SECOND DIVISION

G.R. No. 192718 – ROBERT F. MALLILIN v. LUZ G. JAMESOLAMIN AND THE REPUBLIC OF THE PHILIPPINES

Promulgated:

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DISSENTING OPINION

LEONEN, *J.*:

Petitioner Robert F. Mallilin (Robert) filed separate Petitions — one before our courts and another before the tribunals of the Catholic Church — to have his marriage with Luz G. Jamesolamin (Luz) declared void.

On September 20, 2002, the Regional Trial Court voided their marriage after finding Luz to be psychologically incapacitated to comply with the essential marital obligations.[1]

On October 10, 2002, the Metropolitan Tribunal of First Instance for the Archdiocese of Manila (Metropolitan Tribunal) declared their marriage invalid *ab initio* "on the ground of the grave lack of due discretion on the part of both parties[.]"[2] The National Appellate Matrimonial Tribunal affirmed this declaration on April 8, 2003.[3]

Despite the declarations of nullity by both the trial court and the church tribunals, the Court of Appeals reversed the trial court's Decision by declaring the marriage valid and subsisting.[4] This prompted Robert's appeal before this court.[5]

Robert submits that the trial court had considered all evidence before it ruled "that the totality of unrebutted and credible evidence showing the wife's actions before and during the marriage leaves no doubt as to her incapacity to act as wife. . . . Unfortunately, the Honorable Court of Appeals had comfortably substituted its own judgment for that of the trial court by ruling that the absence of the psychological examination of the wife underscores the evidential gap to sustain the Decision of nullity of marriage

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1 *Rollo*, pp. 52–53.
2 Id. at 68.
3 Id. at 72–74.
4 Id. at 59.
5 Id. at 11–12.

rendered by the RTC."[6] Even the church tribunals[7] found Luz to be "suffering from Grave Lack of Discretion in Judgment concerning the essential rights and obligations mutually given and accepted in marriage[.]"[8] Robert refers to Luz's sexual indiscretion with different men and her failure to act as homemaker for her family as bases for her incapacity to comply with the essential marital obligations.[9] He argues that "nymphomania is much more than sexual infidelity, an illness rooted within the body of a woman."[10] Luz was sexually involved not with one man, but with several.[11] She would even bring her paramour to their conjugal home, showing no sense of right or wrong.[12]

The Office of the Solicitor General counters that Robert's evidence failed to establish that at the time of their marriage, Luz was suffering from a psychological disorder depriving her of the ability to assume the essential marital duties.[13] The church tribunals' findings have persuasive effect, but these are not controlling.[14] In any case, the church tribunals' decisions anchored on "lack of discretion of judgment concerning matrimonial rights and obligations [that] is due to outside factors other than a psychological incapacity as contemplated in Article 36 of the Family Code."[15]

The Office of the Solicitor General also argues collusion, considering that Luz had executed a Retraction of Testimony and Waiver of Custody[16] without the presence of counsel sometime in 1998, or a few months before she married an American.[17]

The ponencia affirmed the Court of Appeals in setting aside the trial court Decision voiding the marriage. It found that Robert failed to prove Luz's alleged psychological incapacity as to warrant a declaration of nullity of marriage under Article 36 of the Family Code.[18]

I dissent.

Preliminarily, the argument on collusion deserves no merit. The factual antecedents alleged that Robert filed the Complaint for declaration of nullity on March 16, 1994. The trial court denied the Complaint. Luz

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6 Id. at 286.
7 Id. at 289–290.
8 Id. at 289.
9 Id. at 285.
10 Id.
11 Id. at 286.
12 Id. at 284.
13 Id. at 212–213.
14 Id. at 217.
15 Id. at 219.
16 Id. at 201–204.
17 Id. at 219–220.
18 Ponencia, p. 16.

submitted a Retraction of Testimony and Waiver of Custody during the pendency of the case before the Court of Appeals.[19]

On January 29, 1999, the Court of Appeals reversed the trial court by voiding the Complaint and Answer for failure to comply with Article 48 of the Family Code on collusion. The case was remanded to the designated family court. The lower court then rendered the September 20, 2002 Decision voiding the marriage of Robert and Luz.[20]

Thus, the issue on collusion was already addressed when the case was remanded to the trial court, and the city prosecutor would be furnished a copy of the Complaint and Answer. This complies now with Article 48 of the Family Code:

> Art. 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.
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> In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

