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Deputy Division Clerk of Court
THIRD DIVISION Third Division

Mis. PDC Batt

SEP 24 2019

G.R. No. 226907 – GERARDO A. ELISCUPIDEZ, *petitioner*, v.
GLENDA C. ELISCUPIDEZ, *respondent*.

Promulgated:
July 22, 2019

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DISSENTING OPINION

LEONEN, J.:

By denying this Petition, this Court continues to apply the restrictive interpretation of psychological incapacity begun by *Republic v. Court of Appeals and Molina*.¹ I dissent from the continued application of the rigid *Molina* guidelines as an interpretation of Article 36 of the Family Code.

I

Article 36 of the Family Code provides psychological incapacity as a ground for the nullity of marriage:

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.

This Court first applied this provision in *Santos v. Court of Appeals*,² noting that the Family Code Revision Committee must have deliberately omitted a specific definition for psychological incapacity “to allow some resiliency in its application.”³ It also cited the Committee’s deliberations in support of its conclusion that “‘psychological incapacity’ should 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[.]”⁴

Likewise referencing the provision’s religious origins in the New Canon Law, this Court cited a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila, Dr. Gerardo

¹ 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].
² 310 Phil. 21 (1995) [Per J. Vitug, En Banc].
³ Id. at 36.
⁴ Id. at 40.

Veloso, who stated “that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.”⁵

These findings in *Santos* formed the basis of *Molina*, where this Court developed the following guidelines in determining a spouse’s psychological incapacity:

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

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

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or 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 Id. at 39.

(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 (*sic*) 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.⁶ (Emphasis in the original, citations omitted)

These guidelines have been cited in multiple cases since 1997, and petitions have often been denied when courts find one (1) or more of its requirements absent. Likewise, courts have often denied petitions that allege

⁶ *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 676–679 (1997) [Per J. Panganiban, En Banc]. The eighth guideline has been dispensed with pursuant to A.M. No. 02-11-10-SC (2003) (*Re: Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*). 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]; and *Carating-Siyngco v. Siyangco*, 484 Phil. 396, 410 (2004) [Per J. Chico-Nazario, Second Division].

grounds for annulment or legal separation together with, or as proof of, a spouse's psychological incapacity.⁷

From *Molina's* promulgation in 1997 to 2008, only *Antonio v. Reyes*⁸ was able to satisfy the guidelines' stringent requirements. Since the Family Code's passage into law, only the cases of *Chi Ming Tsoi v. Court of Appeals*,⁹ *Antonio v. Reyes*,¹⁰ *Ngo Te v. Yu-Te*,¹¹ *Azcueta v. Republic*,¹² *Halili v. Santos-Halili*,¹³ *Camacho-Reyes v. Reyes-Reyes*,¹⁴ *Kalaw v. Fernandez*,¹⁵ *Tani-De La Fuente v. De La Fuente*,¹⁶ *Republic v. Javier*,¹⁷ and *Republic v. Mola Cruz*¹⁸ have sustained a marriage's nullity due to a spouse's psychological incapacity.¹⁹ Evidently, the *Molina* guidelines have imposed a restrictive set

⁷ See *Hernandez v. Court of Appeals*, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division]; *Matudan v. Republic*, 799 Phil. 449 (2016) [Per J. Del Castillo, Second Division]; and *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31 (2017) [Per J. Leonen, Second Division].

⁸ 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

⁹ 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division].

¹⁰ 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

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

¹² 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division].

¹³ 607 Phil. 1 (2009) [Per J. Corona, Special First Division].

¹⁴ 642 Phil. 602 (2010) [Per J. Nachura, Second Division].

¹⁵ 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].

¹⁶ 807 Phil. 31 (2017) [Per J. Leonen, Second Division].

¹⁷ G.R. No. 210518, April 18, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64164>> [Per J. Reyes, Jr. Second Division].

¹⁸ G.R. No. 236629, July 23, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64585>> [Per J. Gesmundo, Third Division].

