

TWENTIETH DIVISION

[CA- G.R. CV NO. 04241, November 27, 2014]

ELENITA SOCO TOMARONG, PETITIONER-APPELLEE, VS. MELVIN TOMARONG, RESPONDENT-APPELLEE,

REPUBLIC OF THE PHILIPPINES, OPPOSITOR-APPELLANT.

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal on the Decision^[1] dated April 18, 2011 and Order^[2] dated July 6, 2011 of the Regional Trial Court of Lapu-Lapu City, Branch 54, in Civil Case No. R-LLP-08-03075-CV, which declared the marriage of Elenita Soco Tomarong to her husband Melvin Tomarong as null and void on the basis of the latter's psychological incapacity and which denied oppositor-appellant Republic's Motion for Reconsideration, respectively.

The relevant facts of the case follow.

Elenita Soco Tomarong and Melvin Tomarong were married on January 29, 1994 in Talisay, Cebu. The two were blessed with three children.

Elenita claims that at the time she contracted marriage with Melvin, she did not know that the latter was psychologically incapacitated to assume and comply with the essential marital obligations of marriage. She alleges that her husband's psychological incapacity manifested after their marriage as she found out that he is irresponsible as a husband and as a father to their children.^[3]

Elenita, in her testimony,^[4] narrated that she solely supports their children because Melvin never helps in their financial needs. He never gives money to her nor to his children. At one point, Elenita had to go to Melvin's parents to convince the latter to talk to their son and persuade him to give support to his family. His parents, however, was not able to help her as they told her that Melvin likewise never gave money to them.

Elenita likewise narrated that she was humiliated by her husband in public and that she was punched by him on the face during one altercation. She also recounted that her husband kicked her when she refused to have sex with him. She also claimed that her husband verbally abused her, that he berrated and blamed her for coming back to the country after she worked abroad.

Aside from physical and verbal abuse that she experienced with her husband, Elenita claimed that Melvin was a drunkard and a gambler. She said that these vices have caused their quarrels and would result in Melvin mauling her if he was drunk or had lost in his gambling activities. She remembered that he was first hit by her

husband in 1995, when their first child was still one-year old. At that time, Melvin hit her because he was jealous with regard to the nature of her work which necessitated overtime work.

Not only that Melvin was irresponsible and abusive husband, but also, according to Elenita, he is a womanizer. In fact, in February 2006, Melvin left Elenita and their children to live with his paramour. She narrated that when she was still working abroad, she already heard stories about her husband being a womanizer, and when she came back to the country and confronted her husband about his alleged womanizing, the latter admitted the same.

Elenita also narrated that she was once hit by Melvin before they got married and that she already knew about his vices and his relationships with other women even before they were married. She said that before their marriage, Melvin changed, so she just tolerated his vices as she was very forgiving and patient. But, she could no longer bear the pain in her heart, so she decided to file a case for the declaration of nullity of their marriage.

Aside from Elenita's testimony, her friend, Astela Bayta, testified^[5] before the trial court as regards her knowledge that Elenita's husband Melvin left his wife and children for another woman, that she saw Melvin and his paramour in a mall in Mactan, and that she often saw Melvin, when he was still staying with his wife, verbally and physically abusing his wife.

To prove that Melvin's acts would constitute as manifestations of his psychological incapacity, Dr. Andres Gerong, a clinical psychologist, testified as regards his psychologist report evaluating the personality of Melvin.

Dr. Gerong's psychologist report^[6] and testimony^[7] stated that Melvin is suffering from Antisocial Personality Disorder and Narcissistic Disorder. According to his report and testimony, Melvin's acts of abandoning his wife and children for another woman; failing to support his family as a result of his affair with another woman; physically and verbally abusing his wife; and his lack of care for his children, would manifest his antisocial personality disorder. He testified that Melvin's personality disorder is not treatable or curable and is very serious and grave. He further testified that Melvin's personality disorder was rooted in his own dysfunctional family as his father was a drunkard and was abusive, and that his material and emotional deprivation during childhood was the cause of his personality disorder.

While the proceedings before the trial court ensued, Melvin never appeared and participated in the proceedings despite due notice.

On April 18, 2011, the trial court rendered its assailed Decision^[8] granting the petition of Elenita and declaring her marriage to Melvin null and void by reason of the latter's psychological incapacity. The decretal portion of the said Decision reads:

“WHEREFORE, premises considered, the Court hereby renders judgement declaring the marriage between Elenita Soco Tomarong and respondent Melvin Tomarong VOID AB INITIO, by reason of the psychological incapacity of respondent to comply with the essential marital obligations of marriage pursuant to Article 36 of the Family Code of the Philippines.

The Court shall forthwith issue the corresponding decree of absolute nullity upon the finality of the Decision subject to pertinent rules considering that the parties have no properties.

xxxx

xxxx.”^[9]

The Republic, through the Office of the Solicitor General moved for a reconsideration^[10] of the above Decision, but the same was denied in the assailed Order^[11] of the trial court.

Hence, this appeal.

The Republic, as oppositor-appellant, raised this sole error on appeal:

“THE TRIAL COURT ERRED IN GRANTING THE NULLITY OF MARRIAGE CONSIDERING THAT PETITIONER FAILED TO PROVE THE REQUIREMENTS PROVIDED UNDER ARTICLE 36.”^[12]

For the Republic, Elenita failed to prove the gravity, incurability and juridical antecedence of her husband's supposed psychological incapacity as required by law and jurisprudence.

