SPECIAL FIRST DIVISION

G.R. No. 212717 — REPUBLIC OF THE PHILIPPINES, *petitioner*, ***versus*** **ARIEL S. CALINGO and CYNTHIA MARCELLANA-CALINGO,** *respondents*.

Promulgated:

NOV 23 2022

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

Article 36 of the Family Code details the concept of psychological incapacity in the context of marriage. It reads:

> A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

In *Republic v. Molina*[1] (*Molina*), the Court articulated guidelines for the application and interpretation of the foregoing provision on the basis of the discussions and written memoranda of *amici curiae* Reverend Oscar V. Cruz and Justice Ricardo C. Puno, thus:

> (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 [or she] was assuming, or knowing

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[1] 335 Phil. 664 (1997).

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.

(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.

(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.

(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, 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.
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> 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.
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> (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his [or her] reasons for his [or her] agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[2] (Emphasis supplied)

As the nomenclature suggests, the *Molina* guidelines only serve as a guide in determining the existence of psychological incapacity. The *Molina* guidelines are *not* meant to "straightjacket all petitions for declaration of nullity of marriage."[3]

In the recent case of *Tan-Andal v. Andal*[4] (*Tan-Andal*) the Court, sitting *en banc*, had the opportunity to recalibrate and refine the *Molina* guidelines, and nuance them in order to address the overly restrictive interpretation and application by the courts. It is this reconfiguration as pronounced in *Tan-Andal* which now leads me to revisit and reconsider the position I took in my Concurring Opinion in the assailed March 11, 2020 Decision. Simply stated, I now concur with the *Resolution*'s disposition to grant the Motion for Reconsideration at bar.

For the purpose of recasting the undisputed facts of the instant case in a different light with respect to determining the presence of a psychological incapacity on the part of respondent Cynthia Marcellana-Calingo (Cynthia), *Tan-Andal*'s (i) clarification of the quantum of proof, (ii) its elucidation on the nature of the incapacity that is contemplated by Article 36, as well as (iii) the operational meaning of the psychological incapacity's incurability and gravity are central in import.

First, *Tan-Andal* clarified that the quantum of proof required is clear and convincing evidence, to wit:

> *Molina*, however, is silent on what quantum of proof is required in nullity cases. While there is opinion that a nullity case under Article 36 is like any civil case that requires preponderance of evidence, we now hold

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2 Id. at 676-680. Citations omitted.
3 *Republic v. Javier*, 830 Phil. 213, 221 (2018).
4 G.R. No. 196359, May 11, 2021.

> that the plaintiff-spouse must prove his or her case with *clear and convincing evidence*. This is a quantum of proof that requires more than preponderant evidence but less than proof beyond reasonable doubt. x x x
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> In any case, inasmuch as the Constitution regards marriage as an inviolable social institution and the foundation of the family, courts must not hesitate to void marriages that are patently ill-equipped due to psychic causes inherent in the person of the spouses. In the past, marriages had been upheld solely for the sake of their permanence when, paradoxically, doing so destroyed the sanctity afforded to the institution.[5]

Second, the Court in *Tan-Andal* also amended the jurisprudential interpretation of the nature of the psychological incapacity that is contemplated by Article 36 of the Family Code, and shifts the understanding of the same, thus:

> In light of the foregoing, this Court now categorically abandons the second *Molina* guideline. Psychological incapacity is *neither* a mental incapacity *nor* a personality disorder that must be proven through expert opinion. There must be proof, however, of the durable or enduring aspects of a person's personality, called "personality structure," which manifests itself through clear acts of dysfunctionality that undermines the family. The spouse's personality structure must make it impossible for him or her to understand and, more important, to comply with his or her essential marital obligations.
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> Proof of these aspects of personality need not be given by an expert. Ordinary witnesses who have been present in the life of the spouses before the latter contracted marriage may testify on behaviors that they have consistently observed from the supposedly incapacitated spouse. From there, the judge will decide if these behaviors are indicative of a true and serious incapacity to assume the essential marital obligations.
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> In this way, the Code Committee's intent to limit the incapacity to "psychic causes" is fulfilled. Furthermore, there will be no need to label a person as having a mental disorder just to obtain a decree of nullity. A psychologically incapacitated person need not be shamed and pathologized for what could have been a simple mistake in one's choice of intimate partner, a mistake too easy to make as when one sees through rose-colored glasses. A person's psychological incapacity to fulfill his or her marital obligations should not be at the expense of one's dignity, because it could very well be that he or she did not know that the incapacity existed in the first place.[6]

Third and finally, as explained in the Separate Concurring Opinion of then Senior Associate Justice Estela M. Perlas-Bernabe in *Tan-Andal*, while Article 36, as previously interpreted, requires incurability, it requires so not in the medical sense but in the legal one, to wit:

> Despite these seemingly conflicting views, what remains clear is

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5 Id. at 27-28.

