G.R. No. 166357 – *Valerio E. Kalaw, Petitioner -versus- Ma. Elena Fernandez, Respondent.*

Promulgated: JAN 14 2015

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DISSENTING OPINION

DEL CASTILLO, *J.*:

On September 19, 2011, this Court issued its Decision[1] denying petitioner Valerio E. Kalaw's petition and affirming the appellate court's determination that there is insufficient evidence of psychological incapacity that would render the parties' marriage null and void. The Court, in making its Decision, relied on the experts' own proffered guideline for making their conclusions. They said that actions, such as those allegedly performed by respondent, "when performed **constantly** to the **detriment of quality and quantity of time** devoted to her duties as mother and wife, **constitute** a psychological incapacity in the form of [Narcissistic Personality Disorder]."[2] The Court, using the experts' own guideline, reviewed the evidence to determine if there is indeed proof, before the Court, that respondent engaged in the alleged acts, that she performed them constantly, and to the detriment of the quality and quantity of time devoted to her duties as mother and wife. Considering the opposing views of the trial and appellate courts on the matter, the Court thoroughly reviewed the records of the case, including the psychiatrists' reports. Despite the Court's considerable effort to respect and accept the psychologists' findings, we simply found no adequate evidence of the *factual premises* of their diagnosis of Narcissistic Personality Disorder. Thus, we agreed with the Court of Appeals (CA) that the evidence is insufficient for a declaration of nullity of marriage on the ground of psychological incapacity.

The petitioner filed a Motion for Reconsideration (MR),[3] arguing that the Court erred in finding the psychological experts' conclusions (that respondent is psychologically incapacitated to understand the demands of a marriage) unsupported by the available evidence.

The respondent, in lieu of a Comment,[4] reiterated her earlier Manifestation that she is now conceding that petitioner, not herself, may actually be psychologically incapacitated to perform his essential marital obligations.[5]

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1 *Rollo*, pp. 672-688.
2 Id. at 685.
3 Id. at 689-705.
4 Id. at 707-709.
5 Id. at 650-654.

The Majority Opinion opines that the Court would be unjust to keep the parties in a marriage despite their shared opinion that their marriage is beyond repair.

However, under the law, the parties' own desire to dissolve their marriage is not a determining factor in assessing the existence of a ground for annulment or declaration of nullity. Indeed, Article 48 of the Family Code mandates the court to guard against the possibility of collusion between the parties:

> ARTICLE 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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The Court's Decision should rely solely on the available evidence and the law.

The Majority Opinion claims that our Decision failed to appreciate the evidence, as found by the trial court ***and*** by the expert psychologists and that the trial court's ruling on the psychological incapacity of the parties should be final and binding on the appellate courts when such ruling is based on the facts and on opinion of the qualified experts.

I agree that the ruling of a lower court should be given due respect and finality when it is adequately explained, rests on established facts, ***and*** considers the opinion of qualified experts. Unfortunately, such kind of trial court ruling is not before us; hence, our September 19, 2011 Decision did not see fit to adopt the findings of the trial court.

The trial court summarized the parties' respective evidence, including the testimonies of their psychologists, in the first six pages of its decision.[6] It then proceeded to quote Article 36 of the Family Code and the definitions of psychological incapacity in *Santos v. Court of Appeals*[7] and in the *Republic v. Court of Appeals.*[8] Without any indication of which pieces of evidence it found convincing, reliable, and overwhelming, much less a discussion of how these evidence tend to prove the existence or non-existence of psychological incapacity – *ergo, without factual findings whatsoever* – the trial court ruled in a terse and unsatisfying paragraph that:

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6 Id. at 74-79.
7 310 Phil. 21 (1995).
8 *Rollo*, pp. 79-80.