As such, We resolve this sole issue: is the evidence presented sufficient to establish the alleged psychological incapacity of Elenita's husband Melvin?

In granting the petition for declaration of nullity of marriage on the ground of psychological incapacity, the trial court relied heavily on the psychological report and testimony of the expert witness, Dr. Gerong, which convinced the trial court that Melvin is suffering from antisocial personality disorder by reason of which he could not carry out the essential marital obligations of marriage. On the bases of Dr. Gerong's testimony and report, the trial court held that Melvin's antisocial personality disorder is attended by gravity, incurability, and juridical antecedence.^[13]

In this appeal, the Republic argues that the basis on which the evidence and diagnosis of the alleged psychological incapacity of Melvin was not shown, and that it may have solely come from the self-serving testimony of Elenita without any further relevant, material and independent evidence or information.^[14]

We find for the Republic.

We hold that the evidence presented by Elenita fell short to prove the alleged psychological incapacity of her husband which would render her marriage to him a nullity.

We quote with approval the observation of the OSG, thus:

“While the expertise of the psychologist is not being disputed, his prognosis as to the alleged psychological incapacity of respondent could

not be considered as conclusive or reliable, given the source of his information. Considering the importance of his analysis of the psychological make-up of respondent[-appellee Melvin], the psychologist should have stated whether he has exerted effort in gathering relevant, material and reliable information in order to get an accurate psychological evaluation of the subject xxxx.”^[15]

Indeed, the case of *Marcos v. Marcos*^[16] asserted that there is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician, if the totality of evidence presented is enough to sustain a finding of psychological incapacity. However, it is equally controlling that the presentation of expert testimony is important to establish the precise cause of a party’s psychological incapacity, and to show that it existed at the inception of the marriage.^[17]

Clearly, before the courts declare a marriage null and void on the ground of psychological incapacity, even with or without expert testimony of a psychologist, “the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.”^[18]

Hence, if an expert witness is presented, it is noted and emphasized by jurisprudence that the “presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.”^[19]

What it means to have an in-depth analysis, Associate Justice Eduardo Nachura, in the case of *Te v. Te*,^[20] quotes the *Psychological Extension Evaluation Research Services* (PEERS) which enumerates the segments of the psychological evaluation report for psychological incapacity, to wit:

- *“Identifying Data: Personal Information*
- *Referral Question:* Data coming from informants and significant others (psychologists, psychiatrists, physicians, parents, brothers, sisters, relatives, friends, etc.).
- *Test Administered (Dates):* List by name
- *Background Information:*
 - Current Life Situation:* Presenting complaint (personal and marital conflict), history of problem, and consequences in client’s life.
 - Life History Information:* Childhood development, educational history, vocational history, medical history, sexual and marital history, personal goals.
- *Behavior Observations:* Description of client, relationship with examiner, and test related behaviors.
- *Interpretation of Test Results:*
 - Intellectual Functioning:* Wechsler tests, Stanford-Binet, etc. Obtained IQ scores and specific strengths and deficits.
 - Cognitive Functioning:* Rorschach, TAT, MMPI, etc. Perception of reality or perceptual efficiency, conceptual organization, psychological needs, conflicts,

preoccupations, suspiciousness, hallucinations, or delusions.

Emotional Functioning (MMPI, Rorschach, etc.): Liability of emotions, impulse control, predominant concerns like aggression, anxiety, depression, guilt, dependency, and hostility.

Relationship Patterns (MMPI, Rorschach, TAT, etc.): Problem areas in work or school, friendships, intimate relationships, difficulties such as immaturity, irresponsibility, cooperativeness, sociability, introversion, impulsivity, aggression, dangerousness to self or others.

Defenses and compensations: Evidence of any strength, any coping mechanisms, or any useful compensation that might be helping the client maintain himself/herself.

- *Integration of Test Results with Life History*: Presenting a clinical picture of the client as a total person against the background of his marital discords and life circumstances. Hypotheses posed through the referral question and generated and integrated via test results and other reliable information.
- *Summary, Conclusion, Diagnosis, Prognosis*:
 - Summary: Emphasis should be on conciseness and accuracy so that the reader can quickly find the essential information and overall impression.
 - Conclusion: Integrating the material (data) into a more smoothly stated conceptualization of the client's personality and problem areas as regards root causes and characteristics as ground for nullity of marriage.
 - Diagnosis: Diagnostic impression is evolved from the data obtained, formed impression of personality disorders, and classified mental disorders based on the criteria and multi axial system of the DSM IV.
 - Prognosis: Predicting the behavior based on the data obtained that are relevant to the current functioning of the client, albeit under ideal conditions.
- *Recommendation*: Providing a careful specific recommendation is based on the referral sources and obtained data in dealing with a particular client that may be ameliorative, remedial, or unique treatment/intervention approaches. As to psychological incapacity, specific recommendation on the nullity of marriage based on Article 36 of the Family Code and expertise and clinical judgment of the Clinical Psychologist should be given emphasis. (Ng, Apruebo & Lepiten, Legal and Clinical Bases of Psychological Incapacity, 2006 ed. pp. 179-181.)"

Taking cue from the pronouncement of Te, the Supreme Court in *Suazo v. Suazo*^[21] evaluated the expert evidence therein whether the same would constitute an in-depth assessment of the parties by the psychologist or expert, in order to come up with a conclusive diagnosis of a psychological incapacity that is grave, severe and incurable.

In the case of *Suazo*, concluding that the psychologist's testimony and the psychological report did not conclusively show the root cause, gravity and