

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**EMILIO TUASON,
*Petitioner,***

-versus-

**G.R. No. 116607
April 10, 1996**

**COURT OF APPEALS and MARIA
VICTORIA L. TUASON,
*Respondents.***

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DECISION

PUNO, J.:

This Petition for Review on *Certiorari* seeks to annul and set aside the decision dated July 29, 1994 of the Court of Appeals in CA-G.R. CV No. 37925 denying petitioner's appeal from an order of the Regional Trial Court, Branch 149, Makati in Civil Case No. 3769.

This case arose from the following facts:

In 1989, private respondent Maria Victoria Lopez Tuason filed with the Regional Trial Court, Branch 149, Makati a petition for annulment or declaration of nullity of her marriage to petitioner Emilio R. Tuason. In her complaint, private respondent alleged that she and petitioner were married on June 3, 1972 and from this union, begot

two children; that at the time of the marriage, petitioner was already psychologically incapacitated to comply with his essential marital obligations which became manifest afterward and resulted in violent fights between husband and wife; that in one of their fights, petitioner inflicted physical injuries on private respondent which impelled her to file a criminal case for physical injuries against him; that petitioner used prohibited drugs, was apprehended by the authorities and sentenced to a one-year suspended penalty and has not been rehabilitated; that petitioner was a womanizer, and in 1984, he left the conjugal home and cohabited with three women in succession, one of whom he presented to the public as his wife; that after he left the conjugal dwelling, petitioner gave minimal support to the family and even refused to pay for the tuition fees of their children compelling private respondent to accept donations and dole-outs from her family and friends; that petitioner likewise became a spendthrift and abused his administration of the conjugal partnership by alienating some of their assets and incurring large obligations with banks, credit card companies and other financial institutions, without private respondent's consent; that attempts at reconciliation were made but they all failed because of petitioner's refusal to reformed. In addition to her prayer for annulment of marriage, private respondent prayed for powers of administration to save the conjugal properties from further dissipation.^[1]

Petitioner answered denying the imputations against him. As affirmative defense, he claimed that he and private respondent were a normal married couple during the first ten years of their marriage and actually begot two children during this period; that it was only in 1982 that they began to have serious personal differences when his wife did not accord the respect and dignity due him as a husband but treated him like a persona non grata; that due to the "extreme animosities" between them, he temporarily left the conjugal home for a "cooling-off period" in 1984; that it is private respondent who had been taking prohibited drugs and had a serious affair with another man; that petitioner's work as owner and operator of a radio and television station exposed him to malicious gossip linking him to various women in media and the entertainment world; and that since 1984, he experienced financial reverses in his business and was compelled, with the knowledge of his wife, to dispose of some of the conjugal shares in exclusive golf and country clubs. Petitioner

petitioned the court to allow him to return to the conjugal home and continue his administration of the conjugal partnership.

After the issues were joined, trial commenced on March 30, 1990. Private respondent presented four witnesses, namely, herself; Dr. Samuel Wiley, a Canon Law expert and marriage counselor of both private respondent and petitioner; Ms. Adelita Prieto, a close friend of the spouses, and Atty. Jose F. Racela IV, private respondent's counsel. Private respondent likewise submitted documentary evidence consisting of newspaper articles of her husband's relationship with other women, his apprehension by the authorities for illegal possession of drugs; and copies of a prior church annulment decree.^[2] The parties' marriage was clerically annulled by the Tribunal Metropolitanum Matrimoniale which was affirmed by the National Appellate Matrimonial Tribunal in 1986.^[3]

During presentation of private respondent's evidence, petitioner, on April 18, 1990, filed his Opposition to private respondent's petition for appointment as administratrix of partnership of gains.

After private respondent rested her case, the trial court scheduled the reception of petitioner's evidence on May 11, 1990.

On May 8, 1990, two days before scheduled hearing, a counsel for petitioner moved for a postponement on the ground that the principal counsel was out of the country and due to return on the first week of June.^[4] The court granted the motion and reset the hearing to June 8, 1990.^[5]

On June 8, 1990, petitioner failed to appear. On oral motion of private respondent, the court declared petitioner to have waived his right to present evidence and deemed the case submitted for decision on the basis of the evidence presented.

