or she] may have a notional and conceptual understanding of them.”<sup>271</sup> Lastly, the third paragraph on lack of due competence contemplates a situation where the person, while having intellect and ordinary capacity to consent, cannot deliver the object of the *marital* consent—his or her very person.<sup>272</sup> The incapacity, like in the second paragraph, is due to psychic causes, which is:

. . . something in the psyche or the psychic constitution of a person which impedes his [or her] capacity to assume three (3) general obligations of marriage: (1) consortium of whole life between a man and a woman; (2) a consortium which is directed towards the good of the spouses; and (3) towards the procreation and upbringing of children.<sup>273</sup>

From this discussion, the concept under the first paragraph of Canon 1095 is explicitly outside the realm of psychological incapacity under Article 36 of the Family Code as envisioned by the Code Committee. To recall, the Code Committee did not view psychological incapacity as a mental disorder.

However, psychological incapacity under Article 36 is actually closer, concept-wise, to lack of due discretion under the second paragraph of Canon 1095, rather than lack of due competence contemplated in the third paragraph. This is strange, because while Article 36 of the Family Code is similarly worded to the third paragraph of Canon 1095, its meaning is similar to that embraced in the second paragraph.

To add to the confusion, and as was previously discussed, this Court’s conceptualization of psychological incapacity became medically oriented, discussing psychological incapacity in terms of mental disorders that have to be medically or clinically identified. This is the concept of lack of sufficient use of reason under the first, not the third, paragraph of Canon 1095.

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<sup>267</sup> Id.

<sup>268</sup> Id.

<sup>269</sup> Id. at 374.

<sup>270</sup> Id.

<sup>271</sup> Id.

<sup>272</sup> Id. at 376–377.

<sup>273</sup> Id. at 377.

Therefore, while Article 36 of the Family Code is similarly worded to the third paragraph of Canon 1095, canonical decisions based on the second paragraph should likewise have a persuasive effect in secular decisions on psychological incapacity, if we are to avoid anomalous situations where canonically void marriages remain valid under civil law.

The above discussions notwithstanding, canonical decisions are, to reiterate, merely *persuasive* and not binding on secular courts. Canonical decisions are to only serve as evidence of the nullity of the secular marriage, but ultimately, the elements of declaration of nullity under Article 36 must still be weighed by the judge.

To summarize, psychological incapacity consists of clear acts of dysfunctionality that show a lack of understanding and concomitant compliance with one's essential marital obligations due to psychic causes. It is not a medical illness that has to be medically or clinically identified; hence, expert opinion is not required.

As an explicit requirement of the law, the psychological incapacity must be shown to have been existing at the time of the celebration of the marriage, and is caused by a durable aspect of one's personality structure, one that was formed before the parties married. Furthermore, it must be shown caused by a genuinely serious psychic cause. To prove psychological incapacity, a party must present clear and convincing evidence of its existence.

### III

Considering the foregoing, this Court finds Mario psychologically incapacitated to comply with his essential marital obligations.

Rosanna discharged the burden of proof required to nullify her marriage to Mario. Clear and convincing evidence of Mario's psychological incapacity consisted mainly of testimony on Mario's personality structure and how it was formed primarily through his childhood and adult experiences, well before he married Rosanna. In addition to Rosanna's testimony, Dr. Garcia recounted how Mario developed traits exhibiting chronic irresponsibility, impulsivity and lack of genuine remorse, lack of empathy, and sense of entitlement—behaviors manifesting his inherent psychological incapacity to comply with his essential marital obligations:

**In summary, there is a Partner Relational Problem (code V61.1), which is secondary to the psychopathology of Mario Victor M. Andal who gravely failed in providing his family the love, support,**

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**dignity, understanding and respect. He has the essential features of a personality disorder** as per criteria set in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV).

His psychopathology has its root causes. There were childhood and adolescent precursors which had led to the development of his psychological deficits.

Mario, the youngest in a brood of eight was born on December 7, 1961. His sedate father, a known businessman died when Mario was 6 years old. His mother, (sic) had to take over the family business; however, she was unable to cope so they had to sell the company. She became a top performer as a sales executive. She migrated to the U.S. His maternal grandmother, who lived with Mario and his siblings, played favorites and was very obvious about it.