¹⁹ To date, this Court has resolved the following cases via a decision or signed resolution: *Republic v. Deang*, G.R. No. 236279, March 25, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65071>> [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tecag*, G.R. No. 229272, November 19, 2018, <<http://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*, G.R. No. 210518, April 18, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64164>> [Per J. Reyes, Jr. Second Division]; *Espina-Dan v. Dan*, G.R. No. 209031, April 16, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64126>> [Per J. Del Castillo, First Division]; *Republic v. Tobora-Tionglico*, G.R. No. 218630, January 11, 2018, 851 SCRA 107 [Per J. Tijam, First Division]; *Lontoc-Cruz v. Cruz*, 802 Phil. 401 [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, 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]; *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 Honorable 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*, 651 Phil. 68 (2010) [Per J. Villarama, Jr., Third Division]; *Camacho-Reyes v. Reyes-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

of requirements for establishing a spouse's psychological incapacity. In *Ngo Te*, this Court stated that our "jurisprudential doctrine has unnecessarily imposed a perspective"²⁰ that is "totally inconsistent with the way the concept [of psychological incapacity] was formulated[.]"²¹ Verily, the strictures of *Molina* have often been applied indiscriminately and without regard for the specific circumstances of suffering petitioners:

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 OSG'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 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.²² (Citations omitted)

In *Kalaw v. Fernandez*,²³ this Court similarly discussed the consequences of our adherence to the *Molina* guidelines:

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

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*, 472 Phil. 807 (2004) [Per J. Corona, 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]; *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].

²⁰ *Ngo Te v. Yu-Te*, 598 Phil. 666, 669 (2009) [Per J. Nachura, Third Division].

²¹ *Id.*

²² *Id.* at 695–696.

²³ 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].

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.”²⁴ (Citation omitted)

While our laws, and concurrently our jurisprudence, seek to uphold marriage as an inviolable social institution, the State should be wary of equating inviolability with permanence. In a previous opinion, I discussed that the contract of marriage was established for a specific purpose, which bounds the State’s interest in its preservation:

The notion of “permanent” is not a characteristic that inheres without a purpose. The Family Code clearly provides for the purpose of entering into marriage, that is, “for the establishment of conjugal and family life.” Consequently, the state’s interest in protecting the marriage must anchor on ensuring a sound conjugal union capable of maintaining a healthy environment for a family, resulting in a more permanent union. The state’s interest cannot extend to forcing two individuals to stay within a destructive marriage.²⁵ (Citation omitted)

The purpose of marriage cannot be met when the parties are incapable of fulfilling their marital obligations to each other. Forcing them to sustain such a relationship results in harm not only to the parties, but to the very foundation of the family—that which the State seeks to protect.

In *Hernandez v. Court of Appeals*,²⁶ this Court refused to nullify the petitioner’s marriage despite her husband’s evident incapability of fulfilling his marital obligations. He refused to support his family, opting to spend his money drinking with friends instead. His constant promiscuity resulted in him infecting his wife with gonorrhea. When she confronted him about his behavior, he beat her so badly that she had a concussion. But since the grounds alleged as proof of the husband’s psychological incapacity were also grounds for legal separation, this Court refused to declare the marriage void. Rather, it held that, consistent with *Molina*, the wife needed expert evidence proving that her husband’s acts were “manifestations of a disordered personality which make private respondent completely unable to discharge the essential obligations of the marital state[.]”²⁷

²⁴ Id. at 499–500.

²⁵ J. Leonen, Dissenting Opinion in *Mallilin v. Jamesolamin*, 754 Phil. 158, 203 (2015) [Per J. Mendoza, Second Division].

²⁶ 377 Phil. 919 (1999) [Per J. Mendoza, Second Division].

²⁷ Id. at 932.

In *Matudan v. Republic*,²⁸ this Court also maintained the marriage's validity despite the wife's evident refusal to live with the petitioner and their four (4) children. She went abroad for work in 1985 and never returned. She never informed her family of her whereabouts, and was, thus, unavailable for examination by the petitioner's clinical psychologist. Despite her inability to live together with or "render mutual help and support"²⁹ to her spouse, the lower courts found that abandonment was only a ground for legal separation.³⁰ This Court affirmed this finding, in line with the strict requirements of gravity, juridical antecedence, and incurability as discussed in *Santos*, and standardized in *Molina*.

Verily, neglect, abuse, and exploitation flourish under destructive and dysfunctional marriages.³¹ Such relationships cannot be the foundation of society that the State is mandated to protect. Rather, it is the family, as a "basic autonomous social institution[.]" that should be protected, regardless of its structure.³²

I opine that *Tani-De La Fuente* is more consistent with the resilient application of Article 36 of the Family Code, as envisioned in *Santos*. In *Tani-De La Fuente*, the petitioner was deemed to have established her husband's psychological incapacity by detailing his pattern of physical and psychological abuse. The husband's paranoia and insecurity manifested in his treatment of the petitioner as a "sex slave."³³ The tipping point was when he poked a gun at her head during a heated argument. These accounts were interpreted by the testimony of a clinical psychologist who interviewed the petitioner and her husband's best friend. The husband's condition was diagnosed as "paranoid personality disorder[.]"³⁴ attributed to a "pathogenic parental model"³⁵ and hereditary traits from his father, who was also a psychiatric patient. The nature of the illness was also described as grave and incurable because the husband's paranoia compelled him to deny that something was wrong with him.³⁶

