



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

NICOLAS S. MATUDAN,
Petitioner,

G.R. No. 203284

Present:

- versus -

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 MENDOZA,* and
 LEONEN, *JJ.*

REPUBLIC OF THE PHILIPPINES
and MARILYN B. MATUDAN,**
Respondents.

Promulgated:
14 NOV 2016

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DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ seeks to set aside the January 31, 2012 Decision² and August 23, 2012 Resolution³ of the Court of Appeals (CA) denying the Petition in CA-G.R. CV No. 95392 and the Motion for Reconsideration,⁴ thus affirming the December 18, 2009 Decision⁵ of the Regional Trial Court (RTC) of Quezon City, Branch 94, in Civil Case No. Q-08-62827.

Factual Antecedents

Petitioner Nicolas S. Matudan (petitioner) and respondent Marilyn B. Matudan (Marilyn) were married in Laoang, Northern Samar on October 26, 1976. They had four children.

In 1985, Marilyn left to work abroad. From then on, petitioner and the children lost contact with her; she had not been seen nor heard from again.

* On leave.
 ** Marilyn in some parts of the records.
¹ *Rollo*, pp. 7-13.
² *Id.* at 17-31; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Franchito N. Diamante.
³ *Id.* at 14-16.
⁴ *CA rollo*, pp. 97-101.
⁵ *Id.* at 23-31; penned by Presiding Judge Roslyn M. Rabara-Tria.

Twenty-three years later, or on June 20, 2008, petitioner filed a Petition for Declaration of Nullity of Marriage,⁶ docketed as Civil Case No. Q-08-62827 with the RTC of Quezon City, Branch 94. Petitioner alleged that before, during, and after his marriage to Marilyn, the latter was psychologically incapable of fulfilling her obligations as a wife and mother; that she consistently neglected and failed to provide petitioner and her children with the necessary emotional and financial care, support, and sustenance, and even so after leaving for work abroad; that based on expert evaluation conducted by Clinical Psychologist Nedy L. Tayag (Dr. Tayag), Marilyn's psychological incapacity is grave, permanent, and incurable; that petitioner's consent to the marriage was obtained by Marilyn through misrepresentation as she concealed her condition from him; and that Marilyn is "not ready for a lasting and permanent commitment like marriage"⁷ as she "never (gave) him and their children financial and emotional support x x x and for being selfish through their six (6) years of cohabitation;"⁸ that Marilyn became "so despicably irresponsible as she has not shown love and care upon her husband, x x x and that she cannot properly and morally take on the responsibility of a loving and caring wife x x x."⁹

The Republic of the Philippines (Republic), through the Office of the Solicitor General, opposed the Petition.

The Quezon City Office of the City Prosecutor having determined that there is no collusion between the parties, proceedings were conducted in due course. However, trial proceeded in Marilyn's absence.

Apart from the testimonies of the petitioner, his daughter Maricel B. Matudan (Maricel), and Dr. Tayag, the following documents were submitted in evidence:

1. Petitioner's Judicial Affidavit¹⁰ (Exhibit "A") which was adopted as his testimony on direct examination;
2. The Judicial Affidavit¹¹ of Maricel (Exhibit "D"), which was adopted as part of her testimony on direct examination;
3. The Sworn Affidavit¹² of Dr. Tayag (Exhibit "B"), which was considered part of her testimony on direct examination;
4. Dr. Tayag's evaluation report entitled "A Report on the Psychological

⁶ Records, pp. 1-4.

⁷ Id. at 2.

⁸ Id.

⁹ Id.

¹⁰ Id. at 44-45.

¹¹ Id. at 62-63.

¹² Id. at 46-50.



Condition of NICOLAS T. MATUDAN, the petitioner for Nullity of Marriage against respondent MARILYN BORJA-MATUDAN”¹³ (Exhibit “C”); and

5. Other relevant evidence, such as petitioner’s marriage contract/certificate and respective birth certificates of his children, and a Letter/Notice, with Registry Return Receipt, sent by Dr. Tayag to Marilyn requesting evaluation/interview relative to petitioner’s desire to file a petition for declaration of nullity of their marriage (Exhibits “E” to “G”).

Ruling of the Regional Trial Court

On December 18, 2009, the RTC issued its Decision¹⁴ dismissing the Petition in Civil Case No. Q-08-62827 on the ground that petitioner’s evidence failed to sufficiently prove Marilyn’s claimed psychological incapacity. It held, thus:

Petitioner, his daughter Maricel Matudan and psychologist Nedy L. Tayag testified. Petitioner offered in evidence Exhibits “A” to “G” which were admitted by the Court.

The State and the respondent did not present any evidence.

From the testimonial and documentary evidence of the petitioner, the Court gathered the following:

Petitioner and respondent were married on October 26, 1976 x x x. They begot four (4) children x x x. Petitioner and respondent lived together with their children. On June 25, 1985, petitioner asked respondent [sic] for permission to work and left the conjugal dwelling. Since then she was never heard of [sic]. Respondent never communicated with the petitioner and her children. Petitioner inquired from the relatives of the respondent but they did not tell him her whereabouts.

In his Affidavit which was considered as his direct testimony, petitioner claimed that respondent failed to perform her duties as a wife to him. Respondent never gave petitioner and their children financial and emotional support, love and care during their cohabitation. She was irresponsible, immature and exhibited irrational behavior towards petitioner and their children. She was self-centered, had no remorse and involved herself in activities defying social and moral ethics.

On cross-examination, petitioner testified that he and the respondent had a happy married life and they never had a fight. The only reason why he filed this case was because respondent abandoned him and their children.

¹³ Id. at 51-61.