> From the evidence, it appears that parties are both suffering from psychological incapacity to perform their essential marital obligations under Article 36 of the Family Code. The parties entered into a marriage without as much as understanding what it entails. They failed to commit themselves to its essential obligations: the conjugal act, the community of life and love, the rendering of mutual help, the procreation and education of their children to become responsible individuals. Parties' psychological incapacity is grave, and serious such that both are incapable of carrying out the ordinary duties required in marriage. The incapacity has been clinically established and was found to be pervasive, grave and incurable.[9] (Emphases supplied)

The inadequacy of the trial court's ruling and its understanding of the concept of psychological incapacity is apparent. Psychological incapacity, as a ground for the declaration of nullity, is not a lack of understanding of what marriage entails, nor is it a "failure to commit" one's self to the essential marital and familial obligations.[10] It is a downright *inability* to understand, perform, or comply with, the said duties and obligations.[11] How can any appellate court rely on the trial court's assessment of whether the evidence constituted psychological incapacity when there is none and its understanding of the concept of psychological incapacity is doctrinally flawed?

The trial court then characterized the parties' psychological incapacity as grave and serious, without even going over the evidence upon which it relied in making such conclusion. It appears to the Court that the last sentence of the trial court's decision – that "the incapacity has been clinically established" -- encapsulates the process by which the trial court arrived at its judgment. It relied merely and solely on the conclusions of the psychological experts, without doing its duty to make an independent assessment of the evidence.

To reiterate, while I agree that the trial court's ruling on the psychological incapacity of the parties should be final and binding on the appellate courts when such ruling is based on the facts **and** on the opinion of the experts, I believe that the trial court's decision in this case was not based on facts, but ***solely*** on the opinion of the experts. Such blind reliance by the trial court was an abdication of its duty to go over the evidence for itself.

While the courts may consider the assistance of the experts, the courts are duty-bound to assess not only the correctness of the experts' conclusions, but also the factual premises upon which such conclusions are based. The expert's conclusions, like any other opinion, are based on certain assumptions or premises. It is the court's job to assess whether those assumptions or premises are in fact true or correct, and supported by evidence on record. The soundness of experts'

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9 Id. at 80.

10 *Republic v. Galang*, G.R. No. 168335, June 6, 2011, 650 SCRA 524, 539-540; *Agraviador v. Amparo-Agraviador*, G.R. No. 170729, December 8, 2010, 637 SCRA 519, 533-534.

11 *Antonio v. Reyes*, 519 Phil. 337, 351 (2006).

conclusions lie in the ***quantity and quality*** of the input they received in making their conclusions. This is precisely where the courts take the reins from these experts. The root cause of psychological incapacity must not only be clinically identified by experts, it must also be sufficiently proven and clearly explained in the decision.[12]

The expertise of courts lies in determining which facts are admissible, which are relevant, which carry weight, which have been proven, which have been debunked. In resolving legal disputes, the courts have the expertise in evaluating the quantity, quality, and relevance of the facts to the legal issue involved. Courts have to conduct its independent assessment of the quality of the facts that the psychologists relied upon in support of their conclusion. It is only if, and when, the court is convinced that the psychologists' conclusions are strongly anchored on verifiable, admissible, and relevant evidence that it can adopt the psychologists' findings. Even petitioner's expert witness, Fr. Healy, acknowledged in his testimony that it is the court's job, not that of the expert, to verify the truthfulness of the factual allegations regarding respondent's alleged habits. Fr. Healy cautioned that his opinion rests only on his ***assumption*** that the factual allegations are true.[13]

