

## SECOND DIVISION

**[ G.R. No. 126010, December 08, 1999 ]**

**LUCITA ESTRELLA HERNANDEZ, PETITIONER VS. COURT OF APPEALS AND MARIO C. HERNANDEZ, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari of the decision<sup>[1]</sup> of the Court of Appeals, dated January 30, 1996, affirming the decision of the Regional Trial Court, Branch 18, Tagaytay City, dated April 10, 1993, which dismissed the petition for annulment of marriage filed by petitioner.

Petitioner Lucita Estrella Hernandez and private respondent Mario C. Hernandez were married at the Silang Catholic Parish Church in Silang, Cavite on January 1, 1981 (Exh. A).<sup>[2]</sup> Three children were born to them, namely, Maie, who was born on May 3, 1982 (Exh. B),<sup>[3]</sup> Lyra, born on May 22, 1985 (Exh. C),<sup>[4]</sup> and Marian, born on June 15, 1989 (Exh. D).<sup>[5]</sup>

On July 10, 1992, petitioner filed before the Regional Trial Court, Branch 18, Tagaytay City, a petition seeking the annulment of her marriage to private respondent on the ground of psychological incapacity of the latter. She alleged that from the time of their marriage up to the time of the filing of the suit, private respondent failed to perform his obligation to support the family and contribute to the management of the household, devoting most of his time engaging in drinking sprees with his friends. She further claimed that private respondent, after they were married, cohabited with another woman with whom he had an illegitimate child, while having affairs with different women, and that, because of his promiscuity, private respondent endangered her health by infecting her with a sexually transmissible disease (STD). She averred that private respondent was irresponsible, immature and unprepared for the duties of a married life. Petitioner prayed that for having abandoned the family, private respondent be ordered to give support to their three children in the total amount of P9,000.00 every month; that she be awarded the custody of their children; and that she be adjudged as the sole owner of a parcel of land located at Don Gregorio Subdivision I in Bo. Bucal, Dasmariñas, Cavite, purchased during the marriage, as well as the jeep which private respondent took with him when he left the conjugal home on June 12, 1992.<sup>[6]</sup>

On October 8, 1992, because of private respondent's failure to file his answer, the trial court issued an order directing the assistant provincial prosecutor to conduct an investigation to determine if there was collusion between the parties.<sup>[7]</sup> Only petitioner appeared at the investigation on November 5, 1992. Nevertheless, the prosecutor found no evidence of collusion and recommended that the case be set for trial.<sup>[8]</sup>

Based on the evidence presented by the petitioner, the facts are as follows:<sup>[9]</sup>

Petitioner and private respondent met in 1977 at the Philippine Christian University in Dasmariñas, Cavite. Petitioner, who is five years older than private respondent, was then in her first year of teaching zoology and botany. Private respondent, a college freshman, was her student for two consecutive semesters. They became sweethearts in February 1979 when she was no longer private respondent's teacher. On January 1, 1981, they were married.

Private respondent continued his studies for two more years. His parents paid for his tuition fees, while petitioner provided his allowances and other financial needs. The family income came from petitioner's salary as a faculty member of the Philippine Christian University. Petitioner augmented her earnings by selling "Tupperware" products, as well as engaging in the buy-and-sell of coffee, rice and *polvoron*.

From 1983 up to 1986, as private respondent could not find a stable job, it was agreed that he would help petitioner in her businesses by delivering orders to customers. However, because her husband was a spendthrift and had other women, petitioner's business suffered. Private respondent often had smoking and drinking sprees with his friends and betted on fighting cocks. In 1982, after the birth of their first child, petitioner discovered two love letters written by a certain Realita Villena to private respondent. She knew Villena as a married student whose husband was working in Saudi Arabia. When petitioner confronted private respondent, he admitted having an extra-marital affair with Villena. Petitioner then pleaded with Villena to end her relationship with private respondent. For his part, private respondent said he would end the affairs, but he did not keep his promise. Instead, he left the conjugal home and abandoned petitioner and their child. When private respondent came back, however, petitioner accepted him, despite private respondent's infidelity in the hope of saving their marriage.

Upon the recommendation of a family friend, private respondent was able to get a job at Reynolds Philippines, Inc. in San Agustin, Dasmariñas, Cavite in 1986. However, private respondent was employed only until March 31, 1991, because he availed himself of the early retirement plan offered by the company. He received P53,000.00 in retirement pay, but instead of spending the amount for the needs of the family, private respondent spent the money on himself and consumed the entire amount within four months of his retirement.