His eldest brother, Alfonso the favored grandson was dominant and opinionated. Alfonso had to quit schooling due to his father's death. Alfonso was supposed to take charge of the family business but he was heavy on alcohol intake. He possessed a temper that would lead to the physical abuse of the two youngest siblings (Mario and Alberto). Another brother was also physically aggressive like Alfonso, (sic) was unable to complete college because of his heavy alcohol intake. The intelligent, generous and the talented Socorro stood as the mother to the younger siblings. Alberto, who was unable to complete his college degree in UST, is a substance user who is jobless and irresponsible.

The older siblings had difficulty coping with the change from a relatively prosperous life to a life of near poverty and difficulty coping with major responsibilities like running a company which they were not prepared for. Mario was their baby. His sisters were extra loving and patient with him. Mario is athletic and excels in swimming, football/soccer, and basketball. But[,] he is an introvert[,] i.e.[,] he wasn't vocal about his innermost feelings. He was the obedient son who was made to do errands. He adores his mother and is demonstrative of his affections towards her.

Mario, (sic) is an "electronics [whiz]" whose intelligence matches the eldest brother's. He completed his primary and secondary education with the highest honors. But he messed up his third year in UP. He had very few friends in his college days. He hang (sic) around with a buddy who was heavy into drugs and alcohol even when he was still in high school. He could not concentrate on his job; although there were periods when he worked as a technician in a wire company in Switzerland. He was heart-broken when he returned to Manila in 1995.

To sum up, Mario does not have enough ego strength to effectively self-regulate and face the marital the (sic) tasks and relational stressors. Indeed, there were substrates in his development which made him feel inadequate and bitter; thus[,] the need to have power over others to save face.

**Mario has a narcissistic-antisocial personality disorder.** He exhibits chronic irresponsibility, impulsivity and lack of genuine remorse, lack of empathy and a sense of entitlement. In addition, he has the propensity to be emotionally constricted and evasive. **Superimposed on his personality disorder is substance use disorder with psychotic features (paranoid delusions and bizarre behavior) and aggression**

**against people in his environ[ment]. While he may have satisfactorily endeared himself to his lone child, he miserably failed to comply with his vital marital obligations.**<sup>274</sup> (Emphasis in the original)

Dr. Garcia reiterated these findings in her Judicial Affidavit,<sup>275</sup> with Mario's counsel cross-examining her on her statements.

It is true that Dr. Garcia gave the expert opinion—which, we reiterate, is no longer required but is considered here given that it was offered in evidence—without having to interview Mario. Even Dr. Garcia herself admitted during cross-examination that her psychiatric evaluation would have been more comprehensive had Mario submitted himself for evaluation.<sup>276</sup> However, the Court of Appeals erred in discounting wholesale Dr. Garcia's expert opinion because her methodology was allegedly “unscientific and unreliable.”<sup>277</sup>

Unlike ordinary witnesses who must have personal knowledge of the matters they testify on,<sup>278</sup> expert witnesses do not testify in court because they have personal knowledge of the facts of the case. The credibility of expert witnesses does not inhere in their person;<sup>279</sup> rather, their testimony is sought because of their special knowledge, skill, experience, or training<sup>280</sup> that ordinary persons and judges do not have.<sup>281</sup> Rule 130, Section 49 of the Rules of Court on the opinion of expert witness provides:

SECTION 49. *Opinion of expert witness.* — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

Standards for admitting expert opinion were discussed in *Tortona v. Gregorio*.<sup>282</sup> In *Tortona*, a parcel of land was extrajudicially partitioned based on a deed of absolute sale bearing the thumbmark of the purported seller. The seller's heirs contested the deed for being a forgery because the seller, allegedly illiterate, could not have executed it without the knowledge and assistance of her children. As evidence, they presented the expert opinion of fingerprint examiner Eriberto B. Gomez, Jr. (Gomez) of the National Bureau of Investigation, who testified that the thumbmark on the deed of absolute sale, indeed, did not belong to the purported seller.

In their attempt to discredit Gomez and his competence, the buyer's

<sup>274</sup> *Rollo*, pp. 315–316.

<sup>275</sup> *Id.* at 286–288.

<sup>276</sup> Original Transcript of Stenographic Notes, p. 1287.

<sup>277</sup> *Rollo*, p. 84.

<sup>278</sup> RULES OF COURT, Rule 130, sec. 20.

<sup>279</sup> *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

<sup>280</sup> RULES OF COURT, Rule 130, Sec. 49.