¹⁴ Id. at 113-122.

Maricel Matudan was only two (2) years old when respondent left them. She corroborated the testimony of the petitioner that since respondent left the conjugal dwelling she never provided financial support to the family and never communicated with them.

Nedy L. Tayag, Psychologist, testified on the 'Report on the Psychological Condition of Nicolas Matudan' which she prepared (Exhibit "C"). She subjected petitioner to psychological test and interview. She likewise interviewed Maricel Matudan. She came up with the findings that petitioner is suffering from Passive-Aggressive Personality Disorder and respondent has Narcissistic Personality Disorder with Antisocial Traits. The features of petitioner's disorder are the following: negativistic attitude, passive resistance, lacks the ability to assert his opinions and has great difficulty expressing his feelings.

The root cause of his personality condition can be attributed to his being an abandoned child. At a young age, his parents separated and he was left in the custody of his paternal grandmother. He lacked a support system and felt rejected. He developed a strong need for nurturance, love and attention and that he would do anything to attain such.

As for respondent, the manifestation of her disorder are as follows: Pre-occupation with pursuing matters that would make her happy; has a high sense of self-importance; wants to have her way and disregards her husband's opinions; lacks empathy; wants to have a good life.

Her personality condition is rooted on her unhealthy familial environment. She came from an impoverished family. Her parents were more pre-occupied with finding ways to make ends meet to such extent that they failed to give adequate attention and emotional support to their children.

Ms. Tayag further testified that the psychological condition of the parties are grave and characterized by juridical antecedence as the same already existed before they got married, their disorders having been in existence since their childhood years are permanent and severe.

The sole issue to be resolved is whether x x x respondent is psychologically incapacitated to perform her marital obligations under Article 36 of the Family Code.

Article 36 of the Family Code as amended, states:

'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 68 of the same Code provides:

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

In the case of Leouel Santos vs. Court of Appeals, January 4, 1995, G.R.



No. 112019, the Honorable Supreme Court held:

‘Justice Alicia Sempio Dy, in her commentaries on the Family Code cites with approval the work of Dr. Gerardo Veloso a former Presiding Judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila x x x, who opines that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage although the overt manifestations may emerge only after the marriage; and it must be incurable or even if it were otherwise, the cure would be beyond the means of the party involved.

For psychological incapacity however to be appreciated, the same must be serious, grave and ‘so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume.’ x x x.

In the case of Santos, it was also held that the intendment of the law has been to confine the meaning of ‘psychological incapacity’ to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.’

It must be emphasized that the cause of action of petitioner is the alleged psychological incapacity of the respondent. During the pre-trial, the sole issue raised is whether or not respondent is psychologically incapacitated to perform her marital obligations under Article 36 of the Family Code. The alleged personality disorder of the petitioner is clearly not an issue in this case.

Prescinding from the foregoing, the Court finds that the totality of the evidence adduced by petitioner has not established the requisites of gravity, juridical antecedence and incurability. Again, it must be emphasized that this petition was filed on the ground of the psychological incapacity of respondent and not the petitioner.

Respondent is said to be suffering from Narcissistic Personality Disorder with antisocial traits. The salient features of her disorder were enumerated by Nedy Tayag in her report as follows: pre-occupation with pursuing matters that would make her happy; has a high sense of self-importance; wants to have her way and disregards her husband’s opinions; lacks empathy; wants to have a good life. Her personality disorder is considered permanent, grave and incurable. It has its root cause in her unhealthy familial environment during her early developmental years.

In petitions for declaration of marriage (sic), the testimony of the petitioner as to the physical manifestation of the psychological incapacity is of utmost importance. Unfortunately, petitioner’s testimony particularly his affidavit which was considered as his direct examination contained only general statements on the supposed manifestations of respondent’s incapacity. Respondent was described therein as irresponsible, immature, self-centered, lacks remorse, got involved with activities defying social and moral ethics. Petitioner



however miserably failed to expound on these allegations. In fact during his cross-examination, he even contradicted the allegations in his petition and affidavit. He clearly stated that he had a happy marital relationship with the respondent and never had a fight with her (TSN, December 5, 2008, page 8).

Petitioner harped on the abandonment of respondent. He even admitted that this the [sic] only reason why he wants their marriage dissolved (TSN, December 5, 2008, page 9). Abandonment of spouse however is not psychological incapacity. It is only a ground for legal separation.

Petitions for declaration of nullity of marriage are *sui generis*, the allegations therein must be supported by clear and convincing evidence that would warrant the dissolution of the marriage bond. Absent such proof, the Court will uphold the validity of the marriage for 'the rule is settled that every intendment of the law or fact leans toward the validity of marriage, the indissolubility of the marriage bond.' (Sevilla v. Cardenas, G.R. No. 167684, July 31, 2006).

In a petition for declaration of nullity of marriage, the burden of proof to show the nullity of the marriage is on the petitioner.

WHEREFORE, premises considered, the instant petition is dismissed for insufficiency of evidence.

SO ORDERED.¹⁵

Petitioner moved to reconsider,¹⁶ but in a May 12, 2010 Order,¹⁷ the RTC held its ground reiterating its pronouncement that petitioner failed to demonstrate Marilyn's psychological incapacity, and that the petition is anchored merely on Marilyn's abandonment of the marriage and family, which by itself is not equivalent to psychological incapacity.

Ruling of the Court of Appeals

Petitioner filed an appeal before the CA, docketed as CA-G.R. CV No. 95392. However, in its assailed January 31, 2012 Decision, the CA instead affirmed the RTC judgment, declaring thus:

Petitioner-appellant asserts that the RTC should not have denied the petition for declaration of nullity of his marriage to Marilyn x x x. He maintains that, contrary to the conclusion reached by the trial court, he was able to establish by the quantum of evidence required, the claimed psychological incapacity of his wife,

The argument of Nicolas R. Matudan fails to persuade Us.