While private respondent worked at Reynolds Philippines, Inc., his smoking, drinking, gambling and womanizing became worse. Petitioner discovered that private respondent carried on relationships with different women. He had relations with a certain Edna who worked at Yazaki; Angie, who was an operator of a billiard hall; Tess, a "Japayuki"; Myrna Macatangay, a secretary at the Road Master Driver's School in Bayan, Dasmariñas, Cavite, with whom he cohabited for quite a while; and, Ruth Oliva, by whom he had a daughter named Margie P. Oliva, born on September 15, 1989 (Exh. E).<sup>[10]</sup> When petitioner confronted private respondent about his relationship with Tess, he beat her up, as a result of which she was confined at the De la Salle University Medical Center in Dasmariñas, Cavite on July 4-5, 1990 because of cerebral concussion (Exh. F).<sup>[11]</sup>

According to petitioner, private respondent engaged in extreme promiscuous conduct during the latter part of 1986. As a result, private respondent contracted gonorrhea and infected petitioner. They both received treatment at the Zapote Medical Specialists Center in Zapote, Bacoor, Cavite from October 22, 1986 until March 13, 1987 (Exhs. G & H).<sup>[12]</sup>

Petitioner averred that on one occasion of a heated argument, private respondent hit their eldest child who was then barely a year old. Private respondent is not close to any of their children as he was never affectionate and hardly spent time with them.

On July 17, 1979, petitioner entered into a contract to sell (Exh. J)<sup>[13]</sup> with F & C Realty Corporation whereby she agreed to buy from the latter a parcel of land at the Don Gregorio Heights Subdivision I in Bo. Bucal, Dasmariñas, Cavite and placed a partial payment of P31,330.00. On May 26, 1987, after full payment of the amount of P51,067.10, inclusive of interests from monthly installments, a deed of absolute sale (Exh. K)<sup>[14]</sup> was executed in her favor and TCT No. T-221529 (Exh. M)<sup>[15]</sup> was duly issued.

According to petitioner, on August 1, 1992, she sent a handwritten letter<sup>[16]</sup> to private respondent expressing her frustration over the fact that her efforts to save their marriage proved futile. In her letter, petitioner also stated that she was allowing him to sell their owner-type jeepney<sup>[17]</sup> and to divide the proceeds of the sale between the two of them. Petitioner also told private respondent of her intention to file a petition for the annulment of their marriage.

It does not appear that private respondent ever replied to petitioner's letter. By this time, he had already abandoned petitioner and their children. In October 1992, petitioner learned that private respondent left for the Middle East. Since then, private respondent's whereabouts had been unknown.

Ester Alfaro, petitioner's childhood friend and co-teacher at the Philippine Christian University, testified during the hearing on the petition for annulment. She said that sometime in June 1979, petitioner introduced private respondent to her (Alfaro) as the former's sweetheart. Alfaro said she was not impressed with private respondent who was her student in accounting. She observed private respondent to be fun-loving, spending most of his time with campus friends. In November 1980, when petitioner asked Alfaro to be one of the secondary sponsors at her forthcoming wedding, Alfaro wanted to dissuade petitioner from going through with the wedding because she thought private respondent was not ready for married life as he was then unemployed. True enough, although the couple appeared happy during the early part of their marriage, it was not long thereafter that private respondent started drinking with his friends and going home late at night. Alfaro corroborated petitioner's claim that private respondent was a habitual drunkard who carried on relationships with different women and continued hanging out with his friends. She also confirmed that petitioner was once hospitalized because she was beaten up by private respondent. After the first year of petitioner's marriage, Alfaro tried to talk to private respondent, but the latter accused her of meddling with their marital life. Alfaro said that private respondent was not close to his children and that he had abandoned petitioner.<sup>[18]</sup>

On April 10, 1993, the trial court rendered a decision<sup>[19]</sup> dismissing the petition for annulment of marriage filed by petitioner. The pertinent portion of the decision reads:<sup>[20]</sup>

The Court can underscore the fact that the circumstances mentioned by the petitioner in support of her claim that respondent was "psychologically incapacitated" to marry her are among the grounds cited by the law as valid reasons for the grant of legal separation (Article 55 of the Family Code) - not as grounds for a declaration of nullity of marriages or annulment thereof. Thus, Article 55 of the same code reads as follows:

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

(1) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

. . . .

(5) Drug addiction or habitual alcoholism of the respondent;

. . . .

(8) Sexual infidelity or perversion;

. . . .

(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

. . . .

If indeed Article 36 of the Family Code of the Philippines, which mentions psychological incapacity as a ground for the declaration of the nullity of a marriage, has intended to include the above-stated circumstances as constitutive of such incapacity, then the same would not have been enumerated as grounds for legal separation.

In the same manner, this Court is not disposed to grant relief in favor of the petitioner under Article 46, paragraph (3) of the Family Code of the Philippines, as there is no dispute that the "gonorrhea" transmitted to the petitioner by respondent occurred sometime in 1986, or five (5) years after petitioner's marriage with respondent was celebrated in 1981. The provisions of Article 46, paragraph (3) of the same law should be taken in conjunction with Article 45, paragraph (3) of the same code, and a careful reading of the two (2) provisions of the law would require the existence of this ground (fraud) at the time of the celebration of the marriage. Hence, the annulment of petitioner's marriage with the respondent on this ground, as alleged and proved in the instant case, cannot be legally accepted by the Court.