<sup>281</sup> *See* V.C. RAMIREZ, *THE LAW ON MARRIAGE* 181 (3<sup>rd</sup> ed., 2011).

<sup>282</sup> 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

heirs contended that the examiner was “just an ordinary employee”<sup>283</sup> in the National Bureau of Investigation who collected fingerprints from applicants for clearance and took the fingerprints of those involved in crimes. In other words, Gomez allegedly lacked the necessary skill, experience, or training to be an expert on fingerprints.<sup>284</sup>

The trial court nevertheless relied on the expert testimony of Gomez, declaring the deed of absolute sale a forgery.<sup>285</sup> However, the Court of Appeals reversed the decision, finding that the seller’s heirs failed to overcome the presumption of regularity accorded to the deed.<sup>286</sup> It highlighted that the deed was a notarized document and, therefore, should be presumed genuine, and its execution due and voluntary.<sup>287</sup>

In reinstating the trial court’s decision, this Court gave credence to Gomez and his expert opinion. We first discussed opinions in general. According to this Court, opinions are products of personal interpretation and belief and, therefore, inherently subjective and generally inadmissible in evidence.<sup>288</sup> Thus, to qualify as an expert and the opinion admitted as expert opinion, the witness must be shown to possess a special knowledge, skill, or training relevant to the matter they are testifying on, and that the opinion was rendered on the basis of any of these special criteria.<sup>289</sup> This is apart from the requirement that the testimony, in itself, must be credible; that is, it must be based on “common experience and observation . . . as probable under the circumstances.”<sup>290</sup>

This Court in *Tortona* went on to discuss the standards for evaluating expert opinion in the United States. In *Frye v. United States*,<sup>291</sup> James Alfonso Frye (Frye) was charged with second-degree murder. During trial, he offered as evidence expert testimony on the results of a systolic blood pressure deception test, or the polygraph test, to which he was subjected before trial. The prosecution objected to the offer, and it was sustained by the trial court. On appeal, Frye maintained that the trial court erred in refusing to admit the expert testimony offered in evidence.

The Court of Appeals of the District of Columbia affirmed the trial court’s judgment, ruling that the systolic blood pressure test was not “sufficiently established to have gained general acceptance in the particular field in which it belongs”.<sup>292</sup>

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<sup>283</sup> Id. at 993.

<sup>284</sup> Id.

<sup>285</sup> Id. at 987.

<sup>286</sup> Id. at 988–989.

<sup>287</sup> Id. at 989.

<sup>288</sup> Id. at 994.

<sup>289</sup> Id. at 995.

<sup>290</sup> Id. citing *Borguilla v. Court of Appeals*, 231 Phil. 9 (1987) [Per J. Paras, Second Division].

<sup>291</sup> 54 App. D.C. 46, 293 F. 1013 (1923) cited in *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

<sup>292</sup> *Tortona v. Gregorio*, 823 Phil. 980, 1001 (2018) [Per J. Leonen, Third Division].

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.<sup>293</sup>

For a time, the general acceptance test in *Frye* had been the standard for admitting expert opinion, until 1993, when it was overturned in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*<sup>294</sup> *Daubert* involved minors Jason and Eric Daubert who, assisted by their parents, sued Merrell Dow Pharmaceuticals, the manufacturer of a prescription anti-nausea drug called Bendectin. According to them, they were born with serious birth defects caused by the drug, which their mother ingested while pregnant with them.<sup>295</sup>

After discovery, Merrell Dow Pharmaceuticals moved for summary judgment, submitting in evidence expert opinion saying that Bendectin does not cause malformation in fetuses. The expert, a well-credentialed epidemiologist specializing in risks from exposure to chemical substances, arrived at his conclusion by reviewing all the literature on Bendectin and human birth defects.<sup>296</sup> The Dauberts opposed the motion, presenting as evidence the testimony of eight experts who were likewise well-credentialed. These experts were of the contrary opinion that Bendectin actually caused human birth defects, conducting in vitro and in vivo animal studies that showed a link between Bendectin and malformations.<sup>297</sup>

The District Court granted summary judgment. Applying the *Frye* test, it held that in vitro and in vivo animal studies have not been generally accepted by the scientific community as scientific procedures for determining causation between the ingestion of Bendectin and birth defects in humans. It thus rejected the expert opinion offered by the Dauberts.<sup>298</sup> The District Court's ruling was affirmed by the United States Court of Appeals for the Ninth Circuit.<sup>299</sup>

Reversing the lower courts' judgments, the United States Supreme Court held that the *Frye* test, introduced in 1923, has been overturned by the Federal Rules of Evidence, enacted by the legislature in 1975.<sup>300</sup> Rule 702

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<sup>293</sup> Id.

