EN BANC

G.R. No. 196359 — ROSANNA L. TAN-ANDAL, *petitioner,* ***versus*** **MARIO VICTOR M. ANDAL,** *respondent.*

Promulgated:

May 11, 2021

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SEPARATE OPINION

CAGUIOA, *J.*:

I concur in the result.

I agree that Article 147 of the Family Code governs the property relations of the parties, and that Rosanna exclusively owns half of the 315-square meter portion of the Parañaque lot donated in her favor, as well as the duplex built thereon which served as the parties' family home. I find that Rosanna presented sufficient evidence to prove that Mario neither cared for the family nor maintained the household, and that the family home had been constructed exclusively using funds which Rosanna and her father borrowed.

As well, I agree that the issue on custody is now moot and academic since the parties' daughter, Ma. Samantha (Samantha), already reached the age of majority in 2014.

Further, I agree that the Court of Appeals (CA) erred in reversing the Decision of the Regional Trial Court (RTC) of Parañaque that had declared the marriage of petitioner Rosanna L. Tan-Andal (Rosanna) and respondent Mario Victor M. Andal (Mario) null and void based on Article 36 of the Family Code. I find that Rosanna sufficiently established that Mario was psychologically incapacitated at the time of the celebration of the marriage, even under the parameters of *Republic v. Court of Appeals and Molina*[1] (*Molina*) as presently applied.

I share the *ponencia*'s observations with respect to the overly restrictive application of the *Molina* guidelines. As will be explained in detail below, the *Molina* guidelines merely serve to identify, with particularity, the factors which the trial courts **may** consider as evidence of psychological incapacity. These guidelines were intended precisely to serve as a guide to assist the courts in ascertaining whether the totality of evidence proves that one or both of the parties were incapable of understanding and complying with the essential marital obligations at the time of the celebration of the marriage.

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[1] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

However, contrary to this purpose, the *Molina* guidelines have been erroneously treated as a rigid checklist, resulting in the adoption of a "strait-jacket" interpretation of psychological incapacity — an interpretation diametrically opposed to its underlying legislative intent. For this reason, I agree that the *Molina* guidelines should be clarified in light of the framers' intent to make psychological incapacity a resilient and flexible legal concept.

However, while I agree with the *ponencia*'s reformulation of the first second, and fourth *Molina* guidelines, I wish to express my reservations with respect to the reasons cited by the *ponencia* as basis for such reformulation.

First, while I concur that the quantum of proof required in nullity cases should be clear and convincing evidence, I disagree that this requirement stems from the presumption of validity accorded to marriages. Rather, I submit that this higher quantum of proof is primarily premised on the State's policy to protect marriage as a special contract of permanent union and an inviolable social institution.[2]

Second, while I likewise concur with the *ponencia*'s reformulation of the second and fourth *Molina* guidelines, I wish to stress that my concurrence is grounded solely on the spirit and intent of Article 36 as reflected in the deliberations of the Joint Civil Code Revision and Family Law Committee (Joint Committee). This reformulation does not redefine psychological incapacity as a less stringent ground for nullity of marriage. Rather, it clarifies how psychological incapacity should be understood and applied in a manner that is faithful to its underlying legislative intent.

I expound.

The requirement of clear and convincing evidence is necessitated by the State's policy to protect marriage as an inviolable social institution

The *ponencia* holds that in cases involving nullity of marriage, the plaintiff-spouse must prove his or her case through clear and convincing evidence due to the presumption of validity of marriages.[3] I submit, however, that this higher evidentiary standard is more properly grounded on the characterization of marriage under law.

Article 1 of the Family Code defines marriage. It states:

> ARTICLE 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the

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2 FAMILY CODE, Art. 1.
3 *Ponencia*, p. 27.

> establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

This provision echoes the State policy enshrined in Article XV of the 1987 Constitution, thus:

> SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
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> SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

To warrant the severance of what the Constitution characterizes as an inviolable social institution, mere preponderance of evidence, which is the standard of evidence required to nullify *ordinary* civil contracts, will not suffice. A higher standard must be required in recognition of the status of marriage as a *special* contract of permanent union that is protected by the Constitution. To afford the institution of marriage the necessary protection against arbitrary dissolution, clear and convincing evidence must therefore be required. In turn, evidence is clear and convincing if it produces in the mind of the trier of fact a firm belief or conviction as to the allegation sought to be established. It is indeterminate, being more than preponderance, but not to the extent of such certainty as is required beyond reasonable doubt in criminal cases.[4]

Psychological incapacity is a legal concept

Article 36 of the Family Code provides:

> ART. 36. 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.

Based on the foregoing provision, psychological incapacity as a ground for the absolute nullity of marriage only has two textual requirements — *first*, that the afflicted spouse be incapacitated to comply with the essential marital obligations, and *second*, that such incapacity be present at the time of the celebration of the marriage.

As to the first requirement, the deliberations of the Joint Committee clarify that the inability to comply with the essential marital obligations must proceed from a complete lack of understanding of the essential marital

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4 *Dela Paz v. Republic,* G.R. No. 195726, November 20, 2017, 845 SCRA 34, 46-47.

obligations and the effects and/or consequences of marriage. Such lack of understanding must be of such gravity as to render the afflicted spouse ***incapable*** (*i.e.*, lacking the capacity, power, ability or qualification[5]) of complying with his or her marital obligations, thus:

> Justice [Eduardo] Caguioa stated that there are two interpretations of the phrase "psychologically or mentally incapacitated" — in the first one there is vitiation of consent, **while in the second one, there is no understanding of the effects of the marriage.** He added that the first one would fall under insanity.
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> Prof. [Esteban] Bautista stated that he is in favor of making psychological incapacity a ground for voidable marriage since otherwise it will encourage one who really understood the consequences of marriage to claim that he did not and to make excuses for invalidating the marriage by acting as if he did not understand the obligations of marriage. Dean [Fortunato Gupit, Jr.] added that it is a loose way of providing for divorce.
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> Justice [Eduardo] Caguioa explained that his point is that in the case of incapacity by reason of defects in the mental faculties, which is less than insanity, there is a defect in consent and, therefore, it is clear that it should be a ground for voidable marriage because there is the appearance of consent and it is capable of convalidation for the simple reason that there are lucid intervals and there are cases when the insanity is curable. **He emphasized that psychological incapacity does not refer to mental faculties and has nothing to do with consent; it refers to obligations attendant to marriage.**[6] (Emphasis supplied)

The deliberations further clarify that the lack of understanding of one's marital obligations, to be a ground for nullity, must be shown to exist at the time of the celebration of the marriage, although its manifestations may become apparent later on.

> Justice [Ricardo Puno] observed that under the present draft provision, it is enough to show that **at the time of the celebration of the marriage, one was psychologically incapacitated so that later on if already he can comply with the essential marital obligations, the marriage is still void ab initio.** Justice [Eduardo] Caguioa explained that **since in divorce, the psychological incapacity may occur after the marriage, in void marriages, it has to be at the time of the celebration of the marriage. He, however, stressed that the idea in the provision is that at the time of the celebration of the marriage, one is psychologically incapacitated to comply with the essential marital obligations, which incapacity continues and later becomes manifest.**[7] (Emphasis supplied)

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5 Incapacity is defined by Merriam-Webster as the "quality or state of being incapable." See <https://www.merriam-webster.com/dictionary/incapacity>. In turn, incapable is defined as "lacking capacity, ability, or qualification for the purpose or end in view." See <https://www.merriam-webster.com/dictionary/incapable>.