Psychological incapacity guidelines

Examining the development of jurisprudence[21] interpreting Article 36 of the Family Code will lead to *Santos v. Court of Appeals*[22] as the first case attempting to lay down standards for the concept of "psychological incapacity." The marriage in *Santos* was declared valid and subsisting for failure to meet the following characteristics:

> Justice Sempio-Diy cites with approval the work of Dr. Gerardo Veloso, a former Presiding Judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila (Branch I), 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. . . .
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> . . . . Thus correlated, "psychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly

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19 Id. at 200–201.
20 Id. at 205–206.
21 *See Republic v. Galang*, G.R. No. 168335, June 6, 2011, 650 SCRA 524, 535–538 [Per J. Brion, Third Division].
22 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

> incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by Article 68 of the Family Code, 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. This psychologic condition must exist at the time the marriage is celebrated.[23] (Emphasis supplied, citations omitted)

Two years later, this court in *Republic v. Court of Appeals and Molina*[24] listed specific guidelines when 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.
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> The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence*, *inviolability* and *solidarity.*
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> (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 physically 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.
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> (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.
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> (4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or

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[23] Id. at 39–40.

[24] 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

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 characteriological 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.[25] (Emphasis in the original, citations omitted)

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[25] Id. at 676–679. The eighth guideline on the certification from the Solicitor General briefly stating his or her reasons for agreeing or opposing the Petition for declaration of nullity of marriage on the ground of psychological incapacity has been dispensed with under A.M. No. 02-11-10-SC (*Re: Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*). *See*

This court has since applied the *Molina* guidelines in deciding cases for declaration of nullity of marriage due to psychological incapacity.[26] In all psychological incapacity cases resolved from 1997 to 2009 applying the *Molina* guidelines, only the parties in *Antonio v. Reyes*[27] were found to have complied with all the requirements of *Molina*.[28]

Medical, psychiatric, or psychological examination

Luz did not appear during trial.[29] Robert disclosed that she was already living in California, USA and was married to an American.[30] This can explain why no medical, psychiatric, or psychological examination could be conducted on Luz. In any event, the reversal of the trial court's finding of psychological incapacity cannot hinge on this lack of examination.

In 2000, this court in *Marcos v. Marcos*[31] ruled that "if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to."[32]

This court then issued A.M. No. 02-11-10-SC also known as the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages. This rule took effect on March 15, 2003.

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-Siayngco v. Siayngco*, 484 Phil. 396, 410 (2004) [Per J. Chico-Nazario, Second Division].

26 *Navales v. Navales*, 578 Phil. 826, 840–842 (2008) [Per J. Austria-Martinez, Third Division]; *Navarro, Jr. v. Cecilio-Navarro*, 549 Phil. 632, 639–640 (2007) [Per J. Quisumbing, Second Division]; *Tongol v. Tongol*, 562 Phil. 725, 732–735 (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, 356–358 (2006) [Per J. Tinga, Third Division]; *Republic v. Iyoy*, 507 Phil. 485, 498–500 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Quintero-Hamano*, G.R. No. 149498, May 20, 2004, 428 SCRA 735, 740–742 [Per J. Corona, Third Division]; *Ancheta v. Ancheta*, 468 Phil. 900, 915–916 (2004) [Per J. Callejo, Sr., Second Division]; *Choa v. Choa*, 441 Phil. 175, 186–187 (2002) [Per J. Panganiban, Third Division]; *Pesca v. Pesca*, 408 Phil. 713, 719–720 (2001) [Per J. Vitug, Third Division]; *Republic v. Dagdag*, 404 Phil. 249, 256–259 (2001) [Per J. Quisumbing, Second Division]; *Marcos v. Marcos*, 397 Phil. 840, 847–850 (2000) [Per J. Panganiban, Third Division]; *Hernandez v. Court of Appeals*, 377 Phil. 919, 932 (1999) [Per J. Mendoza, Second Division].

27 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

28 Another case where the parties successfully obtained a decree of nullity of marriage due to psychological incapacity is *Chi Ming Tsoi v. Court of Appeals*, 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division]. However, *Chi Ming Tsoi* was not decided under the *Molina* guidelines. This court had yet to promulgate *Molina* when *Chi Ming Tsoi* was decided.

29 *Rollo*, p. 260.

30 Id. at 265 and 267.

31 397 Phil. 840 (2000) [Per J. Panganiban, Third Division].