<sup>294</sup> 509 U.S. 579, 113 S.Ct. 2786 (1993) cited in *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

<sup>295</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 582 (1993).

<sup>296</sup> Id.

<sup>297</sup> Id. at 583.

<sup>298</sup> Id. at 583–584.

<sup>299</sup> Id. at 584.

<sup>300</sup> Id. at 586–589.

of the Federal Rules of Evidence provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.<sup>301</sup>

The United States Supreme Court noted how Rule 702 does not require general acceptance for admissibility of expert opinion. Instead, the rule requires the following: first, the “knowledge” testified on must be “scientific,” that is, it must be “more than subjective belief or unsupported speculation”;<sup>302</sup> second, the specialized knowledge must be of such character that the trial judge is “able to understand the evidence or to determine a fact in issue”;<sup>303</sup> and third, the trial judge, like a “gatekeeper,” must take a firsthand look on “the scientific validity . . . [or] the evidentiary relevance and reliability. . . of the principles that underlie”<sup>304</sup> the testimony being offered as expert opinion. “The focus . . . must be solely on principles and methodology, not on the conclusions they generate.”<sup>305</sup>

On hearsay, *Daubert* echoed the rule in our jurisdiction that such evidence is generally inadmissible. However, if “the expert opinion [is] based on otherwise inadmissible hearsay, [it is] to be admitted only if the facts or data are ‘of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject.’”<sup>306</sup> The United States Supreme Court thus remanded the case “for further proceedings consistent with [its] opinion”<sup>307</sup> in *Daubert*.

After discussing the standards for admitting expert opinion, this Court in *Tortona* ultimately held that Gomez qualified as an expert and his testimony, necessarily, as expert opinion. According to this Court, his work as a fingerprint examiner at the National Bureau of Investigation qualified him as an expert on fingerprints. Further, his conclusion—that the seller’s fingerprint in the deed of absolute sale and that appearing on the specimen documents were different—was arrived at using a three-part examination done for determining whether a thumbmark was impressed by the same person.<sup>308</sup> The methodology he used was not shown to be unscientific and unreliable; thus, this Court relied on his expert opinion that the thumbmark on the deed did not belong to the purported seller.

Applying *Tortona* here, we find that Dr. Garcia was sufficiently

<sup>301</sup> Id. at 588 as cited in *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

<sup>302</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590 (1993).

<sup>303</sup> Id. at 591.

<sup>304</sup> Id. at 595–596.

<sup>305</sup> Id. at 595.

<sup>306</sup> Id.

<sup>307</sup> Id. at 598.

<sup>308</sup> V.C. RAMIREZ, *THE LAW ON MARRIAGE* 181 (3<sup>rd</sup> ed., 2011).

qualified as an expert in psychiatry. She possesses the special knowledge to practice her profession, holding degrees in medicine and special education.<sup>309</sup> She has been practicing her profession as a physician-psychiatrist since 1990, including working at the Philippine Mental Health Association as a psychiatrist for 11 years.<sup>310</sup>

On the principles and methodology Dr. Garcia applied in evaluating Rosanna and Mario, she conducted a psychiatric clinical interview and mental status examination of Rosanna. She likewise interviewed Ma. Samantha and Jocelyn Genevieve, Rosanna's sister. The psychiatric clinical interview and mental status examination remain to be the principal techniques in diagnosing psychiatric disorders.<sup>311</sup> While ideally, the person to be diagnosed should be personally interviewed, it is accepted practice in psychiatry to base a person's psychiatric history on collateral information, or information from sources aside from the person evaluated.<sup>312</sup> This is usually done if the patient is not available, incapable, or otherwise refuses to cooperate, as in this case.