6 Minutes of the 148th Meeting of the Civil Code and Family Law Committees, July 26, 1986, pp. 9-10.

7 Minutes of the 149th Meeting of the Civil Code and Family Law Committees, August 2, 1986, p. 4.

Based on the language of Article 36 and the spirit of the provision as reflected in the Joint Committee deliberations, therefore, the only indispensable requirements that must be established to sustain a finding of psychological incapacity are: (i) a lack of understanding of the effects of marriage that is of such gravity as to bring about the afflicted spouse's incapacity to comply with the essential marital obligations provided in the Family Code; and (ii) the existence of such incapacity at the time of the celebration of the marriage. These essential marital obligations include the obligations of the spouses to one another (that is, those detailed under Articles 68 to 71 of the Family Code), ***and*** the obligations of the spouses as parents (that is, those detailed under Articles 220, 221, and 225 of the Family Code) for, as aptly explained by the *ponencia,* the State affords protection to marriage in view of its role as the foundation of the family.[8] Undoubtedly, a fruitful family life requires the fulfillment of the spouses' obligations not only as husband and wife, but also as parents.

Indeed, the deliberations demonstrate that the Joint Committee purposely refrained from narrowly defining the term "psychological incapacity" or from giving examples to allow resiliency and flexibility in its application.[9]

On this score, I agree with the *ponencia* insofar as it holds that proof of a medically or clinically incurable **illness** should not be deemed as an indispensable requisite in actions involving psychological incapacity for two main reasons.

First, as already mentioned, imposing such a requirement would unduly limit the concept in contravention of the clear intent of the framers.

Second, as keenly pointed out by Senior Associate Justice Estela P. Bernabe during the course of the deliberations, "psychological incapacity," while coined as such, is not really a medical or clinical concept. **Rather, it is a *legal concept* that must be interpreted on a case-to-case basis and applied when the factual circumstances show that the two foregoing textual requisites are attendant.** Indeed, Joint Committee member Justice Eduardo P. Caguioa took great pains in distinguishing psychological incapacity (which contemplates a defect in understanding) from insanity (which contemplates a defect in the mind). To quote:

> On psychological incapacity, [Justice Flerida Ruth] Romero inquired if they do not consider it as going to the very essence of consent. She asked if they are really removing it from consent. In reply, Justice [Eduardo] Caguioa explained that, ultimately, consent in general is affected but he stressed that his point is that it is not principally a vitiation of consent since there is a valid consent. He objected to the lumping together of the validity of the marriage celebration and the obligations

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8 See *ponencia*, p. 28.

9 See *Santos v. Court of Appeals*, G.R. No. 112019, January 4, 1995, 240 SCRA 20, 31.

> attendant to marriage, which are completely different from each other, because they require a different capacity, which is eighteen years of age, for marriage but in contract, it is different. Justice [Ricardo] Puno, however, felt that psychological incapacity is still a kind of vice of consent and that it should not be classified as a voidable marriage which is incapable of convalidation; it should be convalidated but there should be no prescription. In other words, as long as the defect has not been cured, there is always a right to annul the marriage and if the defect has been really cured, it should be a defense in the action for annulment so that when the action for annulment is instituted, the issue can be raised that actually, although one might have been psychologically incapacitated, at the time the action is brought, it is no longer true that he has no concept of the consequence of marriage.
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> [Professor Esteban] Bautista raised the question: Will not cohabitation be a defense? In response, Justice [Ricardo] Puno stated that even the bearing of children and cohabitation should not be a sign that psychological incapacity has been cured.
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> **[Justice Flerida Ruth] Romero opined that psychological incapacity is still insanity of a lesser degree. Justice [Leonor Ines] Luciano suggested that they invite a psychiatrist, who is the expert on this matter. Justice [Eduardo] Caguioa, however, reiterated that psychological incapacity is not a defect in the mind but in the understanding of the consequences of marriage, and, therefore, a psychiatrist will not be of help.**
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> [Professor Esteban] Bautista stated that, in the same manner that there is a lucid interval in insanity, there are also momentary periods when there is an understanding of the consequences of marriage. Justice [J.B.L.] Reyes and Dean [Fortunato] Gupit remarked that the ground of psychological incapacity will not apply if the marriage was contracted at the time when there is understanding of the consequences of marriage.[10] (Emphasis supplied)

The foregoing distinction is confirmed by the fact that psychological incapacity and insanity are treated differently, *i.e.*, the first is defined and governed by Article 36, whereas insanity is governed by Article 45(2) of the Family Code.

