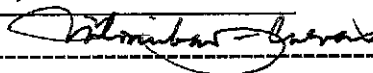


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G.R. No. 196359- ROSANNA L. TAN-ANDAL, *Petitioner* v. MARIO VICTOR M. ANDAL, *Respondent*.

Promulgated:

May 11, 2021



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CONCURRING OPINION

M. LOPEZ, J.:

Petitioner Rosanna L. Tan-Andal (Rosanna) married Mario Victor M. Andal (Mario) on December 16, 1995. Rosanna gave birth to Ma. Samantha, the only child of the parties, the following year. Since Mario had no work, Rosanna allowed Mario to run the construction firm she set up before they got married. During their marital cohabitation, Mario showed emotional immaturity, financial irresponsibility, irritability and paranoia. Mario also struggled with substance abuse and despite attempts to rehabilitate him, he relapsed to drugs use. Rosanna took care of their child without Mario's help and support.

Rosanna eventually filed a Petition for Declaration of Nullity of Marriage. To prove Mario's psychological incapacity, Rosanna presented, as expert witness, a psychiatrist who diagnosed Mario with Narcissistic Antisocial Personality Disorder and Substance Abuse Disorder with Psychotic Features of Paranoid Delusions and Bizarre Behavior. The psychiatrist testified that Mario's personality disorder was grave, deeply rooted in his character, and impermeable to any form of psychiatric therapeutic modality. The trial court voided the parties' marriage and awarded the custody of their child to Rosanna. The trial court likewise declared Rosanna as the sole and absolute owner of a duplex including the lot on which it was built. However, the Court of Appeals reversed the trial court and ruled that the psychiatrist's evaluation is unscientific and unreliable. According to the CA, the psychiatrist's conclusion was based on second-hand information provided to her by the petitioner. Hence, this petition.

I am of the view that Rosanna has sufficiently proven Mario's psychological incapacity. Mario's disorders were seen as a pervasive life pattern of irresponsibility, inability to maintain his own direction in life without the financial help and support of Rosanna and other people, impulsivity, aggression and lack of empathy. The frequency, intensity and duration of these symptomatic behaviors similarly indicated their gravity and seriousness. The totality of evidence in this petition confirms that Mario's disorders rendered him


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psychologically incapacitated, thus, incapable of fulfilling his essential marital obligations as embodied in the Family Code.

I agree with the conclusion reached in the *ponencia* ably written by the Honorable Marvic M.V.F. Leonen. With the ponente's indulgence, I offer my observations.

Psychological incapacity is a legal concept, but its root cause can be a mental or personality disorder.

There are clear scientific standards to determine certain medical conditions (insanity, serious sexually transmissible disease, incapability to consummate, etc.) that serve as qualifying characteristics for a legal status (the marriage is voidable, etc.). Psychological incapacity, on the other hand, does not have any clinical equivalent. Justice Leonen expounded that psychological incapacity is not a mental disorder recognized by the scientific community but is a purely legal concept. However, psychologists and psychiatrists are forced to ascribe a diagnosis because *Republic v. CA and Molina*¹ requires a root cause that is medically or clinically identified.

In *Leouel Santos v. CA*² and reiterated in *Molina*, the Court ruled, *viz*:

x x x x “psychological incapacity” should refer to no less than a mental (not physical) incapacity that causes a party to be truly 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.

The learned *ponente* also mentioned personality structure manifested through clear acts of dysfunctionality that undermines the family, and this aspect of personality fulfills the law's intent to limit psychological incapacity to “psychic causes”.

Indeed, the term psychological incapacity *per se* is and has always been a legal concept. For the concept to be meaningful and to settle the confusion about

¹ G.R. No. 108763, February 13, 1997, 335 PHIL 664-693.