In any case, it cannot be said that the psychiatric evaluation of Mario was exclusively based on collateral information. Dr. Garcia likewise based her diagnosis on a personal history handwritten by Mario himself while staying at Seagulls, an "independent evidence."<sup>313</sup>

At any rate, this Court said in *Marcos*<sup>314</sup> that personal examination of the allegedly psychologically incapacitated spouse is "not [required] for a declaration of [nullity of marriage due to] psychological incapacity."<sup>315</sup> So long as the totality of evidence, as in this case, sufficiently proves the psychological incapacity of one or both<sup>316</sup> of the spouses, a decree of nullity of marriage may be issued.<sup>317</sup>

Therefore, the Court of Appeals erred in not giving credence to Dr. Garcia's expert opinion just because Mario did not appear for psychiatric evaluation.

<sup>309</sup> *Rollo*, p. 283. Judicial Affidavit.

<sup>310</sup> *Id.* at 284.

<sup>311</sup> See B.J. SADOCK, M.D. AND V.A. SADOCK, M.D. KAPLAN & SADOCK'S SYNOPSIS OF PSYCHIATRY BEHAVIORAL SCIENCE/CLINICAL PSYCHIATRY 229-245 (9<sup>th</sup> ed., 2003).

<sup>312</sup> *Id.* at 229.

<sup>313</sup> *Rollo*, p. 85, Court of Appeals Decision.

<sup>314</sup> *Marcos v. Marcos*, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]. See also V. C. RAMIREZ, JR., THE LAW ON MARRIAGE 170-172 (3<sup>rd</sup> ed., 2011), where a clinical psychologist explained how a personal examination of one spouse is sufficient to evaluate "the psychological capacity to contract marriage of the other spouse." Through projection, identification, and introjection, a spouse "would reveal the interpersonal relations between the spouses... [and] the characteristics each spouse has acquired from the other." The expert would then "distinguish which of the characteristics are not acquired and, therefore, inherent, and which are acquired and therefore, not inherent."

<sup>315</sup> *Id.* at 850.

<sup>316</sup> *Ngo Te v. Yu-Te*, 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

<sup>317</sup> *Marcos v. Marcos*, 397 Phil. 840, 850 (2000) [Per J. Panganiban, Third Division].

That drug addiction is a ground for legal separation<sup>318</sup> will not prevent this Court from voiding the marriage in this case. A decree of legal separation entitles spouses to live separately from each other without severing their marriage bond,<sup>319</sup> but no legal conclusion is made as to whether the marriage is valid.<sup>320</sup> Therefore, it is possible that the marriage is attended by psychological incapacity of one or both spouses, with the incapacity manifested in ways that can be considered as grounds for legal separation. At any rate, so long as a party can demonstrate that the drug abuse is a manifestation of psychological incapacity existing at the time of the marriage, this should be enough to render the marriage void under Article 36 of the Family Code.

Here, the totality of evidence presented by Rosanna clearly and convincingly proved that Mario's drug abuse was of sufficient durability that antedates the marriage. Admittedly, part of marriage is accepting a person for who they are, including their addictions. However, in Mario's case, his persistent failure to have himself rehabilitated, even bringing his child into a room where he did drugs, indicates a level of dysfunctionality that shows utter disregard of his obligations not only to his wife, but to his child.

We agree with the trial court that Mario failed to render mutual help and support to his wife, failing to find gainful employment and even driving to bankruptcy the construction firm founded by Rosanna by siphoning its funds for his drug use. He failed to exercise his rights and duties as a parent to Ma. Samantha. In the words of the trial court:

... [Mario] is incapable of performing his marital obligations, particularly to observe love and respect for his wife and to render mutual help and support. [Mario] had shown utter disregard for his wife. Throughout their life together, it was [Rosanna] who mostly provided for the needs of the family. [Mario] hardly contributed to their expenses because he never bothered to look for a job. [Mario] was also using prohibited drugs. *A responsible husband would not commit acts which will bring danger, dishonor or injury to [his spouse or to his family].* (Art. 72, Family Code of the Philippines). The safety and security of the family at all times is a primordial duty of the spouse.<sup>321</sup>

Even assuming that Mario has since lived a drug-free life, he only did so after separating from Rosanna. This confirms Dr. Garcia's finding that his psychological incapacity was enduring relative to his long-estranged wife<sup>322</sup> and can manifest again if he is forced to stay with her.

<sup>318</sup> FAMILY CODE, art. 55(5) provides:

Art. 55. A petition for legal separation may be filed on any of the following grounds:

....

(5) Drug addiction or habitual alcoholism of the respondent[.]

<sup>319</sup> FAMILY CODE, art. 63(1).

<sup>320</sup> See *Amicus Curiae* Brief of Dean Sta. Maria, pp. 19–20.