32 Id. at 850.

The rule provides that "[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 but *expert opinion need not be alleged*."[33] It also states that "[i]n case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other matters as may aid in the prompt disposition of the petition."[34]

A.M. No. 02-11-10-SC thus codified the ruling in *Marcos* that examination by a physician or psychologist is not a *conditio sine qua non* for a declaration of nullity of marriage.[35]

In 2010, this court voided the marriage in *Camacho-Reyes v. Reyes*[36] discussing that "[t]he lack of personal examination and interview of the respondent, or any other person diagnosed with personality disorder, does not *per se* invalidate the testimonies of the doctors [and] [n]either do their findings automatically constitute hearsay that would result in their exclusion as evidence."[37]

Thus, the psychological report of Myrna de los Reyes Villanueva, a Guidance Psychologist II of the Northern Mindanao Medical Center in Cagayan de Oro,[38] cannot be considered hearsay on the ground that Luz was not interviewed and examined. A marriage involves two persons only. Necessarily, these two are in the best position to testify on the other's behavior during their marriage. Put in this context, Robert's testimony cannot be disregarded for being self-serving.

In any event, Myrna de los Reyes Villanueva administered five tests[39] on Robert before concluding that "Robert Malillin [sic] is psychologically incapacitated to [c]arry out the responsibility of married life *especially with an individual who is equally emotionally infertile and immature*[.]"[40] Robert quoted Myrna de los Reyes Villanueva's testimony as follows:

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33 VOID AND VOIDABLE MARRIAGES RULE, sec. 2(d).

34 VOID AND VOIDABLE MARRIAGES RULE, sec. 14(b).

35 *Marcos v. Marcos*, 397 Phil. 840, 842 (2000) [Per J. Panganiban, Third Division].

36 G.R. No. 185286, August 18, 2010, 628 SCRA 461 [Per J. Nachura, Second Division].

37 Id. at 487.

38 *Rollo*, p. 266.

39 Id. Petitioner, in his Memorandum, enumerated the tests:
DAP - the client is asked to draw a person. The objective is to know the client's inner side, and his emotional dynamics. . . .
HTP - to protect the client's orientation to society and ability to realize it. . . .
LCT - the client is asked to arrange the color cards. The objective is to determine client's monetary stress, roaming wishes, and conflicts. . . .
IQ - to tap the client's intellectual function. . . .
BVMGT - to determine the client's perceptual ability, a projective tool to determine the client's emotional dynamics, preoccupation, inferiority, and immaturity. . . .

40 Id. at 266-A, *citing* TSN, May 7, 2001, p. 10.

Q: Can you explain to the court what is your recommendation?

A: He is emotionally infantile and immature considering also that he is of age and as there is chronological age responsibility, we have profound emotional quotation chronologically. In one of my interview with client, he manifested that he was left out that most have created the vaccum. . . . often times in his relationship with woman, he would look for a woman, more or less has a mother figure.

Q: As you said in your recommendation, Mr. Malillin is psychologically incapacitated to carry out responsibility with the emotional infantile and immature, egocentric and mother dependence?

A: In our psychological examination, there is said stress in him as a person as that of the child, the ego, the adult, the parents, what is dominant traits in person, what behavior appear when I say youth, the individual display more on a child on him, it is the child who is concern with the feeling or reaction, if the person react more incapable impulses that is distracted, he is more of infantile than adult, in the case of Robert Malillin if we cite, he related to me that he is having some affairs with some women so I can see that he is quite speaking of nature and individual getting through serious responsibilities of married life.

Q: Since you stated that you have interviewed this Robert Malillin, several incidents, have you talk matters regarding his wife?

A: Yes, he told me that the wife had several affairs in fact, there was a short doubt of his first son because upon learning that he offered marriage, the woman refused and that fuel his doubt later because he learns that the woman is with another guys and he said that woman contracting loans without his knowledge and the woman is not even taking care of the child.

Q: Considering that Mr. Malilllin had dispute with his wife, he would say that the wife is infantile and immature?

A: The transaction is the same because they were both child and the child here has no decision made then there is nothing to reach up.

Q: Base on your observation with this case Malillin is infantile and immature?

A: ***Both parties were infantile, immature, what would happen, just imagine two children living, what would be the relationship of the husband and wife, they would keep on challenging each other***.[41] (Emphasis supplied)

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[41] Id. at 266-A–267, *quoting* TSN, May 7, 2001, pp. 11–14.