² G.R. No. 112019, January 4, 1995, 310 PHIL 21-49.



what really constitutes inability to understand and comply with one's marital obligations, there should be indicators or facts to verify the concept. **For the court to arrive at a legal conclusion of psychological incapacity, the aggrieved party must prove certain facts including the root cause which may be a mental or personality disorder.** To establish the root cause of psychological incapacity, a psychologist or psychiatrist may be required to assess and evaluate the psychological condition of the parties. By the very nature of Article 36 cases, due regard must be given to expert opinion on the psychological and mental disposition of the respondent.³

Further, the term "personality structure" appears in the literature of psychology.⁴ Personality structure is defined as the organization of the personality in terms of its basic, enduring components and their relationship to each other.⁵ The famous Sigmund Freud talked about personality structure as tripartite, or composed of the id, ego and superego, developing at different stages in our lives.⁶ Neither the petitioner nor an ordinary witness can solely characterize the so-called personality structure of one who is allegedly psychologically incapacitated. An expert in the field of psychology may be necessary to explain and prove that the personality structure of the respondent, or both parties, has manifested itself through acts of dysfunctionality.

The fifth version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), used by clinicians for assessments and diagnosis of mental disorders, may be considered. The manual describes personality disorder as a sub-class or one of the major diagnostic categories of mental disorders.⁷ In *Santos* and *Molina*, psychological incapacity was explained in the context of mental incapacity and personality disorder; there is no indication to limit psychological incapacity to the term "personality disorder" in its technical sense. The intention was simply to differentiate mental or psychologic condition from physical incapacity. To confine the root cause of psychological incapacity to personality disorders only would negate the discussions of the Civil Code and Family Law Committee on the existence of relative incapacity,⁸ which is not possible in personality disorders that are, by their nature, pervasive or deeply ingrained in the personality of the individual. Further, mental disorders like psychosis, characterized by distortions in thinking, perception, emotions,

³ Tani-Dela Fuente v. Dela Fuente, G.R. No. 188400, March 8, 2017, 807 PHIL 31-51.

⁴ The term "personality structure" can be found in hundreds of references in the field of psychology. See R. Christie and F. Lindner, *Annual Review of Psychology*, 1963 14:1, 201-230.

⁵ As defined by the American Psychological Association (APA). See APA Dictionary.

⁶ The Freudian Theory of Personality.

⁷ Categories in the DSM-5 include anxiety disorders, bipolar and related disorders, depressive disorders, feeding and eating disorders, obsessive-compulsive and related disorders, and personality disorders.

⁸ Minutes of the Civil Code and Family Law Committee Meeting on July 26, 1986, p. 9.

Justice Puno observed that under the present draft provision, it is enough to show that at the time of the celebration of marriage, one was psychologically incapacitated so that later on if he can already comply with the essential marital obligations, the marriage is still *void ab initio*.

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Justice Puno and Judge Diy, however, pointed out that it is possible that after the marriage, one's psychological incapacity becomes manifest but later on, he was cured. Justice Reyes and Justice Caguioa opined that the remedy in this case is to allow to remarry.

language, sense of self and behavior,⁹ although not categorized as personality disorder, may cause a party's inability to comply with marital obligations. The root cause of psychological incapacity should therefore be interpreted to encompass other subcategories of mental disorders, not just personality disorders.

Certainly, diagnosis of a personality or other mental disorder will only clarify and strengthen an action under Article 36. The resulting incapacity as it relates to the essential marital obligations, which is the core issue in Article 36 cases, must still be proven. Ultimately, it is the judge, not the psychiatrist or the psychologist, who gets to decide when a party is incapable of fulfilling the essential obligations of marriage.

The concepts of root cause and juridical antecedence should not be confused with childhood development.

In *Molina* it was held that 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. The issue on root cause needs to be revisited because a lot of cases were denied simply because of petitioner's failure to present evidence or witness (expert or corroborative) on the respondent's childhood development.