Even then, the Court of Appeals reversed the Regional Trial Court's declaration of the marriage's nullity. It discarded the expert witness' testimony for being hearsay, noting that the clinical psychologist "had no chance to personally conduct a thorough study and analysis of respondent's mental and psychological condition."³⁷ Thus, the petitioner was deemed

²⁸ 799 Phil. 449 (2016) [Per J. Del Castillo, Second Division].

²⁹ FAMILY CODE, art. 68.

³⁰ *Matudan v. Republic*, 799 Phil. 449, 458 (2016) [Per J. Del Castillo, Second Division].

³¹ See *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093>> [Per J. Peralta, En Banc].

³² CONST., art. II, sec. 12.

³³ *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31, 34 (2017) [Per J. Leonen, Second Division].

³⁴ *Id.* at 37.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 45-46.

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unable to prove the gravity, juridical antecedence, and incurability of her husband's psychological incapacity in accordance with *Molina*.

Before this Court, we held that the petitioner's evidence satisfied the *Molina* guidelines, and that "it would be of utmost cruelty"³⁸ to force the spouses together given the husband's abusive behavior and his inability to comply with his basic marital obligations of mutual help and support.

It is clear that *Molina's* stringency has rendered it an inconsistent tool in assessing a spouse's psychological fitness to comply with his or her marital obligations, and ineffective at maintaining the intended "resiliency" of Article 36 of the Family Code. Courts have indiscriminately bound couples together instead of recognizing that particular circumstances in specific marriages may deviate from the *Molina* guidelines, but nevertheless indicate an incapability to meet the essential obligations of a married life. A revised framework is, therefore, required.

II

In this light, I opine that petitioner Gerardo A. Eliscupidez sufficiently proved respondent Glenda C. Eliscupidez's psychological incapacity.

As proof of respondent's psychological incapacity, petitioner testified that their disagreements would often result in physical violence: respondent would often throw things at him, once even assaulting him with a knife. Respondent also asked her helper to purchase abortifacients so that she could avoid getting pregnant with petitioner's child. Despite this, she conceived two (2) children with another man while petitioner was abroad for work.³⁹ These accounts were corroborated by their household helper, Irene V. Oro (Oro), who confirmed respondent's aggressive tendencies toward her husband and testified on the spouses' quarrel over respondent's use of abortifacients.⁴⁰

Likewise, the expert testimony of clinical psychologist Nedy L. Tayag (Dr. Tayag), which was drawn from interviews with petitioner, Oro, and respondent's sister Vilma Casacbel Viernes (Viernes), assessed respondent's psychological behavior in a Psychological Evaluation Report. Dr. Tayag diagnosed respondent's condition as "histrionic personality disorder with anti[-]social personality traits[.]"⁴¹ characterizing the illness as prone to causing "colorful, dramatic, extroverted behavior"⁴² and an "excitable and

³⁸ Id. at 50.

³⁹ Ponencia, p. 2.

⁴⁰ Id. at 2-3.

⁴¹ Id. at 3.

⁴² Id.

emotional”⁴³ state of mind. Thus, during their marriage, respondent would “at times exaggerate while expressing her thoughts and feelings to the extent of being abusive and temperamental to her spouse[.]”⁴⁴

Respondent also prevented petitioner “from meeting up with his friends and relatives,”⁴⁵ and even attending certain work projects, out of fear that he would be attracted to other women.⁴⁶ These behaviors resulted in respondent often humiliating petitioner in front of other people “with her nagging ways, fabricated stories[,] and indiscretions.”⁴⁷

Showing no remorse, she also repeatedly betrayed his trust by cohabiting with other men.⁴⁸ Ultimately, respondent “abandoned her family in order to cohabit with her paramour.”⁴⁹

Dr. Tayag’s interview with Viernes also gave insight into respondent’s upbringing. Viernes’ accounts of their having grown up as part of their father’s second family, and of respondent’s “manipulative”⁵⁰ tendencies, led Dr. Tayag to conclude that respondent lacked proper role models, and had “insufficient bonding, closeness[,] and support”⁵¹ while growing up. Thus, Dr. Tayag’s report indicated that respondent’s disorder may have taken root in her childhood and was further embedded when she “learned to use her charm/good looks and assets in order to obtain”⁵² her “need for reassurance, security[,] and affection from others[.]”⁵³