National Appellate Matrimonial Tribunal interpretations

The ponencia discussed that the National Appellate Matrimonial Tribunal Decision was not offered during trial as required under Rule 132, Section 34 of the Rules of Court.[42] The ponencia added that even if the National Appellate Matrimonial Tribunal Decision was considered, this was based on the second paragraph of Canon 1095 on grave lack of discretion and not the third paragraph, which was similar to Article 36 of the Family Code.[43]

Robert could not have offered the church tribunal rulings during trial since the trial court had rendered its Decision on September 20, 2002, or before the Metropolitan Tribunal rendered its Decision on October 10, 2002.[44]

The Metropolitan Tribunal's Decision even included a restrictive clause "to the effect that neither of the parties may enter into another marriage without the express permission of this tribunal, in deference to the sanctity and dignity of the sacrament as well as for the protection of the intended spouse."[45] The National Appellate Matrimonial Tribunal confirmed this nullity Decision, discussing its findings as follows:

> The FACTS on the Case prove with the certitude required by law that based on the deposition of the Petitioner – the Respondent understand[a]bly ignored the proceedings completely for which she was duly cited for Contempt of Court – and *premised on the substantially concordant testimonies of the Witnesses, the woman Respondent demonstrated in the external forum through her action and reaction patterns,* ***before and after*** *the marriage-in-fact, her grave lack of due discretion in judgment for marriage intents and purposes basically by reason of her immaturity of judgement as manifested by her emotional ambivalence and affective instability that were sufficiently evidenced* by the three following more salient factors in the Case which are de officio abbreviated and generalized for judicial prudence in deference [to] her person: One, THAT the ***Respondent already practiced a fundamental ambivalence in her emotional constitution by engaging in multiple carnal attachements*** [sic] ***at an early age***. Two, THAT the Respondent was in effect ultimately rendered pregnant by the Petitioner when she was but nineteen years old. Three, THAT the ***Respondent after her de facto marriage with the Petitioner demonstrated her affective instability by entertaining as well several carnal relationships*** that finally terminated the union of some fourteen years that were punctuated by several temporary separations and that brought to life no less than three children.

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42 Ponencia, p. 10.
43 Id.
44 *Rollo*, pp. 287–288.
45 Id. at 68.

> As to the matter of the relatively long time frame of the union, it should be noted that just as the mere passage of time does not nullify an ab initio valid marriage, neither does it ipso facto validate an ab initio null and void marriage. As to the question of the number of children born of the union, just as there are valid marriages without children, the[re] are invalid marriages with children. The presence of children from a union directly prove biological potency on the part of both the Parties in Causa – not necessarily their tenure of due discretion in judgement for marriage.[46] (Emphasis supplied)

On Canon 1095, the marriage in *Antonio v. Reyes*[47] was also annulled by the Metropolitan Tribunal. That marriage was affirmed with modification by the National Appellate Matrimonial Tribunal,[48] finding that "respondent was impaired by a *lack of due discretion*."[49] This court discussed that:

> Of particular notice has been the citation of the Court, first in *Santos* then in *Molina*, of the considered opinion of canon law experts in the interpretation of psychological incapacity. This is but unavoidable, considering that the Family Code committee had bluntly acknowledged that the concept of psychological incapacity was derived from canon law, and as one member admitted, ***enacted as a solution to the problem of marriages already annulled by the Catholic Church but still existent under civil law. It would be disingenuous to disregard the influence of Catholic Church doctrine in the formulation and subsequent understanding of Article 36, and the Court has expressly acknowledged that interpretations given by the National Appellate Matrimonial Tribunal of the local Church, while not controlling or decisive, should be given great respect by our courts.*** Still, it must be emphasized that the Catholic Church is hardly the sole source of influence in the interpretation of Article 36. Even though the concept may have been derived from canon law, its incorporation into the Family Code and subsequent judicial interpretation occurred in wholly secular progression. Indeed, while Church thought on psychological incapacity is merely persuasive on the trial courts, judicial decisions of this Court interpreting psychological incapacity are binding on lower courts.
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> As noted earlier, the Metropolitan Tribunal of the Archdiocese of Manila decreed the invalidity of the marriage in question in a *Conclusion* dated 30 March 1995, citing the "lack of due discretion" on the part of respondent. Such decree of nullity was affirmed by both the National Appellate Matrimonial Tribunal, and the Roman Rota of the Vatican. In fact, respondent's psychological incapacity was considered so grave that a restrictive clause was appended to the sentence of nullity prohibiting respondent from contracting another marriage without the Tribunal's consent.[50] (Emphasis supplied, citations omitted)

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46 Id. at 73–74.
47 519 Phil. 337 (2006) [Per J. Tinga, Third Division].
48 Id. at 346.
49 Id. at 347.
50 Id. at 353–366.