Verily, instead of substantiating the alleged psychological incapacity of



¹⁵ Id. at 114-121.

¹⁶ Id. at 123-127, 130-136.

¹⁷ Id. at 141-143.

his wife, petitioner-appellant revealed during his cross examination that it was actually his wife's act of abandoning the family that led him to seek the nullification of their marriage. In fact, during his cross-examination, he readily admitted that they were happily married and that they never engaged in bickering with each other.

x x x x

Q: But how would you describe your marital relations [sic]? Were there moments that you were happy with your wife?

A: Yes, ma'am, that is why we begot four children.

COURT

And so, you so you [sic] had a happy married life then?

FISCAL

I would presume that you had a happy married life, how come your wife just left you like that? Do you have any idea why your wife just left you like that?

A: She did not communicate with us to tell her whereabouts.

Q: Did you ever have a fight with your wife?

A: None, ma'am.

x x x x

COURT

All right, you stated in this Affidavit that you are filing this case for the declaration of nullity of marriage because of the psychological incapacity of your wife, what do you mean by that?

WITNESS

'Pinabayaan lang kaming pamilya niya, hindi naman niya sinasabi kung saan siya hahanapin.' She did not inform us of her whereabouts.

COURT

Is that the only reason why you want your marriage with her dissolved?

WITNESS

Yes, your honor.

As correctly observed by the RTC, abandonment by a spouse, by itself, however, does not warrant a finding of psychological incapacity within the contemplation of the Family Code. It must be shown that such abandonment is a manifestation of a disordered personality which makes the spouse concerned completely unable to discharge the essential obligations of the marital state.

Indeed, the term 'psychological incapacity' to be a ground for the nullity of marriage under Article 36 of the Family Code, refers to a serious psychological illness afflicting a party even before the celebration of the marriage. Psychological incapacity must refer to 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.

In *Republic v. Court of Appeals and Rorodel Olaviano Molina*, the following definitive guidelines were laid down in resolving petitions for declaration of nullity of marriage, based on Article 36 of the Family Code:

(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.

(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.

(3) The incapacity must be proven to be existing at 'the time of the celebration' of the marriage.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of 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.

(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.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.

These Guidelines incorporate the basic requirements established in *Santos v. Court of Appeals* that psychological incapacity must be characterized by: (a) gravity; (b) juridical antecedence; and (c) incurability. These requisites must be strictly complied with, as the grant of a petition for nullity of marriage based on psychological incapacity must be confined only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.

Using the above standards, We find the totality of the petitioner-appellant's evidence insufficient to prove that the respondent-appellee is



psychologically unfit to discharge the duties expected of her as a wife.

Just like his own statements and testimony, the assessment and finding of the clinical psychologist cannot be relied upon to substantiate the petitioner-appellant's theory of the psychological incapacity of his wife.

It bears stressing that Marilyn never participated in the proceedings below. The clinical psychologist's evaluation of the respondent-appellee's condition was based mainly on the information supplied by her husband, the petitioner, and to some extent from their daughter, Maricel. It is noteworthy, however, that Maricel was only around two (2) years of age at the time the respondent left and therefore cannot be expected to know her mother well. Also, Maricel would not have been very reliable as a witness in an Article 36 case because she could not have been there when the spouses were married and could not have been expected to know what was happening between her parents until long after her birth. On the other hand, as the petitioning spouse, Nicolas' description of Marilyn's nature would certainly be biased, and a psychological evaluation based on this one-sided description can hardly be considered as credible. The ruling in *Jocelyn Suazo v. Angelito Suazo, et al.*, is illuminating on this score:

We first note a critical factor in appreciating or evaluating the expert opinion evidence – the psychologist's testimony and the psychological evaluation report – that Jocelyn presented. Based on her declarations in open court, the psychologist evaluated Angelito's psychological condition only in an indirect manner – she derived all her conclusions from information coming from Jocelyn whose bias for her cause cannot of course be doubted. Given the source of the information upon which the psychologist heavily relied upon, the court must evaluate the evidentiary worth of the opinion with due care and with the application of the more rigid and stringent set of standards outlined above, *i.e.*, that there must be a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.

x x x x

From these perspectives, we conclude that the psychologist, using meager information coming from a directly interested party, could not have secured a complete personality profile and could not have conclusively formed an objective opinion or diagnosis of Angelito's psychological condition. While the report or evaluation may be conclusive with respect to Jocelyn's psychological condition, this is not true for Angelito's. The methodology employed simply cannot satisfy the required depth and comprehensiveness of examination required to evaluate a party alleged to be suffering from a psychological disorder. In short, this is not the psychological report that the Court can rely on as basis for the conclusion that psychological incapacity exists.

In the earlier case of *Rowena Padilla-Rumbaua v. Edward Rumbaua*, it was similarly declared that '[t]o make conclusions and generalizations on the



respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.'

At any rate, We find the report prepared by the clinical psychologist on the psychological condition of the respondent-appellee to be insufficient to warrant the conclusion that a psychological incapacity existed that prevented Marilyn from complying with the essential obligations of marriage. In said report, Dr. Tayag merely concluded that Marilyn suffers from Narcissistic Personality Disorder with antisocial traits on the basis of what she perceives as manifestations of the same. The report neither explained the incapacitating nature of the alleged disorder, nor showed that the respondent-appellee was really incapable of fulfilling her duties due to some incapacity of a psychological, not physical, nature.

x x x x

Dr. Tayag's testimony during her cross examination as well as her statements in the Sworn Affidavit are no different.