As psychological incapacity under Article 36 contemplates the inability to take cognizance of and to assume the basic marital obligations[11] set forth under the Family Code, a clinically or medically diagnosed illness or disorder amounts to psychological incapacity in legal contemplation ***only when*** such an illness or disorder causes a party to be truly incognizant of his or her essential marital obligations. In like manner, the absence of a clinical or medical diagnosis should not in any way be considered fatal, provided the totality of evidence proves that one or both of the spouses were absolutely incapable of understanding the effects of marriage and thus complying with

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[10] Minutes of the 148th Joint Meeting of the Civil Code and Family Law Committees, July 26, 1986, pp. 12-13.

[11] See id. at 13.

its attendant obligations, and that such incapacity existed at the time of the celebration of the marriage.

In other words, when the evidence on record clearly and convincingly demonstrates that there was a lack of understanding of marital obligations at the time of the marriage which rises to a degree that renders the afflicted spouse incapable of fulfilling his or her marital obligations, a declaration of absolute nullity of marriage on the ground of psychological incapacity is warranted. In such cases, the lack of expert testimony identifying the root cause of such incapacity and confirming its incurability, without more, should not serve as ample ground for dismissal. As stated by Justice Teodoro R. Padilla in his Separate Statement in *Molina*, "each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on 'all fours' with another case. The trial judge must take pains in examining the actual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."[12]

The Molina guidelines are evidentiary guideposts, not rigid requisites

While I agree that neither the identification of a medically or clinically identified root cause nor a finding of a permanent or incurable illness is indispensable, I deem it necessary to clarify that they should **not** be deemed wholly irrelevant in determining whether an action for declaration of nullity on the ground of psychological incapacity should prosper. **As stated at the outset, these two factors remain relevant as evidentiary guideposts which aid the trial courts in the assessment of the evidence on record.**

To recall, the *Molina* guidelines were formulated because of the difficulty then being experienced by many trial courts in interpreting and applying the novel concept of psychological incapacity under Article 36. Hence, following the conduct of oral arguments, the Court handed down guidelines for the application and interpretation of Article 36, based on 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,"

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[12] See *J.* Padilla, Separate Statement in *Republic v. Molina*, supra note 1, at 214.

thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence*, *inviolability* and *solidarity*.

(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.

(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.

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) **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 reasons for his 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.[13] (Italics in the original; emphasis supplied)

To be sure, the *Molina* guidelines only provide, with particularity: (i) who has the burden of establishing the existence of psychological incapacity (as in guideline 1[14]); and, more importantly (ii) the factors which **may** be considered in determining the existence of psychological incapacity (as in guidelines 2, 3, 4, 5 and 7[15]). It should be noted that these factors which are

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13 *Republic v. Court of Appeals and Molina*, supra note 1, at 209-213.

14 That is, "[t]he 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."

15 To restate: (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; (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage; (4) Such incapacity must also be shown to be medically or clinically permanent or incurable; (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of 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; and (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.

identified as relevant in the *Molina* guidelines merely echo those which were discussed in the course of the Joint Committee deliberations.

Nevertheless, while intended merely as an aid in the evaluation of evidence, the *Molina* guidelines have been erroneously applied as a rigid checklist, perhaps owing to the directory language in which the *Molina* guidelines had been couched. In *Ngo Te v. Yu-Te*[16] (*Ngo Te*), the Court recognized the unintended restrictive effect of the *Molina* guidelines in these words:

> The resiliency with which the concept should be applied and the case-to-case basis by which the provision should be interpreted, as so intended by its framers, had, somehow, been rendered ineffectual by the imposition of a set of strict standards in *Molina* x x x[.]
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> x x x x
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> Noteworthy is that in *Molina*, while the majority of the Court's membership concurred in the *ponencia* of then Associate Justice (later Chief Justice) Artemio V. Panganiban, three justices concurred "in the result" and another three—including, as aforesaid, Justice Romero—took pains to compose their individual separate opinions. Then Justice Teodoro R. Padilla even emphasized that "each case must be judged, not on the basis of *a priori* assumptions, predelictions or generalizations, but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on 'all fours' with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."
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> Predictably, however, in resolving subsequent cases, the Court has applied the aforesaid standards, without too much regard for the law's clear intention that **each case is to be treated differently**, as "courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals."
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> 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, schizophremics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled

[16] G.R. No. 161793, February 13, 2009, 579 SCRA 193.