Najera v. Najera[51] came three years later and differentiated the second and third paragraphs of Canon 1095. This court discussed how Article 36 of the Family Code was based on the third paragraph of Canon 1095 as a ground and not the second paragraph:[52]

> Canon 1095. The following are incapable of contracting marriage:
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> 1. those who lack sufficient use of reason;
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> 2. those who suffer from a grave lack of discretion of judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted;
>
> 3. *those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage*.[53] (Emphasis supplied)

The facts of *Najera* are not in point. In *Najera*, the trial court considered the evidence presented and decreed only the legal separation of the parties, and not annulment of the marriage.[54] The Court of Appeals no longer considered the National Appellate Matrimonial Tribunal's Decision since "it was made on a different set of evidence of which [w]e have no way of ascertaining their truthfulness . . . [a]nd based on the evidence on record, [w]e find no ample reason to reverse or modify the judgment of the Trial Court."[55]

On the other hand, both the trial court and the National Appellate Matrimonial Tribunal voided the marriage between Robert and Luz. Assuming the two tribunals considered different sets of evidence, they nevertheless reached the same conclusion of declaring the nullity of the marriage.

A declaration of nullity of marriage by the church requires two positive decisions to be executory — one by the first instance tribunal and another by the second instance tribunal.[56] This process, though not conclusive, warrants respect by this court. The decisions of these tribunals must be considered for their persuasive effect, especially in fulfillment of the intent behind Article 36 of the Family Code "to harmonize our civil laws with the religious faith [such that] . . . subject to our law on evidence[,] what is decreed as canonically invalid should also be decreed civilly void."[57]

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51 609 Phil. 316 (2009) [Per J. Peralta, Third Division].
52 Id. at 335–336.
53 Id. at 335.
54 Id. at 324–325.
55 Id. at 334.
56 *See* Catholic Bishops' Conference of the Philippines website <http://www.cbcponline.net/commissions/tribunal.html> (visited February 11, 2015).
57 *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 679 (1997) [Per J. Panganiban, En Banc].

In the end, every case filed on Article 36 of the Family Code requiring an application of the *Molina* guidelines must be considered on a case-to-case basis.[58]

Flexible *Molina* guidelines

In 2009, this court in *Ngo Te v. Gutierrez Yu-Te*[59] voided Kenneth and Rowena's marriage on the ground of their psychological incapacity. This court observed how "[t]he resiliency with which the concept [of psychological incapacity] should be applied and the case-to-case basis by which the provision should be interpreted, as so intended by its framers, had, somehow, been rendered ineffectual by the imposition of a set of strict standards in *Molina*[.]"[60] This court expressed fear that *Molina* became a straitjacket for all subsequent Article 36 cases.[61]

This court in *Ngo Te* was clear in "not suggesting the abandonment of *Molina*[,]"[62] but stressed how "courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals."[63] *Ting v. Velez-Ting*[64] promulgated a month after *Ngo Te* suggested a "relaxation of the stringent requirements"[65] laid down in *Molina.*

In 2010, *Suazo v. Suazo*[66] explained that *Ngo Te* "stands for a more flexible approach in considering petitions for declaration of nullity of marriages based on psychological incapacity"[67] and upholds an evidentiary approach:

> By the very nature of Article 36, *courts*, despite having the primary task and burden of decision-making, *must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties.*
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> . . . .
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> *Hernandez v. Court of Appeals* emphasizes the importance of presenting expert testimony to establish the precise cause of a party's psychological incapacity, and to show that it existed at the inception of the marriage. And as *Marcos v. Marcos* asserts, there is no requirement that the person to be declared psychologically incapacitated be personally

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58 *Antonio v. Reyes*, 519 Phil. 337, 370 (2006) [Per J. Tinga, Third Division].
59 598 Phil. 666 (2009) [Per J. Nachura, Third Division].
60 Id. at 692.
61 Id. at 696.
62 Id. at 699.
63 Id.
64 601 Phil. 676 (2009) [Per J. Nachura, Third Division].
65 Id. at 692.
66 629 Phil. 157 (2010) [Per J. Brion, Second Division].
67 Id. at 179.