When asked to explain the personality disorder of Marilyn, Dr. Tayag simply replied:

Q: On her case you assessed her as, likewise, suffering from a personality disorder characterized by Narcissistic Personality Disorder with Anti-Social Trait. Will you please tell to the Court what do you mean by that personality disorder?

A: In layman's term, once you are being labeled as a narcissistic [sic], this is a person whose preoccupation are all toward his own self satisfaction both materially or emotionally at the expense of somebody. They have what you called [sic] strong sense of entitlement thinking that she can get away whatever [sic] she wants to in pursuit of her own satisfaction at the expense of somebody. And this is what happened to the respondent. She gave more consideration to her own satisfaction material wise at the expense of social embarrassment of the children because of what happened to her.

On the other hand, in her Sworn Affidavit, Dr. Tayag stated:

7. Without a doubt, Marilyn is suffering from a form of personality disorder that rooted [sic] the downfall of their marriage. As based on the DSM-IV, respondent's behavioral disposition fits with individuals with NARCISSISTIC PERSONALITY DISORDER with Anti-social traits, as characterized by her disregard for and violation of the rights of others as well as her failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are clearly immoral and socially despised. Such is also depicted through his [sic] deceitfulness, as indicated by repeated lying and conning methods she used upon others in order to achieve personal profit or pleasure. In addition, her consistent irresponsibility, as indicated by her repeated failure to sustain consistent work behavior or honor financial obligations



and her lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another. x x x. And such condition is considered to [sic] grave, severe, long lasting and incurable by any treatment available.

Accordingly, even if We assume that Marilyn is really afflicted with Narcissistic Personality Disorder with anti-social traits, in the absence of any showing that the same actually incapacitated her from fulfilling her essential marital obligations, such disorder cannot be a valid basis for declaring Nicolas' marriage to Marilyn as null and void under Article 36 of the Family Code.

To be sure, jurisprudence has declared that not every psychological illness/disorder/condition is a ground for declaring the marriage a nullity under Article 36. '[T]he meaning of 'psychological incapacity' [is 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.'

All told, We find that no reversible error was committed by the trial court in rendering its assailed Decision.

WHEREFORE, the instant appeal is DENIED. The assailed Decision of the Regional Trial Court of Quezon City, Branch 94, in Civil Case No. Q-08-62827, is AFFIRMED.

SO ORDERED.¹⁸ (Citations omitted)

Petitioner moved for reconsideration, but in its assailed August 23, 2012 Resolution, the CA stood its ground. Hence, the instant Petition.

In a November 19, 2014 Resolution,¹⁹ this Court resolved to give due course to the Petition.

Issue

Petitioner mainly questions the CA's appreciation of the case, insisting that he was able to prove Marilyn's psychological incapacity.

Petitioner's Arguments

In his Petition and Reply,²⁰ petitioner argues that contrary to the CA's findings, he was able to prove Marilyn's psychological incapacity which is rooted in Dr. Tayag's diagnosis that she was suffering from Narcissistic Personality Disorder which existed even before their marriage, and continued to subsist thereafter; that her illness is grave, serious, incurable, and permanent as to render

¹⁸ *Rollo*, pp. 20-31.

¹⁹ *Id.* at 70-71.

²⁰ *Id.* at 63-67.

her incapable of assuming her marriage obligations; that the nullification of his marriage to Marilyn is not an affront to the institutions of marriage and family, but will actually protect the sanctity thereof because in effect, it will discourage individuals with psychological disorders that prevent them from assuming marital obligations from remaining in the sacred bond;²¹ that the issue of whether psychological incapacity exists as a ground to nullify one's marriage is a legal question; and that the totality of his evidence and Marilyn's failure to refute the same despite due notice demonstrate that he is entitled to a declaration of nullity on the ground of psychological incapacity.

Respondent's Arguments

In its Comment²² praying for denial, the Republic argues that the Petition calls for an evaluation of facts, thus violating the rule that a petition for review on *certiorari* should be confined to legal questions. Citing *Perez-Ferraris v. Ferraris*,²³ which decrees as follows –

The issue of whether or not psychological incapacity exists in a given case calling for annulment of marriage depends crucially, more than in any field of the law, on the facts of the case. Such factual issue, however, is beyond the province of this Court to review. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. It is a well-established principle that factual findings of the trial court, when affirmed by the Court of Appeals, are binding on this Court, save for the most compelling and cogent reasons, like when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; or when there is a misappreciation of facts, which are unavailing in the instant case. (Citations omitted)

the State argues that the instant case should be dismissed instead.

The public respondent adds that allegations and proof of irresponsibility, immaturity, selfishness, indifference, and abandonment of the family do not automatically justify a conclusion of psychological incapacity under Article 36 of the Family Code; that the intent of the law is to confine the meaning of psychological incapacity to the most serious cases of personality disorders – existing at the time of the marriage – clearly demonstrating an utter insensitivity or inability to give meaning and significance to the marriage, and depriving the spouse of awareness of the duties and responsibilities of the marital bond he/she is about to assume; that petitioner failed to show how each of Marilyn's claimed negative traits affected her ability to perform her essential marital obligations; that the supposed psychological evaluation of Marilyn was in fact based on the one-

²¹ Citing *Ngo Te v. Gutierrez Yu-Te*, 598 Phil. 666 (2009).

²² *Rollo*, pp. 39-54.

²³ 527 Phil. 722 (2006).

sided, self-serving, and biased information supplied by petitioner and Maricel – which renders the same unreliable and without credibility; that petitioner’s real reason for seeking nullification is Marilyn’s abandonment of the family; and that all in all, petitioner failed to prove the gravity, juridical antecedence, and incurability of Marilyn’s claimed psychological incapacity.