It must be emphasized that in Article 36 cases, it is the respondent's psychological incapacity to perform essential marital obligations – not his childhood development or upbringing – that must be proven in court. The root cause of the incapacity refers to the respondent's disorder, not his childhood development. Even without a description of childhood development of the party alleged to be psychologically incapacitated, a wife or husband's narration to the psychologist as to what could have given rise to the psychological incapacity should already suffice.

Both heredity and environment shape personality. The interplay of these factors defines the development of characteristic traits in an individual. There are a lot of things that happen to a child outside of the home that contribute to his character development, such as peer pressure, media, or relations with neighbors, teachers and other people the child gets in contact with. For example, although much can be traced on how a child was reared, there are children from broken families or with physically abusive parents who grew up to be ideal partners.

Furthermore, it is not possible to truly have a witness who can trace every fact or circumstance regarding a person's childhood development. It is doubtful

⁹ World Health Organization. "Mental Disorders". Available at <https://www.who.int/> (Last Accessed: January 20, 2021).

that siblings or parents of the respondent would come to court and testify as to how their family member was brought up and became psychologically incapacitated. At best, statements from respondent's family members are only their recollection of events. In determining the root cause, what's important is the assessment and diagnosis by a psychologist whose psychological evaluation report may be considered as an *amicus curiae* brief.

Regarding juridical antecedence, it simply means, as required by the clear text of Article 36 of the Family Code, that psychological incapacity must exist at the time of the celebration of marriage although such incapacity becomes manifest only after its solemnization. The provision does not refer to the disorder or root cause which should be present during the time the marriage is celebrated, but rather, the incapacity to fulfill marital obligations must have attached at such moment or prior to thereto. Surely, tracing childhood development is not the only way which would reveal and clarify the state of mind and incapacity of the party at the moment of celebration of marriage.

Psychological incapacity need not be incurable.

The *ponencia* discussed that medical health professionals use prognosis or the prospect of recovery as anticipated from the usual course of disease or peculiarities of the case. Curability or incurability is not used as a description. Significantly, the textual requirements of Article 36 do not mention incurability. There is no basis for mandating the element of incurability.¹⁰

Incurability as a characterization of psychological incapacity appears antithetical. Even if some mental disorders are treatable or improvement possible through medicine, therapy, or other treatments, the subsequent cure will not make the marriage valid. Further, a person may be psychologically incapacitated *vis-à-vis* his or her spouse but he or she is just like any regular person to the rest of the world. In fact, there is no law that prohibits a psychologically incapacitated person from marrying again.¹¹ If psychological incapacity is permanent or incurable, it cannot be confined within one's relations with the present spouse. This requirement creates an unintended consequence and confusion. How can a person who is permanently psychologically incapacitated still contract a valid marriage later on?

How do we determine psychological incapacity?

In *Santos*, the Court stated that psychological incapacity, as interpreted by the Catholic Marriage Tribunal, must be characterized by gravity, juridical

¹⁰ *Amicus Curiae* Brief of Dean Melencio S. Sta. Maria, pp. 11-12.

¹¹ Justice Alicia V. Sempio-Diy. Psychological Incapacity as a Ground to Dissolve Marriage. San Beda L.J. 41 (1994). According to J. Sempio-Diy, "the psychologically incapacitated person would not be disqualified from marrying again".

antecedence and incurability. Jurisprudence mentioned some guidelines and requisites but did not specify the procedure on how to assess psychological incapacity. Justice Leonen elucidated that psychological incapacity develops within the marital relationship as a result of interpersonal dynamics of the couple. Necessarily, different behaviors manifested by the husband or wife before and during the marriage must be considered, but how do we gather information about these behaviors?

The spouse of the person alleged to be psychologically incapacitated may be interviewed by the psychologist since he or she is in the best position to describe his or her spouse's inability to comply with marital obligations. The period of marital cohabitation and matters involving the spouses' affective communication with each other, the time they devoted to each other, the spouses' dissatisfaction on matters involving family income and expenses, manner of resolving major concerns, issues and problems in the family, style of rearing their child, interpersonal dealings with each other's family members and other significant events can only be discussed by the spouse. Other indicia of psychological incapacity that can only be witnessed by the spouse include paraphilia, aberrant sexual behavior, sexual promiscuity and inhibitions. Based on the spouse's observations, the psychologist can identify and explain whether the respondent is psychologically incapacitated.