> marriages on account of the personality disorders of the said individuals.[17] (Emphasis in the original)

Considering that the restrictive effect of the *Molina* guidelines stems not from the guidelines themselves, but rather, from their **misapplication**, I maintain that clarification, rather than abandonment, is the proper course of action.

As stated, psychological incapacity under Article 36 is a *legal* and not a medical concept. Its existence must therefore be judicially determined based on attendant circumstances established by the totality of evidence on record. To reiterate, actions for declaration of nullity filed under Article 36 should be resolved "on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of Church tribunals which, although not binding on the civil courts, may be given persuasive effect since [Article 36] was taken from Canon Law."[18]

In line with this, the *Molina* guidelines were crafted as an **evidentiary tool** to ***aid*** trial courts in ascertaining the weight and sufficiency of the evidence presented, as no single case of psychological incapacity may be deemed identical to another. The *Molina* guidelines merely identify some of the factors which the trial court may consider as evidence to support a claim of psychological incapacity. These factors may change and evolve over time, but this too was intended by the Joint Committee.

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[17] Id. at 220-225.

[18] On the Canon Law roots of Article 36, see Justice Flerida Ruth P. Romero's Separate Opinion in *Molina*:

> With the revision of Book I of the Civil Code, particularly the provisions on Marriage, the drafters, now open to fresh winds of change in keeping with the more permissive mores and practices of the time, took a leaf from the relatively liberal provisions of Canon Law.
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> Canon 1095 which states, *inter alia*, that the following persons are incapable of contracting marriage: "3. (those) who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage" provided the model for what is now Art. 36 of the Family Code: "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."
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> It bears stressing that unlike in Civil Law, Canon Law recognizes only two types of marriages with respect to their validity: valid and void. Civil Law, however, recognizes an intermediate state, the voidable or annullable marriages. When the Ecclesiastical Tribunal "annuls" a marriage, it actually declares the marriage null and void, *i.e.*, it never really existed in the first place, for a valid sacramental marriage can never be dissolved. Hence, a properly performed and consummated marriage between two living Roman Catholics can only be nullified by the formal annulment process which entails a full tribunal procedure with a Court selection and a formal hearing.
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> Such so-called church "annulments" are not recognized by Civil Law as severing the marriage ties as to capacitate the parties to enter lawfully into another marriage. The grounds for nullifying civil marriage, not being congruent with those laid down by Canon Law, the former being more strict, quite a number of married couples have found themselves in limbo—freed from the marriage bonds in the eyes of the Catholic Church but yet unable to contract a valid civil marriage under state laws. Heedless of civil law sanctions, some persons contract new marriages or enter into live-in relationships. (*J.* Romero, Separate Opinion in *Republic v. Court of Appeals and Molina*, supra note 1, at 217-218.)

Hence, and it bears repeating, these guidelines should not be used as a rigid checklist. **The pieces of evidence identified therein are neither indispensable nor exhaustive of the type of evidence that may be used to prove the existence of psychological incapacity.**

Thus, the absence of one or more factors espoused in *Molina*, *e.g.*, a psychiatric evaluation, shall not serve as a ground for dismissal, provided that the totality of evidence on record clearly and convincingly shows that the lack of understanding of marital obligations rises to a degree that renders the afflicted spouse incapable of fulfilling his or her marital obligations. The opposite is true as well — "[t]he well-considered opinions of psychiatrists, psychologists, and persons with expertise in psychological disciplines might be helpful or even desirable"[19] and a positive finding of a grave and incurable personality disorder could strengthen a claim of psychological incapacity if said illness or disorder incapacitated the party from understanding and complying with the essential marital obligations at the time of the celebration of the marriage.