Our Ruling

The Court denies the Petition.

The landmark case of *Santos v. Court of Appeals*²⁴ taught us that psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. Thus, the incapacity “must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.”²⁵ In this connection, the burden of proving psychological incapacity is on the petitioner, pursuant to *Republic v. Court of Appeals*,²⁶ or the *Molina* case.

The foregoing pronouncements in *Santos* and *Molina* have remained as the precedential guides in deciding cases grounded on the psychological incapacity of a spouse. But the Court has declared the existence or absence of the psychological incapacity based strictly on the facts of each case and not on *a priori* assumptions, predilections or generalizations. Indeed, the incapacity should be established by the totality of evidence presented during trial, making it incumbent upon the petitioner to sufficiently prove the existence of the psychological incapacity.²⁷

Both the trial and appellate courts dismissed the petition in Civil Case No. Q-08-62827 on the ground that the totality of petitioner’s evidence failed to sufficiently prove that Marilyn was psychologically unfit to enter marriage – in short, while petitioner professed psychological incapacity, he could not establish its gravity, juridical antecedence, and incurability.

The Court agrees.

Petitioner’s evidence consists mainly of his judicial affidavit and testimony; the judicial affidavits and testimonies of his daughter Maricel and Dr. Tayag; and Dr. Tayag’s psychological evaluation report on the psychological condition of

²⁴ 310 Phil. 21 (1995).

²⁵ Id. at 39.

²⁶ 335 Phil. 664, 676 (1997).

²⁷ *Republic v. Court of Appeals*, 698 Phil. 257, 267 (2012).

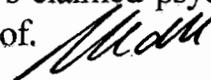
both petitioner and Marilyn. The supposed evaluation of Marilyn's psychological condition was based solely on petitioner's account, since Marilyn did not participate in the proceedings.

Indeed, "[w]hat is important is the presence of evidence that can adequately establish the party's psychological condition."²⁸ "[T]he complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage."²⁹ Petitioner's judicial affidavit and testimony during trial, however, fail to show gravity and juridical antecedence. While he complained that Marilyn lacked a sense of guilt and was involved in "activities defying social and moral ethics,"³⁰ and that she was, among others, irrational, irresponsible, immature, and self-centered, he nonetheless failed to sufficiently and particularly elaborate on these allegations, particularly the degree of Marilyn's claimed irresponsibility, immaturity, or selfishness. This is compounded by the fact that petitioner contradicted his own claims by testifying that he and Marilyn were happily married and never had a fight, which is why they begot four children; and the only reason for his filing Civil Case No. Q-08-62827 was Marilyn's complete abandonment of the marriage and family when she left to work abroad.

'Psychological incapacity,' as a ground to nullify a marriage under Article 36 of the Family Code, should refer to no less than a mental – not merely 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 which, as so expressed in Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of 'psychological incapacity' to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.³¹

If any, petitioner's accusations against Marilyn are untrue, at the very least. At most, they fail to sufficiently establish the degree of Marilyn's claimed psychological incapacity.

On the other hand, Maricel cannot be of help either. She was only two years old when Marilyn left the family. Growing up, she may have seen the effects of Marilyn's abandonment – such as the lack of emotional and financial support; but she could not have any idea of her mother's claimed psychological incapacity, as well as the nature, history, and gravity thereof.



²⁸ *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

²⁹ *Republic v. Galang*, 665 Phil. 658, 672 (2011).

³⁰ Records, p. 2.

³¹ *Republic v. De Gracia*, 726 Phil. 502, 509 (2014).

Just as well, Dr. Tayag's supposed expert findings regarding Marilyn's psychological condition were not based on actual tests or interviews conducted upon Marilyn herself; they are based on the personal accounts of petitioner. This fact gave more significance and importance to petitioner's other pieces of evidence, which could have compensated for the deficiency in the expert opinion which resulted from its being based solely on petitioner's one-sided account. But since these other pieces of evidence could not be relied upon, Dr. Tayag's testimony and report must fail as well. In one decided case with a similar factual backdrop and involving the very same expert witness, this Court held:

It is worth noting that Glenn and Mary Grace lived with each other for more or less seven years from 1999 to 2006. The foregoing established fact shows that living together as spouses under one roof is not an impossibility. Mary Grace's departure from their home in 2006 indicates either a refusal or mere difficulty, but not absolute inability to comply with her obligation to live with her husband.

Further, considering that Mary Grace was not personally examined by Dr. Tayag, there arose a greater burden to present more convincing evidence to prove the gravity, juridical antecedence and incurability of the former's condition. Glenn, however, failed in this respect. Glenn's testimony is wanting in material details. Rodelito, on the other hand, is a blood relative of Glenn. Glenn's statements are hardly objective. Moreover, Glenn and Rodelito both referred to Mary Grace's traits and acts, which she exhibited during the marriage. Hence, there is nary a proof on the antecedence of Mary Grace's alleged incapacity. Glenn even testified that, six months before they got married, they saw each other almost everyday. Glenn saw "a loving[,] caring and well[-]educated person" in Mary Grace.

Anent Dr. Tayag's assessment of Mary Grace's condition, the Court finds the same as unfounded. *Rumbaua* provides some guidelines on how the courts should evaluate the testimonies of psychologists or psychiatrists in petitions for the declaration of nullity of marriage, viz.:

We cannot help but note that Dr. Tayag's conclusions about the respondent's psychological incapacity were based on the information fed to her by only one side — the petitioner — whose bias in favor of her cause cannot be doubted. While this circumstance alone does not disqualify the psychologist for reasons of bias, her report, testimony and conclusions deserve the application of a more rigid and stringent set of standards in the manner we discussed above. For, effectively, Dr. Tayag only diagnosed the respondent from the prism of a third party account; she did not actually hear, see and evaluate the respondent and how he would have reacted and responded to the doctor's probes.