It remains my opinion that the factual premises for the experts' conclusions in this case were not established ***in court***. While the experts testified that the alleged dysfunction in respondent's family and her subsequent actions within her marriage are indicative of a Narcissistic Personality Disorder, the court records themselves reveal no credible and preponderant evidence of the supposed family dysfunction in respondent's childhood and of her supposed narcissistic habits later in life. There was no independent witness presented, who is knowledgeable of respondent's upbringing and of her actions before and after the celebration of marriage. This is detrimental in proving that the cause of her psychological incapacity occurred before, or at the time of the celebration of, the marriage,[14] and renders the experts' opinion on the root cause of her psychological incapacity conjectural or speculative. Also there was no evidence of respondent's supposed obsessive desire for attention and selfishness, which obsession, according to the experts, indicates a narcissistic personality. The most *that was proven* was a single incident wherein she was found in a hotel room with another man (after they have separated in fact), a penchant for visiting salons and for meeting friends over a *mahjong* game. This can hardly be considered as a pattern, defined as "a reliable sample of traits, acts or other observable features characterizing an individual,"[15] much less an obsession.

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12 *Republic v. Dagdag*, 404 Phil. 249, 260 (2001); *Republic v. Court of Appeals*, 335 Phil. 664, 677 (1997).

13 *Rollo*, p. 676.

14 *Republic v. Galang*, supra note 10 at 540-541; *Agraviador v. Amparo-Agraviador*, supra note 10 at 535-536.

15 BLACK'S LAW DICTIONARY (abridged 5th ed.)

Much is said about respondent's undesirability as a mother for supposedly exposing her children to the "culture of gambling;"[16] this, from the evidence that she brought her children with her to their "aunt's house" where she frequently played mahjong. I find this judgment unsupported by the evidence and irrelevant. While it has been proven that respondent played mahjong, there is no evidence whatsoever that it involved gambling, which is "the act of playing a game and consciously risking money or other stakes on its outcome."[17] Without the element of gambling, a mother's act of bringing her kids with her when she meets with friends (which is the most that can be said of this matter) can hardly be described as undesirable. Even Fr. Healy acknowledged that playing mahjong and spending time with friends are not disorders by themselves. They would only constitute psychological incapacity if inordinate amounts of time are spent on these activities to the detriment of one's familial duties.[18] The Court, in our Decision, applied Fr. Healy's standards. We concluded that respondent was not psychologically incapacitated because there was no proof that she spent inordinate amounts of time in these alleged activities or that her kids were adversely affected.[19] On the contrary, the records revealed her efforts to maintain supervision of her kids, even when she was among her friends. Further, the kids recalled that, after respondent left the conjugal home, she would surreptitiously visit them in their schools; and, once granted visitation rights, spent weekends with them and took care of them at any time they got sick.[20] These are hardly the actions of a woman with an inability to understand her filial duties and obligations.

It must be emphasized that the Court does not disrespect the experts' findings when it disagrees with them; nor does it assert that it is wiser in analyzing human behavior. It is simply performing its duty to go over the evidence independently, consider the experts' opinions, and apply the law and jurisprudence to the facts of the case. The Court cannot simply adhere to the experts' opinion when there is an obvious dearth of factual evidence. The Court is not a passive receptacle of expert opinions; otherwise, there would be no need for psychological incapacity cases to be tried before the courts. Courts would be reduced to a mere rubber stamp for the expert's conclusions. That is not what the framers of Article 36 envisioned.

In the end, this is simply the sad story of two people who married and started a family, but realized early on that they have made a mistake. They both contributed to the demise of their marriage, as hurt people often do. Despite their brokenness, they tried to make the most of the situation, caring for their children while they try to move on with their now separate lives. Now, in their advanced years, they want a magical solution that would erase any trace of their follies of youth; unfortunately, the provision for psychological incapacity is not such a

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16 Majority Opinion, pp. 18-19.
17 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabridged version).
18 *Rollo*, p. 676.
19 Id. at 685.
20 Id. at 679.

miraculous fix for dissolving the marriage bond. The policy of our 1987 Constitution continues to be to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. (Art. 11, Sec. 12, Art. XV, Secs. 1-2) The existence of any doubt should still be resolved in favor of the validity of the marriage.

I, therefore, submit that petitioner's Motion for Reconsideration be denied with finality.

MARIANO C. DEL CASTILLO
Associate Justice