THIRD DIVISION

G.R. No. 248569 — ERICSON C. CABUTAJE, Petitioner, **v. REPUBLIC OF THE PHILIPPINES and ROMELIA A. CABUTAJE,** Respondents.

Promulgated:

JAN 15 2025

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DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* declares as void the marriage between petitioner Ericson C. Cabutaje (petitioner) and private respondent Romelia A. Cabutaje (private respondent) based on the latter's incapacity as sufficiently shown by the requisites of gravity, incurability, and juridical antecedence as jurisprudentially clarified in the case of *Tan-Andal v. Andal.*[1]

With careful consideration of the requisites for the declaration of nullity of a marriage as applied to the facts of the instant case, I dissent.

I dissent with respect to the finding of juridical antecedence of private respondent's psychological incapacity because, while juridical antecedence may indeed be determined by, among others, examining the "lived conjugal life,"[2] the *ponencia* does not identify the evidence where psychologist Dr. Nedy Tayag based his assessment. This is consistent with the recognition in *Tan-Andal v. Andal* that even with the recalibration of the quantum of evidence required and the nuancing of the definition of psychological incapacity, such psychological incapacity must still be proven to have existed at the time of the celebration of marriage and not after the same, given the explicit language of Article 36 of the Family Code.

On this requisite, I submit that the totality of evidence offered by petitioner in this case is wanting.

Specifically, while the *ponencia* reiterates that the psychological examination was based not only on the interview of petitioner and his sister but also of a common friend of the spouses, Cherry Christine Zunega (Zunega), one who knew private respondent from before the marriage, it remains unclear on the facts that occurred prior to the parties' marriage which may evidence the existence of private respondent's psychological incapacity prior to the celebration of her marriage with petitioner.

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1 902 Phil. 558 (2021) [Per J. Leonen, *En Banc*].

2 *Ponencia*, p. 10.

Although the *ponencia* additionally includes a discussion of facts attested to by Zunega, i.e., when the couple met, it was a "whirlwind romance" and that they were forced to get married due to the unplanned pregnancy, these facts still do not persuade a finding of juridical antecedence. While painting a situation which was far from ideal, these facts are not reasonably traceable back to a depiction of the existence or origin of a personality disorder which later on became the root of her psychological incapacity within the contemplation of Article 36 of the Family Code.

To be sure, in finding juridical antecedence for purposes of determining psychological incapacity, I submit that the facts which causally link private respondent's behaviors during the marriage to her pre-marital behavior or indicators are crucial in appreciating the same, and attestation to facts which do not depict so simply cannot suffice. For indeed, while the actual behavior of the psychologically incapacitated spouse is a critical indication of the psychological incapacity, its juridical antecedence, as required by the unequivocal language of Article 36, must still be established. Otherwise, as the Court notably clarified in *Tan-Andal v. Andal*, it would be no different from the situation in the case of a divorce, where the issue may have already begun during the marriage and not prior.

Given the foregoing, I submit that while the Court will not hesitate to order the dissolving of a marriage that meets the legal requisites of nullity, it must similarly not be inclined to nullify a marriage which legally warrants preservation in accordance with prevailing law and jurisprudence.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice