THIRD DIVISION

G.R. No. 236629 – REPUBLIC OF THE PHILIPPINES, *petitioner* v. LIBERATO P. MOLA CRUZ, *respondent.*

Promulgated:
July 23, 2018

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CONCURRING OPINION

LEONEN, *J.*:

I concur. The marriage between Liberato P. Mola Cruz (Liberato) and Liezl (Liezl) Conag is void due to psychological incapacity.

To recall, this Court first interpreted Article 36 of the Family Code in the 1995 case of *Santos v. Court of Appeals*.[1] In *Santos*, this Court outlined the history of Article 36, noting that the term "psychological incapacity" was not defined in the law "to allow some resiliency in its application."[2] The Family Code Revision Committee gave no examples of psychological incapacity to prevent "[limiting] the applicability of the provision under the principle of *ejusdem generis*."[3]

Still, standards were set in *Santos*. At the very least, the psychological incapacity should be 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."[4] In addition, psychological incapacity must refer to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage"[5] and should be characterized by gravity, juridical antecedence, and incurability.[6]

This Court went on to lay down more specific guidelines for resolving Article 36 petitions in the 1997 case of *Republic v. Court of Appeals and*

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1 310 Phil. 21 (1995) [Per J. Vitug, En Banc].
2 Id at 36.
3 Id. *citing Salita v. Magtolis*, 303 Phil. 106 (1994) [Per J. Bellosillo, First Division]. *See also Republic v. Court of Appeals and Molina*, 335 Phil. 664, 677 (1997) [Per J. Panganiban, En Banc].
4 Id. at 40.
5 Id.
6 Id. at 39.

Molina.[7] The *Molina* guidelines, as they have been called since, are as follows:

> (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 psychically 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 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.
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> (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological 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,

[7] 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

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.[8] (Citations omitted)

With the *Molina* guidelines, psychological incapacity petitions were rarely granted by this Court. From 1997 to 2008,[9] only the parties in

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[8] 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).

[9] *Navales v. Navales,* 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Bier v. Bier,* 570 Phil. 442 (2008) [Per J. Corona, First Division]; *Navarro, Jr. v. Cecilio-Navarro,* 549 Phil. 632 (2007) [Per J. Quisumbing, Second Division]; *Tongol v. Tongol,* 562 Phil. 725 (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 (2006) [Per J. Tinga, Third Division]; *Villalon v. Villalon,* 512 Phil. 219 (2005) [Per J. Ynares-Santiago, First Division]; *Republic v. Iyoy,* 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Quintero*-Hamano, 472 Phil. 807 (2004) [Per J. Corona, Third Division]; *Ancheta v. Ancheta,* 468 Phil. 900 (2004) [Per J. Callejo, Sr., Second Division]; *Dedel v. Court of Appeals*, 466 Phil. 266 (2004) [Per J. Ynares-Santiago, First Division]; *Choa v. Choa*, 441 Phil. 175 (2002) [Per J. Panganiban, Third Division]; *Pesca v. Pesca,* 408 Phil. 713 (2001) [Per J. Vitug, Third Division]; *Republic v. Dagdag,* 404 Phil. 249 (2001) [Per J. Quisumbing,

Antonio v. Reyes[10] were found to have complied with all the requirements of *Molina*.

This led the Court to state in *Ngo Te v. Yu Te*,[11] decided in 2009, that "jurisprudential doctrine has unnecessarily imposed a perspective by which psychological incapacity should be viewed."[12] As accurately noted by the Court, this view was "totally inconsistent with the way the concept [of psychological incapacity] was formulated."[13] The *Molina* guidelines were then compared to a "strait-jacket" to which all Article 36 petitions are "forced to fit," thus:

> In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the [Office of the Solicitor General's] exaggeration of Article 36 as the "most liberal divorce procedure in the world". The unintended consequences of Molina, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage.[14] (Citation omitted)

The same observation of the "rigidity" of the *Molina* guidelines was made in *Kalaw v. Fernandez*,[15] resolved on reconsideration in 2015, thus:

> The [*Molina*] guidelines have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of "less specificity" obviously to enable "some resiliency in its application." Instead, every court should approach the issue of nullity "not on the basis of a priori assumptions, predilections or generalizations, but according to its own facts" in recognition of the verity that no case would be on "all fours" with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every "trial judge must take pains in examining the factual milieu and the appellate court must, as

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Second Division]; *Marcos v. Marcos,* 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]; *Hernandez v. Court of Appeals,* 377 Phil. 919 (1999) [Per J. Mendoza, Second Division].

10 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

11 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

12 Id. at 669.

13 Id.

14 Id. at 695–696.

15 G.R. No. 166357, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/166357.pdf> [Per J. Bersamin, Special First Division].

> much as possible, avoid substituting its own judgment for that of the trial court."[16] (Citations omitted)

Since *Ngo Te*'s promulgation in 2009, *Kalaw* would only be the fifth[17] case voiding the parties' marriage due to psychological incapacity, at least through a signed decision or resolution. The present case would only be the sixth. The State's interpretation of its constitutional mandate to protect marriages as the foundation of the family remains the same: all Article 36 petitions are to be challenged until they reach this Court.

Protecting marriages, however, is not the same as forcing partners to stay together when they clearly no longer wish to do so. While the law characterizes marriage as an "inviolable social institution"[18] and a "permanent union,"[19] its inviolability and permanence should be consistent with its purpose of establishing conjugal and family life.[20] This is obviously not the case here, with Liezl having left Liberato to cohabit with another man. Forcing Liberato to stay married to a woman who has no intention of sharing her life with him would have been cruel and inhuman.

Furthermore, the notion of "psychological incapacity" should not only be based on a medical or psychological disorder; it should consist of the inability to comply with the essential marital obligations such that public interest is imperiled. Marriage should be protected only insofar as it affects the stability of society; otherwise, the State has no business interfering with intimate arrangements.

I maintain that divorce is more consistent with our fundamental rights to liberty and autonomy. We had absolute divorce laws in the past,[21] but as the law stands now, former partners have to pathologize each other in order to separate. This is inconsistent with the reality that we are humans and that we make mistakes. There is no need to punish those who simply made the wrong choice of people to love.

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16 Id. at 6–7.

17 The other four cases are *Azcueta v. Republic*, 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division]; *Halili v. Santos-Halili*, 607 Phil. 1 (2009) [Per J. Corona, Special First Division]; *Camacho-Reyes v. Reyes*, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; and *Aurelio v. Aurelio*, 665 Phil. 693 (2011) [Per J. Peralta, Second Division].

18 CONST., art. XV, sec. 2 provides:
Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

19 FAMILY CODE, art. 1.

20 FAMILY CODE, art. 1.

21 Act No. 2710 (1917) allowed the filing of a petition for divorce on the ground of adultery on the part of the wife, or concubinage on the part of the husband. (*Valdez v. Tuason*, 40 Phil. 943, 948 (1920) [Per J. Street, En Banc]) Executive Order No. 141, or the New Divorce Law, effective during the Japanese occupation, provided for eleven grounds for divorce, including "intentional or unjustified desertion continuously for at least one year prior to the filing of [a petition for divorce]" and "slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable." (*Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per J. Ozaeta, En Banc]).

ACCORDINGLY, I vote to **DENY** the Petition and **AFFIRM** the Decision of the Court of Appeals[22] voiding the marriage between Liberato P. Mola Cruz and Liezl Conag.

MARVIC M.V.F. LEONEN
Associate Justice

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22 CA-G.R. CV No. 105873.