Dr. Tayag, in her report, merely summarized the petitioner's narrations, and on this basis characterized the respondent to be a self-centered, egocentric, and unremorseful person who 'believes that the world revolves around him'; and



who 'used love as a . . . deceptive tactic for exploiting the confidence [petitioner] extended towards him.' x x x

We find these observations and conclusions insufficiently in-depth and comprehensive to warrant the conclusion that a psychological incapacity existed that prevented the respondent from complying with the essential obligations of marriage. It failed to identify the root cause of the respondent's narcissistic personality disorder and to prove that it existed at the inception of the marriage. Neither did it explain the incapacitating nature of the alleged disorder, nor show that the respondent was really incapable of fulfilling his duties due to some incapacity of a psychological, not physical, nature. Thus, we cannot avoid but conclude that Dr. Tayag's conclusion in her Report — *i.e.*, that the respondent suffered 'Narcissistic Personality Disorder with traces of Antisocial Personality Disorder declared to be grave and incurable' — is an unfounded statement, not a necessary inference from her previous characterization and portrayal of the respondent. While the various tests administered on the petitioner could have been used as a fair gauge to assess her own psychological condition, this same statement cannot be made with respect to the respondent's condition. To make conclusions and generalizations on the respondent's psychological condition based on the information fed by only one side is, to our mind, not different from admitting hearsay evidence as proof of the truthfulness of the content of such evidence.³²

Finally, the identical rulings of the trial and appellate courts should be given due respect and finality. This Court is not a trier of facts.

The issue of whether or not psychological incapacity exists in a given case calling for annulment of marriage depends crucially, more than in any field of the law, on the facts of the case. Such factual issue, however, is beyond the province of this Court to review. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. It is a well-established principle that factual findings of the trial court, when affirmed by the Court of Appeals, are binding on this Court, save for the most compelling and cogent reasons x x x.³³

With the foregoing disquisition, there is no need to resolve the other issues raised. They have become irrelevant.

WHEREFORE, the Petition is **DENIED**. The January 31, 2012 Decision and August 23, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 95392 are **AFFIRMED**.



³² *Viñas v. Parel-Viñas*, G.R. No. 208790, January 21, 2015, 747 SCRA 508, 521-523, citing *Rumbaua v. Rumbaua*, 612 Phil. 1061 (2009).

³³ *Perez-Ferraris v. Ferraris*, supra note 23 at 727.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice

(On official leave)
JOSE CATRAL MENDOZA
Associate Justice

se dissent.

MARVIC M.V.F. LEONEN
Associate Justice

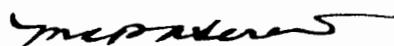
ATTESTATION

I attest 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's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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's Division.



MARIA LOURDES P. A. SERENO

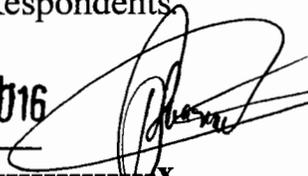
Chief Justice



SECOND DIVISION

G.R. No. 203284 – NICOLAS S. MATUDAN, Petitioner v. REPUBLIC OF THE PHILIPPINES AND MARILYN¹ B. MATUDAN, Respondents

Promulgated
774 NOV 2016



X-----X

DISSENTING OPINION

LEONEN, J.:

I dissent.

In my view, petitioner Nicolas S. Matudan (Nicolas) sufficiently proved that respondent Marilyn B. Matudan (Marilyn) is psychologically incapacitated to comply with her essential marital obligations to him. To deny his Petition is a cruel interpretation of the provisions of existing law.

I disagree that the testimony of the parties' daughter Maricel was not "of help"² in this case. Marilyn left the conjugal home in 1985 when her children were still minors. She never kept in touch with her family. When her children needed her most, Marilyn failed to keep them in her company, to love and support them, all of which are essential obligations under the law. The Petition for Review on Certiorari must be granted.

I

Nicolas' evidence consisted mainly of his testimony and that of their daughter, Maricel. This the ponencia found insufficient because Marilyn did not participate in the proceedings. Further, the ponencia found Dr. Nedy L. Tayag's (Dr. Tayag) psychological evaluation deficient because she diagnosed Marilyn with having a narcissistic personality based on the sole account of Nicolas.³

A psychological evaluation should not be discounted if based on sources other than the patient. In psychiatry, it is accepted practice to base a person's psychiatric history on collateral information. Ideally, the psychiatric history should "be based [on] the patient's own words from his



¹ Respondent is likewise referred to as "Marlyn" in some parts of the records.

² Ponencia, p. 14.

³ Id. at 15.

or her point on view,”⁴ the psychiatric history being a “record of [a] patient’s life[.]”⁵ However, if the patient is not available, as in this case, information from other sources may be utilized.

Dr. Tayag found that Marilyn was suffering from Narcissistic Personality Disorder with Antisocial Traits. The illness is marked by “negativistic attitude, passive resistance, [lack of] ability to assert [one’s] opinions, and . . . difficulty expressing [one’s] feelings.”⁶ In its January 31, 2012 Decision, the Court of Appeals stated:

When asked to explain the personality disorder of Marilyn, Dr. Tayag simply replied:

Q: On her case you assessed her as, likewise, suffering from a personality disorder characterized by Narcissistic Personality Disorder with Anti-Social Trait. Will you please tell to the Court what do you mean by that personality disorder?