6 Id. at 31-32.

that the requirement of incurability was intended by the Code Committee to have a meaning that is **different from its medical or clinical attribution**:

> Judge Diy proposed that they include physical incapacity to copulate among the grounds for void marriages. Justice Reyes commented that in some instances the impotence x x x is only temporary and only with respect to a particular person. Judge Diy stated that they can specify that it is incurable. **Justice Caguioa remarked that the term "incurable" has a different meaning in law and in medicine.**

This runs in stark contrast to the fourth *Molina* guideline which prescribes that "[s]uch incapacity must also be shown to be **medically or clinically permanent or incurable**."

Thus, moving forward, courts ought to interpret incurability in its legal — not medical or clinical — sense; that is, that psychological incapacity is deemed to be legally incurable when it is clearly and convincingly shown that the spouse persistently fails to fulfill his or her duty as a present, loving, faithful, respectful, and supportive spouse to his or her specific partner. An undeniable pattern of such persisting failure must be established so as to demonstrate that there is indeed a psychological anomaly or incongruity in the spouse relative to the other.

On this note, it must be underscored that incurability can **either be absolute or relative** depending on the interpersonal dynamics of the couple. Thus, the fourth *Molina* guideline is correct insofar as it states that "[s]uch incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex." Verily, psychological incapacity may be relative in the sense that anomalous behavior may manifest only towards his or her specific partner, but not necessarily, with another. This is but a realization that not all persons are the same, and consequently, not all relationships are the same in view of the unique individuality (experiences, upbringing, and values, *etc.*) of two people who are called to forge a life of mutual love, respect, and fidelity together. As such, it is therefore possible that when the psychologically incapacitated spouse decides to remarry, the incapacity may not resurface given the change of circumstances in his or her marriage to a different person.[7] (Emphasis supplied)

To be sure, an allegation of psychological incapacity, like any other allegation, must be supported by proof, and in my Concurring Opinion in the March 11, 2020 Decision, I opined that the totality of the evidence presented, measured against the yardstick of the *Molina* guidelines, failed to sustain a finding that Cynthia suffers from a psychological incapacity to fulfill the essential obligations of marriage.[8]

In my Concurring Opinion in the March 11, 2020 Decision, I established that the gravity and juridical antecedence were not sufficiently

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[7] Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Tan-Andal v. Andal*, supra note 4, at 26-27.

[8] Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Republic v. Calingo*, G.R. No. 212717, March 11, 2020, 935 SCRA 392, 407-408.

proven. More specifically, I previously observed that the collective testimonies of respondent Ariel Calingo (Ariel), Dr. Arnulfo Lopez (Dr. Lopez), Francisca Bilason and Ruben Kalaw did not claim to have personal knowledge of Cynthia's childhood circumstances and filial relationship which, in Dr. Lopez's assessment, ultimately caused Cynthia's Borderline Personality Disorder with Histrionic Personality Disorder Features.[9]

However, as the *Resolution* astutely points out, the discussion of Branch 107, Regional Trial Court of Quezon City of the body of evidence submitted to prove Cynthia's psychological incapacity noticeably left out the testimony of Elmer Sales, Cynthia's uncle-in-law, who knew Cynthia from childhood and testified at length about the circumstances of her childhood and turbulent family life.[10] Given this testimony's weight, it appears that the behaviors which were assessed as basis of Cynthia's personality structure which reflected her psychological incapacity were already exhibited even prior to her meeting Ariel, let alone the celebration of their marriage.

Based on the foregoing, it appears that Ariel sufficiently proved by clear and convincing evidence that Cynthia was suffering from a psychological incapacity which existed even prior to their marriage, and one that was grave and legally incurable as to prevent Cynthia from assuming and fulfilling her essential marital obligations.

For these reasons, I vote to **GRANT** the Motion for Reconsideration.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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9 Id. at 408.
10 Resolution, pp. 10-12.