

FIRST DIVISION

[G.R. No. 141917, February 07, 2007]

**BERNARDINO S. ZAMORA, PETITIONER, VS. COURT OF APPEALS
AND NORMA MERCADO ZAMORA, RESPONDENTS.**

DECISION

AZCUNA, J.:

This is an appeal by certiorari under Rule 45 of the Rules of Court to annul and set aside the Decision and Resolution of the Court of Appeals (CA) dated August 5, 1999 and January 24, 2000 in CA-G.R. CV No. 53525, entitled "Bernardino S. Zamora v. Norma Mercado Zamora," which affirmed the dismissal of a complaint for declaration of nullity of marriage.

The facts^[1] are:

Petitioner and private respondent were married on June 4, 1970 in Cebu City. After their marriage, they lived together at No. 50-A Gorordo Avenue, Cebu City. The union did not produce any child. In 1972, private respondent left for the United States to work as a nurse. She returned to the Philippines for a few months, then left again in 1974. Thereafter, she made periodic visits to Cebu City until 1989, when she was already a U.S. citizen.

Petitioner filed a complaint for declaration of nullity of marriage anchored on the alleged "psychological incapacity" of private respondent, as provided for under Article 36 of the Family Code. To support his position, he alleged that his wife was "horrified" by the mere thought of having children as evidenced by the fact that she had not borne petitioner a child. Furthermore, he also alleged that private respondent abandoned him by living in the United States and had in fact become an American citizen; and that throughout their marriage they lived together for not more than three years.

On the other hand, private respondent denied that she refused to have a child. She portrayed herself as one who loves children as she is a nurse by profession and that she would from time to time borrow her husband's niece and nephews to care for them. She also faulted her husband for the breakup of their marriage, alleging that he had been unfaithful to her. He allegedly had two affairs with different women, and he begot at least three children with them.

On June 22, 1995, the trial court rendered its decision thus:

. . .

Plaintiff consented to defendant's trip to the United States in 1974. She [defendant] wanted to earn money there because she wanted to help her

husband build a big house at the Beverly Hills, Cebu City. Defendant's testimony was corroborated by Paulina Martinez, a former househelp of the Zamoras. She always wanted to live in the Philippines before her husband committed infidelity.

One reason why defendant seldom saw her husband while she was in the Philippines was because of the infidelity committed by her husband. No less than plaintiff himself admitted that he has a child with a certain [x x x]. The court is also convinced that he has two children with a certain [y y y]. The infidelity on the part of the plaintiff was one of the contributing factors which led to the estranged relationship between him and defendant.

... [N]othing in the evidence of plaintiff show[s] that the defendant suffered from any psychological incapacity or that she failed to comply with her essential marital obligations. There is no evidence of psychological incapacity on the part of defendant so that she could not carry out the ordinary duties required in married life. Neither has it been shown that there was an incurable defect on the part of defendant.

. . .

WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the complaint.

Without special pronouncement as to cost.

SO ORDERED.^[2]

Petitioner appealed to the CA which rendered a Decision on August 5, 1999 affirming the ruling of the trial court. The pertinent portions of the CA decision read:

...

Without delving further into both parties' allegations, we must deny this appeal.

In the case of *Leouel Santos v. Court of Appeals*,^[3] the High Court ruled that, "psychological incapacity should refer to no less than a mental (not physical) incapacity x x x and that 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 or inability to give meaning and significance to the marriage."

Also, in *Republic v. Court of Appeals and Molina*,^[4] it was held that "mere showing of 'irreconcilable differences' and 'conflicting personalities' in no wise constitutes psychological incapacity. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness."

This appeal does not fall in the category of "psychological incapacity" as defined in the aforementioned cases. The mere refusal of the appellee to

bear a child is not equivalent to psychological incapacity, since even if such allegation is true, it is not shown or proven that this is due to psychological illness.

...

As correctly stated by the appellee in her brief, the appellant even failed to present any psychologist or other medical expert to prove the psychological incapacity of defendant-appellee. This WE feel is a fatal omission on the part of the appellant, considering the doctrine laid down in the Santos and Molina cases (supra).

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 13 of Cebu City is hereby AFFIRMED. Appeal DISMISSED.

SO ORDERED.^[5]

Petitioner filed a motion for reconsideration but the same was denied by the CA in its Resolution dated January 24, 2000.

Hence, this petition raising the following issues:

- 1) Whether or not the Court of Appeals misapplied facts of weight and substance affecting the result of the present case;
- 2) Whether or not Article 68 of the Family Code is applicable to this case;
- 3) Whether or not the presentation of psychologists and/or psychiatrists is still desirable, if evidence in this case already shows the psychological incapacity of private respondent;
- 4) Whether or not the presentation of psychologists and/or psychiatrists is still desirable, considering that the private respondent is a resident of the United States and living far away from the Philippines for more than twenty (20) years:
- 5) Whether or not private respondent's refusal to live with petitioner under one roof for more than twenty (20) years, her refusal to bear children with petitioner, and her living a solitary life in the United States for almost three (3) decades are enough indications of psychological incapacity to comply with essential marital obligations under Article 36 of the Family Code.^[6]

Briefly, the issue is whether there can be a declaration of nullity of the marriage between petitioner and private respondent on the ground of psychological incapacity.

Petitioner argues as follows:

First, there is nothing in *Santos v. CA*,^[7] upon which private respondent relies, that requires as a *conditio sine qua non* the presentation of expert opinion of psychologists and psychiatrists in every petition filed under Article 36 of the Family