A: In layman’s term, once you are being labeled as a narcissistic [sic], this is a person whose preoccupation are all toward his own self satisfaction both materially or emotionally at the expense of somebody. They have what you called [sic] strong sense of entitlement thinking that she can get away whatever [sic] she wants to [sic] in pursuit of her own satisfaction at the expense of somebody. And this is what happened to the respondent. She gave more consideration to her own satisfaction material wise at the expense of social embarrassment of the children because of what happened to her.

On the other hand, in her Sworn Affidavit, Dr. Tayag stated:

7. Without a doubt, Marilyn is suffering from a form of personality disorder that rooted [sic] the downfall of their marriage. As based on the DSM-IV, respondent’s behavioral disposition fits with individuals with NARCISSISTIC PERSONALITY DISORDER with Anti-social traits, as characterized by her disregard for and violation of the rights of others as well as her failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are clearly immoral and socially despised. Such is also depicted through his [sic] deceitfulness, as indicated by repeated lying and conning methods she used upon others in order to achieve personal profit or pleasure. In addition, her consistent irresponsibility, as indicated by her repeated failure to sustain consistent work behavior or honor financial obligations and her lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another. . . . And

⁴ B.J. Sadock, M.D. and V.A. Sadock, M.D., KAPLAN & SADOCK’S SYNOPSIS OF PSYCHIATRY BEHAVIORIAL SCIENCE/CLINICAL PSYCHIATRY 229 (9th ed., 2003).

⁵ B.J. Sadock, M.D. and V.A. Sadock, M.D., KAPLAN & SADOCK’S SYNOPSIS OF PSYCHIATRY BEHAVIORIAL SCIENCE/CLINICAL PSYCHIATRY 229 (9th ed., 2003)

⁶ Ponencia, p. 4.



such condition is considered to [sic] grave, severe, long lasting and incurable by any treatment available.⁷

Dr. Tayag's expert testimony is consistent with the undisputed fact that Marilyn left the conjugal home and has not contacted her family since 1985. *Thirty-one years* of no contact with loved ones, to my mind, shows a grave and incurable illness, a psychological incapacity warranting the dissolution of Marilyn's marriage with Nicolas.

Apart from failing to cohabit with her husband, Marilyn left while her children were still minors. Marilyn failed to comply with her essential obligations under the Family Code:

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

....

Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on 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;

(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.

⁷ Id. at 10-11.

The totality of evidence presented here is more than sufficient to prove Marilyn's psychological incapacity. Nicolas and Marilyn's marriage is void under Article 36⁸ of the Family Code.

II

*Santos v. Court of Appeals*⁹ and *Republic v. Court of Appeals and Molina*¹⁰ outline the history of Article 36 of the Family Code. *Santos* recounts how the Family Code Revision Committee deliberately refused to define the term "psychological incapacity" "to allow some resiliency in [the] application"¹¹ of the provision. No examples of psychological incapacity were given in the law so as not to "limit the applicability of the provision under the principle of *ejusdem generis*."¹²

Article 36 of the Family Code was taken from Canon 1095¹³ of the New Code of Canon Law of the Catholic Church.¹⁴ Citing the work of a former judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila, this Court in *Santos* stated that psychological incapacity "must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability."¹⁵

Molina is known for the eight (8) guidelines in interpreting and applying Article 36 of the Family Code:

(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.

⁸ FAMILY CODE, art. 36 provides:

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

⁹ 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

¹⁰ 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

¹¹ *Santos v. Court of Appeals*, 310 Phil. 21, 36 (1995) [Per J. Vitug, En Banc].

¹² *Id.*, citing *Salita v. Magtolis*, 303 Phil. 106 (1994) [Per J. Bellosillo, First Division]. See also *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 677 (1997) [Per J. Panganiban, En Banc].

¹³ New Code of Canon Law, Canon 1095 provides:

Canon 1095. They are incapable of contracting marriage:

1. who is lack of sufficient use of reason.
2. who suffer from a grave defect of discretion of judgment concerning essential matrimonial rights and duties, to be given and accepted mutually;
3. who for causes of psychological nature are unable to assume the essential obligations of marriage.

¹⁴ *Santos v. Court of Appeals*, 310 Phil. 21, 37 (1995) [Per J. Vitug, En Banc].

¹⁵ *Id.* at 39.

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

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

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

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

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, “mild characterological peculiarities, mood changes, occasional emotional outbursts” cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

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

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

1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

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

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.

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

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.¹⁶ (Citations omitted)

Contrary to the purported fluidity of the meaning of “psychological incapacity,” *Santos* and *Molina* provided guidelines comparable to a “strait-jacket”¹⁷ into which the facts of psychological incapacity cases are forced to fit. This Court observed in *Ngo-Te v. Yu-Te*:¹⁸

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 into

¹⁶ *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 676–680 (1997) [Per J. Panganiban, En Banc].

¹⁷ *Ngo-Te v. Yu-Te*, 598 Phil. 666, 696 (2009) [Per J. Nachura, Third Division].

¹⁸ 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

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.¹⁹ (Citations omitted)

The latest case where this Court voided the marriage due to psychological incapacity is *Kalaw v. Fernandez*,²⁰ which was decided on reconsideration in 2015. In *Kalaw*:

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.”²¹ (Citations omitted)

Kalaw is only the fifth²² case since *Ngo-Te*’s promulgation in 2009 where the Court voided the parties’ marriage due to psychological incapacity. Again, this reflects the State’s interpretation of its constitutional mandate to protect marriages, the foundation of the family,²³ by contesting all Article 36 petitions until they reach this Court.²⁴

The effect of applying the rigid Article 36 guidelines does not negate the compassion that some of the Members of this Court may have for the parties. Still, it is time that this Court operate within the sphere of reality. The law is an instrument to provide succor. It is not a burden that unreasonably interferes with individual choices of intimate arrangements.