A clinical psychologist, once qualified as an expert witness, interprets the facts of the case and gives his or her opinion, unlike an ordinary witness who is required to have personally seen or heard something. Expert opinion is crucial to enable courts to properly assess the issue and arrive at a judicious determination of each case.¹² As emphasized in *Hernandez v. Court of Appeals*,¹³ expert testimony is important to establish the precise cause of a party's psychological incapacity.

Moreover, a spouse's testimony cannot be hearsay since the spouse has personal knowledge which is a substantive prerequisite for accepting testimonial evidence. Other witnesses may likewise be presented but should not be required. Courts should bear in mind that it may be difficult or even impossible to obtain witnesses who have personal knowledge of the different behaviors displayed by a spouse during marital cohabitation. Even if other witnesses are able to observe the respondent, their testimony is only based on isolated incidents or "snapshots" of the respondent's life rather than continuing patterns. Nevertheless, factual information gathered by courts from these witnesses may be considered corroborative evidence.

Lack of personal examination or interview of the psychologically incapacitated spouse does not invalidate the findings of the expert.

¹² *Ngo Te v. Yu-Te*, G.R. No. 161793, February 13, 2009, 598 PHIL 666-710.

¹³ G.R. No. 126010, December 8, 1999, 377 PHIL 919-933.



As *Marcos v. Marcos*¹⁴ asserts, there is no mandatory requirement that a party alleged to be psychologically incapacitated be personally examined. The Court explained:

Psychological incapacity, as a ground for declaring the nullity of a marriage, may be established by the totality of evidence presented. There is no requirement, however, that the respondent should be examined by a physician or a psychologist as a condition *sine qua non* for such declaration.

In *Dela Fuente v. Dela Fuente*,¹⁵ the Court ruled that the psychologist's testimony, as corroborated by the petitioner, sufficiently proved that respondent suffered from psychological incapacity. In *Camacho-Reyes v. Reyes*,¹⁶ the Court reiterated that the non-examination of one of the parties will not automatically render as hearsay or invalidate the findings of the examining psychologist since marriage, by its very definition, necessarily involves only two persons. The totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other.

In other words, diagnosis by an expert should not be dismissed as "unscientific" just because the expert has not interviewed the person alleged to be psychologically incapacitated. Not even a personal interview of the respondent can elicit accurate information because it is highly doubtful that a respondent would admit that he or she is psychologically incapacitated. This is a characteristic of one who has a personality disorder; he or she will not admit that something is wrong with him or her. Besides, while examination of the respondent is desirable, it may not be realistic in all cases given the oftentimes estranged relations between the parties. How can a person be examined when he or she persistently refuses to be interviewed? It would be absurd for the psychologically incapacitated party's refusal or defensiveness to be taken against the petitioner.

Totality of evidence and the quantum of evidence required must be clarified.

Psychological incapacity may be established by the totality of evidence presented.¹⁷ There is no calibrated standard as to how totality of evidence is determined. It is up to the courts to decide on a case-to-case basis since no situation is identical with another.¹⁸ Here, Mario's behaviors were severe enough to warrant a diagnosis of different disorders. Rosanna has likewise documented

¹⁴ G.R. No. 136490, October 19, 2000, 397 PHIL 840-852.

¹⁵ *Supra* note 3.

¹⁶ G.R. No. 185286, August 18, 2010, 642 PHIL 602-634.

¹⁷ *Supra* note 14.