However, I have observed that psychiatric and psychological reports are often heavily laden with scientific esoteric terms pertaining to certain mental disorders which trial courts may have difficulty in appreciating in relation to the afflicted parties' inability to understand and comply with the essential marital obligations under the Family Code. Hence, I deem it apt to stress that the expert opinion, when offered, should shed light on how and to what extent these diagnosed personality disorders affect the afflicted party's inability to understand and comply with his or her essential marital obligations, and whether such inability existed at the time of the marriage. Conversely, trial courts must examine the expert witnesses and their reports in this light.

The totality of evidence on record clearly and convincingly establishes Mario's psychological incapacity

I find that the totality of evidence on record shows that Mario suffers from psychological incapacity to fulfill the essential obligations of marriage. The facts established by said evidence indicate that at the time of his marriage, Mario failed to appreciate and fulfill the essential marital obligations, as shown by his failure to provide emotional and financial support to his family due to his unstable behavior.[20] Further, Mario's psychological state also hampered his ability to provide his daughter with moral and spiritual guidance.[21]

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19 *Santos v. Court of Appeals*, supra note 9, at 35.

20 As required by Articles 68 and 220 of the Family Code.

21 As required by Article 220 of the Family Code.

Indeed, Rosanna was able to prove that Mario was a persistent drug-user despite his many promises to stop, that he was financially irresponsible and could not support his family, that he was incapable of caring for her and for Samantha, and that he even exposed Samantha to his drug-use, among others. Rosanna supported her claims by presenting Dr. Valentina Del Fonso Garcia (Dr. Garcia), a physician and psychiatrist, who testified that Mario's disorders began in "early childhood"[22] and developed as a consequence of several factors, including: (i) his father's death when he was only six years old; (ii) his physically abusive brothers; (iii) the drastic change in lifestyle that he and his siblings had to endure due to their father's untimely death; and (iv) his exposure to drugs and alcohol at an early age, among others.[23] The fact that Mario failed to fully appreciate the consequences of marriage even prior to the parties' marriage is further bolstered by his own assertion that he only proposed to Rosanna to prevent her from undergoing an abortion.[24] The seriousness or gravity of Mario's incapacity is confirmed by his repeated stints in rehabilitation centers. Based on Rosanna's evidence, Mario was committed for drug rehabilitation at the National Bureau of Investigation Treatment and Rehabilitation Center[25] and Seagulls Flight Foundation by order of the RTC of Parañaque City.[26] Mario himself admits that he was also committed for detoxification at the Medical City for six months.[27]

As stated in the *ponencia,* Mario was diagnosed with Narcissistic Antisocial Personality Disorder and Substance Abuse Disorder with Psychotic Features,[28] and that this "abnormality in behavior"[29] is characterized by "a pervasive pattern of grandiosity in fantasy or behavior, need for admiration, and lack of empathy."[30] While neither sufficient in itself nor indispensable in all cases, I find that this diagnosis, **when taken in consonance with or as part of the totality of evidence**, leads to no other conclusion than that Mario was incapable of understanding and complying with his obligation to love, respect, help, and support Rosanna, to financially support their family, and to care for and rear Samantha in a manner that is consistent with the development of her moral, mental, and physical well-being.

All told, the evidence on record clearly and convincingly establish that: (i) Mario is incognizant of his marital obligations to a degree that renders him incapable of fulfilling his marital obligations; and (ii) such incapacity existed even prior to the marriage.

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22 *Ponencia*, p. 11.
23 Id. at 41-42.
24 Id. at 12.
25 Id. at 8.
26 Id.
27 Id. at 13.
28 Id. at 11.
29 Id.
30 Id.