<sup>321</sup> *Rollo*, p. 99. RTC Decision.

<sup>322</sup> *Id.* at 288. Judicial Affidavit.

All told, we find that Rosanna proved with clear and convincing evidence that Mario was psychologically incapacitated to comply with his essential marital obligations. Their marriage, therefore, is void under Article 36 of the Family Code.

#### IV

Void marriages are no marriages. Thus, the provisions of the Family Code on property relations between husband and wife—the systems of absolute community, conjugal partnership of gains, and separation of property—do not apply in disposing of properties that may have been acquired during the parties' cohabitation.<sup>323</sup> Instead, the property regime of parties to a void marriage is governed either by Article 147 or Article 148 of the Family Code, depending on whether the parties have no legal impediment to marry.<sup>324</sup> Article 147 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 their 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.

On the other hand, Article 148 provides:

ARTICLE 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties

<sup>323</sup> *Valdes v. RTC, Br. 102, Quezon City*, 328 Phil. 1289, 1299–1304 (1996) [Per J. Vitug, First Division].

<sup>324</sup> *Id.* at 1295.



through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

On what “capacitated” in Article 147 means, this Court in *Valdes v. Regional Trial Court, Branch 102, Quezon City*<sup>325</sup> said:

The term “capacitated” in [Article 147] (in the first paragraph of the law) refers to the *legal capacity* of a party to contract marriage, i.e., any “male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38” of the Code.<sup>326</sup> (Emphasis in the original, citation omitted)

Article 37<sup>327</sup> refers to incestuous marriages, while Article 38<sup>328</sup> refers to void marriages due to public policy.

Here, Mario and Rosanna are parties to a void marriage due to psychological incapacity. When they were married in 1995, Mario was 33 years old while Rosanna was 31. There is no showing that the marriage was incestuous or void due to public policy. They likewise lived exclusively with each other as husband and wife until they separated in 2000. Being capacitated to marry each other and having lived exclusively with each other albeit under a void marriage, Article 147 of the Family Code governs their

<sup>325</sup> 328 Phil. 1289 (1996) [Per J. Vitug, First Division].

<sup>326</sup> Id. at 1296.

<sup>327</sup> FAMILY CODE, art. 37 provides:

Art. 37. Marriages between the following are incestuous and void from the beginning, whether relationship between the parties be legitimate or illegitimate:

- (1) Between ascendants and descendants of any degree; and
- (2) Between brothers and sisters, whether of the full or half blood.

<sup>328</sup> FAMILY CODE, art. 38 provides:

Art. 38. The following marriages shall be void from the beginning for reasons of public policy:

- (1) Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree;
- (2) Between step-parents and step-children;
- (3) Between parents-in-law and children-in-law;
- (4) Between the adopting parent and the adopted child;
- (5) Between the surviving spouse of the adopting parent and the adopted child;
- (6) Between the surviving spouse of the adopted child and the adopter;
- (7) Between an adopted child and a legitimate child of the adopter;
- (8) Between adopted children of the same adopter; and
- (9) Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse.

property relations.

Under Article 147, wages and salaries earned by the parties during their cohabitation shall be equally divided between them. This is regardless of who worked to earn the wage or salary.

With respect to properties acquired during their cohabitation, the rules on co-ownership under the Civil Code govern.<sup>329</sup> Therefore, a property acquired during the parties' cohabitation shall be presumed to have been acquired through the parties' joint efforts. For purposes of Article 147, "joint efforts" includes a party's care and maintenance of the family and of the household. With this presumption, the parties are deemed to own the property in equal shares.

However, if a piece of property was obtained through only one party's effort, work, or industry, and there is proof that the other did *not* contribute through the care and maintenance of the family and of the household, the property acquired during the cohabitation shall be solely owned by the party who actually worked to acquire the property.<sup>330</sup>

In this case, there is proof that the Parañaque lot was not obtained by Mario and Rosanna's joint efforts, work, or industry. Rita M. Tan, Rosanna's aunt, donated the 315-square meter lot to Rosanna and her father, Rodolfo M. Tan. The Deed of Donation<sup>331</sup> dated August 25, 1998 provides that Rita M. Tan donated 157.50 square meters to "Rodolfo M. Tan, married to Josefina G. Leño"<sup>332</sup> and to "Rosanna L. Tan-Andal, married to Mario Andal"<sup>333</sup> each. Transfer Certificate of Title No. 139811 covering 157.50 square meters of the Parañaque lot is under the name of "Rosanna L. Tan-Andal, of legal age, Filipino, married to Mario Andal."<sup>334</sup> In *Salas, Jr. v. Aguila*,<sup>335</sup> this Court held that "married to" only refers to the civil status of the property's registered owner.<sup>336</sup>

Thus, Rosanna exclusively owns half of the 315-square meter Parañaque lot. Mario has no share in this property because he did not care for and maintain the family and the household.