¹⁹ Id. at 695–696.

²⁰ G.R. No. 166357, January 14, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/166357.pdf>>
[Per J. Bersamin, Special First Division].

²¹ Id. at 6–7.

²² The other four are *Azcueta v. Republic*, 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division]; *Halili v. Santos-Halili*, 607 Phil. 1 (2009) [Per J. Corona, Special First Division]; *Camacho-Reyes v. Reyes*, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; and *Aurelio v. Aurelio*, 665 Phil. 693 (2011) [Per J. Peralta, Second Division].

²³ 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.

²⁴ See J. Leonen, Dissenting Opinion in *Mallilin v. Jamesolamin*, G.R. No. 192718, February 18, 2015
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/192718_leonen.pdf> 13 [Per J. Mendoza, Second Division].

The choice to stay in or leave a marriage is not for this Court, or the State, to make. The choice is given to the partners, with the Constitution providing that “[t]he right of spouses to found a family in accordance with their religious convictions and demands of responsible parenthood[.]”²⁵ Counterintuitively, the State protects marriages if it allows those found to have psychological illnesses that render them incapable of complying with their marital obligations to leave the marriage.²⁶ To force partners to stay in a loveless marriage, or a spouseless marriage as in this case, only erodes the foundation of the family.

III

The Family Code Revision Committee originally intended a provision on absolute or no-fault divorce.²⁷ Instead, the Committee drafted Article 36 of the Family Code, which it derived from Canon Law so as not to offend the Catholic religion to which the majority of Filipinos belong.²⁸

It is strange that in drafting Article 36, the Family Code Revision Committee had to consider the sensibilities of a particular religion. None of our laws should be based on any religious law, doctrine, or teaching; otherwise, the separation of church and State will be violated.²⁹

We had absolute divorce laws in the past. Act No. 2710,³⁰ enacted in 1917, allowed the filing of a petition for divorce on the ground of adultery on the part of the wife, or concubinage on the part of the husband.³¹

During the Japanese occupation, Executive Order No. 141³² provided for 11 grounds for divorce, including “intentional or unjustified desertion continuously for at least one year prior to the filing of a [petition] for divorce” and “slander by deed or gross insult by one spouse against the other to such an extent as to make further living impracticable.”³³

²⁵ CONST., art. XV, sec. 3(1).

²⁶ See *Ngo-Te v. Yu-Te*, 598 Phil. 666, 698 (2009) [Per J. Nachura, Third Division].

²⁷ J. Romero, Concurring Opinion in *Santos v. Court of Appeals*, 310 Phil. 21, 43 (1995) [Per J. Vitug, En Banc].

²⁸ Id.

²⁹ CONST., art. II, sec. 6 provides:

Section 6. The separation of Church and State shall be inviolable.

³⁰ An Act to Establish Divorce (1917).

³¹ Act No. 2710, sec.1 provides:

SECTION 1. A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband, committed in any of the forms described in article four hundred and thirty-seven of the Penal Code.

See *Valdez v. Tuason*, 40 Phil. 943, 948 (1920) [Per J. Street, En Banc].

³² Otherwise known as “The New Divorce Law.”

³³ *Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per J. Ozaeta, En Banc].

After the Japanese left, the laws enacted during the Japanese occupation were declared void.³⁴ Act No. 2710 again took effect until the Civil Code's enactment in 1950. Since then, absolute divorce has been prohibited in our jurisdiction.

Laws on absolute divorce allegedly violate the Constitution, specifically, on the Filipino family being the foundation of the nation³⁵ and the inviolability of marriage.³⁶ I do not agree.

The Constitution describes the family as “the basic *autonomous* social institution.”³⁷ To my mind, the Constitution protects the solidarity of the family *regardless of its structure*. Parties should not be forced to stay in unhappy or otherwise broken marriages in the guise of protecting the family. This avoids the reality that people fall out of love. There is always the possibility that human love is not forever.

The Philippines remains to be the only country in the world with no absolute divorce law available to its citizens regardless of religion.³⁸ Our country needs a law that recognizes the validity of marriage at the time of its celebration but nonetheless allows parties to dissociate without destroying the human dignity³⁹ of their former partners by pathologizing them with a psychological disorder.

For thirty-one (31) years, Nicolas has been alone without a spouse. There is no marriage to protect in this case. Whatever possibility to fix the marriage is obviously absent or, at best, improbable. To deny the Petition of Nicolas is to require him to be condemned to a world that is not his. It is to ensure that he will live a life without the joy that marriage truly brings. It is to treat him as a ward.

³⁴ Id. at 462–463.

³⁵ CONST., art. XV, sec. 1 provides:

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

³⁶ 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.

³⁷ CONST., art. II, sec. 12 provides:

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

³⁸ Carlos H. Conde, *Philippines Stands All but Alone in Banning Divorce*, THE NEW YORK TIMES, June 17, 2011 <<http://www.nytimes.com/2011/06/18/world/asia/18iht-philippines18.html>> (visited November 14, 2016).

Pres. Decree No. 1083, otherwise known as the Code of Muslim Personal Laws, allows divorce but only for Filipino Muslims.

³⁹ CONST., art. II, sec. 11 provides that “[t]he State values the dignity of every human person and guarantees full respect for human rights.”

To deny the Petition of Nicolas is, thus, pure and simple cruelty.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN
Associate Justice