¹⁸ *Supra* note 12.

records of Mario's drug problem. The root cause of his psychological incapacity was identified and its incapacitating nature was fully explained by Dr. Garcia. As aptly ruled by the trial court, Mario is incapable of performing his marital obligations and had shown utter disregard for his wife. On the other hand, the negative behaviors of Rosanna, as mentioned by Mario, were situational behaviors or her reactions to Mario's ill behaviors and drug addiction. Mario's allegations were unsubstantiated.

The *ponencia* prescribed that since there is a presumption of validity of marriage, Article 36 cases must be proven by clear and convincing evidence which is a more stringent standard than preponderance of evidence. Clear and convincing evidence requires that the evidence must be overwhelming enough to clearly indicate the winning party. On the scales of justice, the tilt must weigh *heavily* in favor of a party to the case.

While the principle is every intendment of the law or fact leans toward the validity of marriage,¹⁹ it must be stressed that the quantum of evidence in a nullity of marriage suit, being a civil case, is preponderance of evidence.²⁰ Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is considered synonymous with the term "greater weight of credible evidence".²¹

To clarify, the principle always presume marriage – *semper praesumitur pro matrimonio* – was applied in cases that dealt with the establishment of the fact of celebration of marriage or validity of the ceremony by parties who dwelt together in effectual or apparent matrimony.²² The presumption served as a curative rule leaning towards legalizing matrimony.

On the other hand, in *Antonio v. Reyes*,²³ the Court stated that like in all civil matters, the petitioner in an action for declaration of nullity under Article 36 must be able to establish the cause of action with a preponderance of evidence. This standard of proof was reiterated in *Santos-Gantan v. Gantan*²⁴ where the Court explained that in a civil case for nullity of marriage under Article 36, the burden of proof lies upon the petitioner to prove his or her case by

¹⁹ *Sevilla v. Cardenas*, G.R. No. 167684, July 31, 2006, 529 PHIL 419-436.

²⁰ Section 1, Rule 133 of the Revised Rules on Evidence provides:

"Section 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance of evidence or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witness' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number."

²¹ *Ogawa v. Menigishi*, G.R. No. 193089, July 9, 2012, 690 PHIL 359-368.

²² *See Adong v. Cheong Seng Gee*, G.R. No. 18081, March 3, 1922 and *Avenido v. Avenido*, G.R. No. 173540, January 22, 2014.

²³ G.R. No. 155800, March 10, 2006, 519 PHIL 337-371.

²⁴ G.R. No. 225193, October 14, 2020 (First Division).

preponderance of evidence or balance of probabilities. The burden of proof is discharged by the petitioner if he or she is able to prove his or her cause of action more likely than not. I see no reason to deviate from these rulings. To my mind, imposing a higher threshold of evidence would make it more burdensome for a party to be released from marriage void *ab initio*.

The petition is Daubert compliant.

When a clinical psychologist appears in court, his oral testimony may or may not be admitted in evidence. In the United States, the *Frye v. U.S.*²⁵ and *Daubert v. Merrell Dow Pharmaceuticals*²⁶ standards determined the admissibility or inadmissibility of scientific evidence, including those made by experts in clinical psychology. *Frye* relied on general acceptance of the scientific community, while *Daubert* emphasized the role of the judge as “gatekeeper” in screening the evidence presented in court, defining empirical criteria, and recognizing the possible abuse from supposed expert’s opinion under the principle of *ipse dixit* or “because I say so”. *Frye* and *Daubert* have been recognized in this jurisdiction in the case of *Herrera v. Alba and Cuesta-Vilches*.²⁷ Justice Leonen eruditely discussed these standards.

Here, Dr. Valentina Del Fonso Garcia (Dr. Garcia), a physician-psychiatrist, employed clinical interview and Mental Status Examination (MSE) used by mental health professionals around the world to gather information for diagnostic purposes. DSM-5²⁸ was likewise used as a reference. The trial judge was satisfied that Dr. Garcia’s reasoning or method is scientifically valid and relevant to the issue. The petition is, therefore, *Daubert* compliant because it was screened by the trial judge.²⁹ In the appreciation of the evidence showing Mario’s psychological incapacity, the position and role of the trial judge should not be downplayed but accorded due importance and respect.³⁰

The qualifications of a clinical psychologist and a psychiatrist must also be clarified. Psychiatrists are medical doctors trained in the medical field and authorized to prescribe medication. Clinical psychologists, on the other hand, are trained to conduct psychological evaluation; they are experts in the

²⁵ 54 App.D.C. 46, 293 F. 1013 (1923).