As for the half of the duplex house that served as the parties' family home, there is evidence that the funds used to construct the house were obtained solely through Rosanna and her father's efforts. In a promissory

<sup>329</sup> *Valdes v. RTC, Br. 102, Quezon City*, 328 Phil. 1289, 1297 (1996) [Per J. Vitug, First Division].

<sup>330</sup> *Id.*

<sup>331</sup> *Rollo*, pp. 268–271.

<sup>332</sup> *Id.* at 268.

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 272.

<sup>335</sup> 718 Phil. 274 (2013) [Per J. Carpio, Second Division].

<sup>336</sup> *Id.* at 283.

note<sup>337</sup> dated July 13, 1998, Rosanna and her father jointly loaned ₱2,400,000.00 from the Elena P. Tan Foundation for the construction of a house on the Parañaque lot. Although Mario signed the promissory note to give “marital consent” to Rosanna, he has no proof that he participated in acquiring the funds. He cannot be deemed to have contributed jointly in acquiring the funds since he did not care for and maintain the family and the household.

As the funds to construct the house were obtained solely through Rosanna and her father’s efforts, and Mario did not care for and maintain the household, he has no share in the duplex.

## V

In resolving issues of custody of minors whose parents have separated, Article 213 of the Family Code governs.<sup>338</sup> It states:

ARTICLE 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

In *Pablo-Gualberto v. Gualberto*,<sup>339</sup> this Court held that the “separation of parents” contemplated in Article 213 may either be legal separation or separation in fact.<sup>340</sup> In deciding cases involving custody of a minor, the courts must consider, among others, “the previous care and devotion shown by each of the parents; their religious background, moral uprightness, home environment and time availability; [and] the [child’s] emotional and educational needs.”<sup>341</sup>

Here, Mario and Rosanna have been separated in fact since 2000. Between them, Rosanna showed greater care and devotion to Ma. Samantha. Even when they still lived together, Rosanna had been more available to her child. She raised Ma. Samantha on her own since she and Mario separated. Mario has not supported both mother and child since he separated from Rosanna, even after he had claimed that he has been living “drug-free.”

With these considerations, the trial court did not err in awarding Ma.

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<sup>337</sup> *Rollo*, p. 274.

<sup>338</sup> *Pablo-Gualberto v. Gualberto*, 500 Phil. 226 (2005) [Per J. Panganiban, Third Division].

<sup>339</sup> *Id.*

<sup>340</sup> *Id.* at 246.

<sup>341</sup> *Id.* at 250.

Samantha's custody to Rosanna, without prejudice to Mario's right to visit his daughter.

Nonetheless, Rosanna's parental authority over Ma. Samantha was already terminated in 2014<sup>342</sup> when the child reached the age of majority.<sup>343</sup> Ma. Samantha is now qualified and responsible for all acts of civil life<sup>344</sup> and, therefore, is at liberty to choose how to relate with her father.

## VI

Love is founded on a promise: to seek beyond ourselves in order to enable and ennoble the other to continue to become the best version of themselves.

Being in love can be carried on the wings of poetry, announced publicly through each other's gazes. It is made real and felt with every act of unconditional care and comfort that the lover provides. Love can be beyond labels.

Marriage is not compulsory when in love; neither does it create love. Nonetheless, it remains an institution designed to provide legal and public recognition that may be well deserved not only for the couple, but also for their families existing or yet to come.

To be clear, our collective hope is that one who chooses marriage realizes that the other deserves more caring, more compassion, more kindness in the daily and banal grind of their relationship. It is in these same values of sacrifice and empathy that we will have the chance to evolve into a society that is more humane and, eventually, more just.

Yet, we are not blind to the reality that a person may be truly psychologically incapable for the other from the beginning. Should there be grave need to part for the reasons we have stated, courts can lead the way to make parting less bitter, minimize animosity, and make lives more forward-looking for those most affected.