The judicial determination of psychological incapacity must be based on the trial court's independent assessment of the totality of evidence on record

With the clarification on how to properly understand and treat the second and fourth *Molina* guidelines, concerns against potential abuse once raised in the course of the Joint Committee deliberations necessarily resurface, for without expert testimony tending to establish incurability and a clinically or medically explained root cause, mere difficulty, refusal, neglect, or ill will[31] in the performance of one's marital obligations can easily be feigned as psychological incapacity. Indeed, relegating the treatment of expert testimony from an indispensable requirement to a dispensable form of evidentiary support, may result in opening the floodgates to a deluge of petitions seeking the declaration of absolute nullity of marriage on the basis of feigned incapacity. As expressed by Joint Committee member Professor Esteban Bautista:

> [Professor] Esteban [Bautista] stated that he is in favor of making psychological incapacity a ground for voidable marriage since otherwise it **will encourage one who really understood the consequences of marriage to claim that he did not and to make excuses for invalidating the marriage by acting as if he did not understand the obligations of marriage. Dean [Fortunato] Gupit added that it is a loose way of providing for divorce.**[32] (Emphasis supplied)

In this connection, I echo the following statement of Justice Teodoro R. Padilla — "[w]hile it is true that the broad term 'psychological incapacity' can open the doors to abuse by couples who may wish to have an easy way out of their marriage, there are, however, enough safeguards against this contingency, among which, is the intervention by the State, through the public prosecutor, to guard against collusion between the parties and/or fabrication of evidence."[33] Further, it is apt to stress, as Joint Committee member Justice Eduardo Caguioa once did, that as with the interpretation of all other provisions of law, one cannot argue on the basis of abuse.[34] Ultimately, the Joint Committee did not accord Article 36 a fixed definition to allow some resiliency in its application. As psychological incapacity rests on the attendant circumstances that are unique in each case, the Joint Committee deliberately left the determination of the existence of psychological incapacity to the trial courts.[35] As stated by Justice Eduardo P. Caguioa:

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31 *Yambao v. Republic*, G.R. No. 184065, January 24, 2011, 640 SCRA 355, 367.

32 Minutes of the 148th Meeting of the Civil Code and Family Law Committees, July 26, 1986, p. 10.

33 *J.* Padilla, Dissenting Opinion in *Santos v. Court of Appeals*, supra note 9, at 36-37.

34 Minutes of the 150th Meeting of the Civil Code and Family Law Committees, August 9, 1986, p. 9.

35 See Amicus Brief of Dean Melencio S. Sta. Maria, p. 5, citing Joint Committee Member Justice Eduardo P. Caguioa at the Senate Committee hearing on Women and Family Relations on February 3, 1988.

> x x x A code should not have so many definitions, because a definition straitjackets the concept and, therefore, many cases that should go under it are excluded by the definition. [That is] why we leave it up to the court to determine the meaning of psychological incapacity.[36] (Italics omitted)

To reiterate once more, each case must be decided by the judge on a case-to-case basis after evaluating the relevance, competence, and credibility of the various types of evidence presented. Accordingly, the alleged manifestations of psychological incapacity in each case must be assessed together with all other circumstances attendant therein. The Court therefore calls upon the presiding judges of the trial courts to take up the cudgels and assiduously perform their duty as gatekeepers against potential abuse, ensuring that declarations of absolute nullity of marriage are issued only in cases where psychological incapacity as contemplated under Article 36 is judicially determined to exist. In turn, the trial court's determination must be based on its own assessment of the totality of evidence on record.

Final Note

To close, I wish to state, as I did in *Republic v. Manalo*,[37] that while it is indeed desirable that statutes remain responsive to the realities of the present time, it must be borne in mind that responsiveness is a matter of policy which requires a determination of what the law ought to be, and not what the law actually is.

Hence, it is important to emphasize that the reformulation of the *Molina* guidelines is not a redefinition of psychological incapacity to conform to the current *mores* of the times or other "contemporary circumstances". Rather, the reformulation of these guidelines is to make them more in accord with the original intent of the Joint Committee. In this reformulation, therefore, the Court stays faithful to its duty to exercise judicial power within the bounds of law as it is presently written.

Premises considered, I vote to **GRANT** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[36] Id.

[37] *J.* Caguioa, Dissenting Opinion in *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, 862 SCRA 580, 653.