²⁶ 509 US 579, 113 S.Ct. 2786 (1993).

²⁷ G.R. No. 148220, June 15, 2005, 499 PHIL 185-206.

²⁸ According to the American Psychiatric Association, the new edition of Diagnostic and Statistical Manual of Mental Disorders (DSM-5) is the product of more than 10 years of effort by hundreds of international experts in all aspects of mental health. Used by clinicians and researchers to diagnose and classify mental disorders, the criteria are concise and explicit, intended to facilitate an objective assessment of symptom presentations in a variety of clinical settings - inpatient, outpatient, partial hospital, consultation-liaison, clinical, private practice, and primary care. Available at <https://www.psychiatry.org/psychiatrists/practice/dsm/about-dsm> (Last Accessed: January 8, 2021).

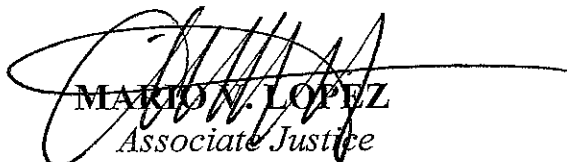
²⁹ Antero Rosauo V. Arias, Jr., A Thematic Look at Selected Cases of Marital Nullity in the Philippines, IAFOR Journal of Psychology & the Behavioral Sciences Volume 2, Issue 3, Winter 2016. Available at: <https://iafor.org/archives/journals/iafor-journal-of-psychology-and-the-behavioral-sciences/10.22492.ijpbs.2.3.05.pdf> (Last Accessed: January 10, 2021).

³⁰ Kalaw v. Fernandez, G.R. No. 166357, January 14, 2015.

administration and evaluation of psychological tests.³¹ Psychiatrists use psychiatric evaluation or a clinical interview, known as an MSE, to determine a patient's mental functioning such as mood, insight and judgment, among other things. It is possible for people who are manipulative to fake this type of interview, which already happened in *Antonio v. Reyes*. In that case, the psychiatrist of respondent Yvonne Reyes made use of the Comprehensive Psychopathological Rating Scale (CPRS), a type of MSE, to evaluate her. The psychiatrist came up with the conclusion that she is not psychologically incapacitated. There is a need for the administration of a battery of psychological tests in evaluating the personality profile of the parties. Psychologists can detect masking reality, "faking good", social desirability, lying, and determine any difference between the interview answers and thoughts of the party examined through certain tests.

In sum, the factual circumstances obtaining in this case warrant the declaration of nullity of Mario and Rosanna's marriage. The totality of evidence presented contemplates Mario's downright inability to comprehend and perform his marital obligations. We cannot condemn Rosanna to stay in a spouseless marriage.³²

ACCORDINGLY, I vote to **GRANT** the Petition for Review on *Certiorari*, to **REVERSE** the Decision dated February 25, 2010 of the Court of Appeals in CA-G.R. CV No. 90303, and to **REINSTATE** the Decision dated May 9, 2007 of the Regional Trial Court, Branch 260, Paranaque City, in Civil Cases Nos. 01-0228 and 03-0384.


MARION N. LOPEZ
Associate Justice

³¹ American Psychiatric Association. What is Psychiatry? Available at: <https://www.psychiatry.org/patients-families/what-is-psychiatry-menu> (Last Accessed: January 10, 2021).

³² Justice Marvic M.V.F. Leonen's Dissenting Opinion in *Matudan v. Republic*, G.R. No. 203284, November 14, 2016.