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<sup>342</sup> Ma. Samantha was born in 1996. *See rollo*, p. 73, Court of Appeals Decision.

<sup>343</sup> FAMILY CODE, art. 234, as amended by Republic Act No. 6809 (1989), provides: Article 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years.

<sup>344</sup> FAMILY CODE, art. 236, as amended by Republic Act No. 6809 (1989), provides: Article 236. Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exceptions established by existing laws in special cases.

Contracting marriage shall require parental consent until the age of twenty-one.

Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code.

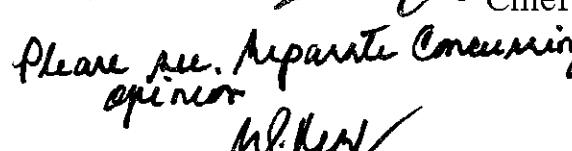
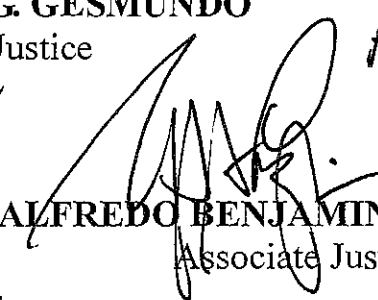
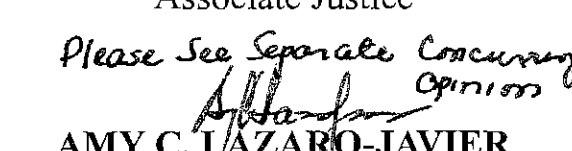

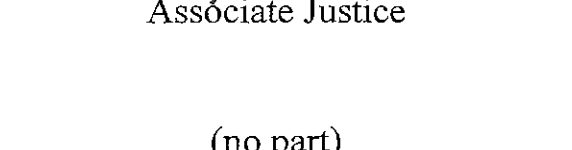
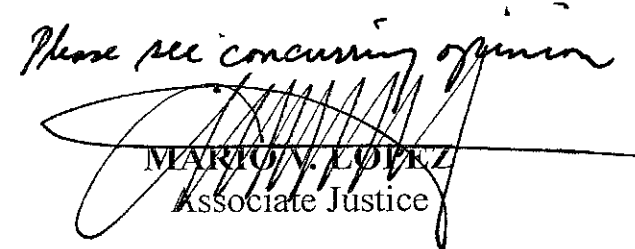
Parting is already a sorrow. It need not be more than what it already is.

**WHEREFORE**, the Petition for Review on Certiorari is **GRANTED**. The Court of Appeals' February 25, 2010 Decision and April 6, 2011 Resolution in CA-G.R. CV No. 90303 are **REVERSED** and **SET ASIDE**. The May 9, 2007 Decision of the Regional Trial Court of Parañaque City, Branch 260, in Civil Cases 01-0228 and 03-0384 is **REINSTATED**.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

	 <b>ALEXANDER G. GESMUNDO</b> Chief Justice	
<i>Please see Separate Concurring opinion</i>	 <b>ESTELA M. PERLAS-BERNABE</b> Associate Justice	<i>Pls. See Separate Opinion</i>
	 <b>ALFREDO BENJAMIN S. CAGUIOA</b> Associate Justice	
<i>Please See Separate Concurring Opinion</i>	 <b>RAMON PAUL L. HERNANDO</b> Associate Justice	
	 <b>ROSHARI D. CARANDANG</b> Associate Justice	
<i>Please See Separate Concurring Opinion</i>	 <b>AMY C. LAZARO-JAVIER</b> Associate Justice	<i>Please see separate concurring opinion</i>
	 <b>HENRI JEAN PAUL B. INTING</b> Associate Justice	
	<i>Please see concurring opinion</i>	
(no part)	 <b>RODIL V. ZALAMEDA</b> Associate Justice	
	 <b>MARIO V. LOPEZ</b> Associate Justice	

*Pls. See Separate  
Concurring Opinion*

**EDGARDO L. DELOS SANTOS**  
Associate Justice

*Pls. see separate  
concurring opinion.*

**SAMUEL H. GAERLAN**  
Associate Justice

**RICARDO R. ROSARIO**  
Associate Justice

**JHOSEP Y LOPEZ**  
Associate Justice

*Pls. see separate  
concurring opinion!*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

**ALEXANDER G. GESMUNDO**  
Chief Justice