Despite all of these, the majority affirmed the Court of Appeals’ denial of the Petition for declaration of the nullity of marriage. It rejected petitioner’s evidence, finding it to be “solely based on the self-serving testimonial descriptions and characterizations of respondent rendered by petitioner and his witnesses.”⁵⁴ Likewise, the majority held that Dr. Tayag’s report “failed to explain in detail how respondent’s condition could be characterized as grave, deeply-rooted, and incurable[.]”⁵⁵ Ultimately, petitioner was found to have fallen short of satisfying the *Molina* guidelines.

My objections to *Molina* notwithstanding, I opine that petitioner’s evidence did satisfy the *Molina* guidelines. Dr. Tayag is a clinical

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id. at 2.

⁴⁶ Id.

⁴⁷ Id. at 3.

⁴⁸ Id. at 4.

⁴⁹ Id.

⁵⁰ Id. at 8.

⁵¹ Id. at 4.

⁵² Id.

⁵³ Id.

⁵⁴ Id. at 8.

⁵⁵ Id.

psychologist whose expertise would have allowed her to “medically or clinically” identify the root cause of respondent’s histrionic personality disorder. Like any expert witness, she does not need to have personal knowledge of the matters subject of her testimony, as her credibility lies in her special knowledge, skill, experience, and training.⁵⁶ Thus, the majority should have considered her testimony, along with the contents of her Psychological Evaluation Report.

In any event, Dr. Tayag’s evaluation was based on testimonies of persons who had observed respondent’s behavior from childhood up to the point that she abandoned her family. The root cause of her psychological incapacity was traced back to her upbringing in a second family without proper role models. Viernes’ accounts also indicate that respondent has exhibited manipulative behavior since childhood.⁵⁷ Not only was the illness duly shown to have existed prior to the marriage, but it was also shown to be grave, as this same behavior prevented respondent from establishing a conjugal and family life with petitioner. It led her to have violent outbursts, to take abortifacients to prevent pregnancy, and to run away and have children with another man.

Respondent’s complete absence, not only from the proceedings in the lower courts, but also from the lives of her husband and two (2) children, is the most telling. Despite petitioner’s attempts to have her return home, she refused and still abandoned her family, choosing to live with another man.⁵⁸ She neither returned to visit nor informed them of her whereabouts. *Tani-De La Fuente* discussed a similar pattern of behavior as indicative of psychological incapacity:

This Court also noticed respondent’s repeated acts of harassment towards petitioner, which show his need to intimidate and dominate her, a classic case of coercive control. *At first, respondent only inflicted non-physical forms of mistreatment on petitioner by alienating her from her family and friends due to his jealousy, and stalking her due to his paranoia. However, his jealousy soon escalated into physical violence when, on separate instances, he poked a gun at his teenage cousin, and at petitioner.*

.....

Respondent’s repeated behavior of psychological abuse by intimidating, stalking, and isolating his wife from her family and friends, as well as his increasing acts of physical violence, are proof of his depravity, and utter lack of comprehension of what marriage and partnership entail. It would be of utmost cruelty for this Court to decree that petitioner should remain married to respondent. After she had exerted efforts to save their marriage and their family, respondent simply refused to believe that there was anything wrong in their marriage. This shows that respondent truly

⁵⁶ RULES OF COURT, Rule 130, sec. 49.

⁵⁷ Ponencia, p. 8.

⁵⁸ Id. at 2.

could not comprehend and perform his marital obligations. This fact is persuasive enough for this Court to believe that respondent's mental illness is incurable.⁵⁹ (Emphasis supplied)

As with *Tani-De La Fuente*, the circumstances here indicate respondent's incapacity to fulfill her essential marital obligations listed in Articles 68 to 71 of the Family Code. This inability to comprehend and comply with essential marital obligations is the crux of psychological incapacity as a ground for the nullity of marriage. The strict and often undiscerning guidelines laid out in *Molina* have since become insensitive to the greater purpose of resiliently applying Article 36 of the Family Code to the unique circumstances of each case.

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



MARVIC M.V.F. LEONEN
Associate Justice

CERTIFIED TRUE COPY

Misael D.C. Batt
MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

SEP 24 2019

⁵⁹ *Tani-De La Fuente v. De La Fuente*, 807 Phil. 31, 49–50 (2017) [Per J. Leonen, Second Division].