> examined by a physician, if the totality of evidence presented is enough to sustain a finding of psychological incapacity. *Verily, the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.*
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> *This is not to mention, but we mention nevertheless for emphasis, 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.*[68] (Emphasis in the original, citation omitted)

Since *Ngo Te,* it appears that only the parties in *Azcueta v. Republic*,[69] *Halili v. Santos-Halili*,[70] *Camacho-Reyes v. Reyes*,[71] and *Aurelio v. Aurelio*[72] obtained a decree of nullity of their marriage under Article 36.

The difficulty in obtaining a declaration of nullity of marriage in this jurisdiction, so evident from our jurisprudence with only a handful of granted petitions, reflects an absolute position taken by the state to contest all petitions until it reaches this court.

The Constitution no doubt mandates the state to protect the social institution that is marriage — the foundation of the family. However, the Constitution also mandates the state to defend "[t]he right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood[.]"[73] In other words, the right to family must be based on one's own personal convictions. The state, under the guise of protecting the marriage, should not force two people to stay together, albeit in paper, when they are incapable of complying with their essential marital obligations with each other.

Right to family

In *Antonio v. Reyes*, this court discussed that "the Constitution itself does not establish the parameters of state protection to marriage as a social institution and the foundation of the family."[74]

The Constitution describes marriage as "inviolable"[75] while the law portrays it as a "permanent union."[76] Nevertheless, the state cannot insist on such permanence and inviolability *per se* under the pretense of its

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68 Id. at 179–180.
69 606 Phil. 177, 199 (2009) [Per J. Leonardo-De Castro, First Division].
70 607 Phil. 1, 8 (2009) [Per J. Corona, Special First Division].
71 G.R. No. 185286, August 18, 2010, 628 SCRA 461, 495 [Per J. Nachura, Second Division].
72 G.R. No. 175367, June 6, 2011, 650 SCRA 561, 564 [Per J. Peralta, Second Division].
73 CONST., art. XV, sec. 3(1).
74 *Antonio v. Reyes*, 519 Phil. 337, 355 (2006) [Per J. Tinga, Third Division].
75 CONST., art. XV, sec. 2.
76 FAMILY CODE, art. 1.

constitutional mandate to protect the existence of every marriage. The state's interest in any and all marriages entered into by individuals should not amount to an unjustified intrusion into one's right to autonomy and human dignity.[77]

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."[78] 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.

The Family Code provides that the "nature, consequences, and incidents [of marriage] are governed by law and not subject to stipulation,"[79] but this does not go as far as reaching into the choices of intimacy inherent in human relations. These choices form part of autonomy, protected by the liberty[80] and human dignity[81] clauses. Human dignity includes our choices of association, and we are as free to associate and identify as we are free not to associate or identify.

Our choices of intimate partners define us — inherent ironically in our individuality. Consequently, when the law speaks of the nature, consequences, and incidents of marriage governed by law, this refers to responsibility to children, property relations, disqualifications, privileges, and other matters limited to ensuring the stability of society. The state's interest should not amount to unwarranted intrusions into individual liberties.

Since the state's interest must be toward the stability of society, the notion of psychological incapacity should not only be based on a medical or psychological disorder, but should consist of the inability to comply with essential marital obligations such that public interest is imperiled.

The *Molina* guidelines provide that church tribunal decisions have persuasive effect on our courts. Nevertheless, the notion of "psychological incapacity" should not be religious. None of our laws should be based on any religious law, doctrine, or teaching. We are a secular state. The

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

78 FAMILY CODE, art. 1.

79 FAMILY CODE, art. 1.

80 CONST., art. III, sec. 1 states that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

81 CONST., art. II, sec. 11.

separation of state and church must at all times be inviolable.[82]

The state protects the family by not forcing its structure; otherwise, there will be "broken families." The Constitution does not define "family," but characterizes it as "the basic *autonomous* social institution."[83] The state should encourage all family arrangements, whether or not borne out of love or "in love." The presumption should be in favor of choices.

Thus, when both husband and wife, the trial court that considered first-hand all evidence presented, as well as two levels of church tribunals, have all determined without reservation that one or both of the parties are incapable of complying with the essential marital obligations, or gravely lack the discretion of judgment regarding these marital obligations, the state must be open to the possibility that there was never a marriage as contemplated by the Constitution and law to protect.

Under these conditions, there is no interest, public or private, to protect in the continued declaration of the existence of a marriage. If at all, the couple now separated and living their own lives are imposed with an unjust burden of a false status. This is pure and simple cruelty.

Accordingly, I vote to grant the Petition.

MARVIC M.V.F. LEONEN
Associate Justice

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[82] CONST., art II, sec. 6.
[83] CONST., art. II, sec. 12.