On June 29, 1990, the trial court rendered judgment declaring the nullity of private respondents marriage to petitioner and awarding custody of the children to private respondent. The court ruled:

“WHEREFORE, in view of the foregoing, the marriage contracted by Ma. Victoria L. Tuason and Emilio R. Tuason on

June 3, 1972 is declared null and void *ab initio* on the ground of psychological incapacity on the part of the defendant under Sec. 36 of the Family Code. Let herein judgment of annulment be recorded in the registry of Mandaluyong, Metro Manila where the marriage was contracted and in the registry of Makati, Metro Manila where the marriage is annulled.

The custody of the two (2) legitimate children of the plaintiff and the defendant is hereby awarded to the plaintiff.

The foregoing judgment is without prejudice to the application of the other effects of annulment as provided for under Arts. 50 and 51 of the Family Code of the Philippines.”^[6]

Counsel for petitioner received a copy of this decision on August 24, 1990. No appeal was taken from the decision.

On September 24, 1990, private respondent filed a “Motion for Dissolution of Conjugal Partnership of Gains and Adjudication to Plaintiff of the Conjugal Properties.”^[7] Petitioner opposed the motion on October 17, 1990.^[8]

Also on the same day, October 17, 1990, petitioner, through new counsel, filed with the trial court a petition for relief from judgment of the June 29, 1990 decision.

The trial court denied the petition on August 8, 1991.^[9]

Petitioner appealed before the Court of Appeals the order of the trial court denying his petition for relief from judgment. On July 29, 1994, the Court of Appeals dismissed the appeal and affirmed the order of the trial court.^[10]

Hence this petition.

The threshold issue is whether a petition for relief from judgment is warranted under the circumstances of the case.

We rule in the negative.

A petition for relief from judgment is governed by Rule 38, Section 2 of the Revised Rules of Court which provides:

“SECTION 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof. — When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside.”

Under the rules, a final and executory judgment or order of the Regional Trial Court may be set aside on the ground of fraud, accident, mistake or excusable negligence. In addition, the petitioner must assert facts showing that he has a good, substantial and meritorious defense or cause of action.^[11] If the petition is granted, the court shall proceed to hear and determine the case as if a timely motion for new trial had been granted therein.^[12]

In the case at bar, the decision annulling petitioner’s marriage to private respondent had already become final and executory when petitioner failed to appeal during the reglementary period. Petitioner however claims that the decision of the trial court was null and void for violation of his right to due process. He contends he was denied due process when, after failing to appear on two scheduled hearings, the trial court deemed him to have waived his right to present evidence and rendered judgment on the basis of the evidence for private respondent. Petitioner justifies his absence at the hearings on the ground that he was then “confined for medical and/or rehabilitation reasons.^[13] In his affidavit of merit before the trial court, he attached a certification by Lt. Col. Plaridel F. Vidal, Director of the Narcotics Command, Drug Rehabilitation Center which states that on March 27, 1990 petitioner was admitted for treatment of drug dependency at the Drug Rehabilitation Center at Camp Bagong Diwa, Bicutan, Taguig, Manila of the Philippine Constabulary-Integrated National Police.^[14] The records, however, show that the former counsel of petitioner did not inform the trial court of this confinement. And when the court rendered its decision, the same counsel was out of the country for which reason the decision became final and executory as no appeal was taken therefrom.^[15]

The failure of petitioner's counsel to notify him on time of the adverse judgment to enable him to appeal therefrom is negligence which is not excusable. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of this right to appeal is not a ground for setting aside a judgment valid and regular on its face.^[16]

Similarly inexcusable was the failure of his former counsel to inform the trial court of petitioner's confinement and medical treatment as the reason for his non-appearance at the scheduled hearings. Petitioner has not given any reason why his former counsel, intentionally or unintentionally, did not inform the court of this fact. This led the trial court to order the case deemed submitted for decision on the basis of the evidence presented by the private respondent alone. To compound the negligence of petitioner's counsel, the order of the trial court was never assailed via a motion for reconsideration.

Clearly, petitioner cannot now claim that he was deprived of due process. He may have lost his right to present evidence but he was not denied his day in court. As the records show, petitioner, through counsel, actively participated in the proceedings below. He filed his answer to the petition, cross-examined private respondent's witnesses and even submitted his opposition to private respondent's motion for dissolution of the conjugal partnership of gains.^[17]

A petition for relief from judgment is an equitable remedy; it is allowed only in exceptional cases where there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition.^[18] Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which have been lost thru inexcusable negligence.^[19]

Petitioner also insists that he has meritorious defense. He cites the Family Code which provides that in actions for annulment of marriage or legal separation, the prosecuting officer should intervene for the state because the law “looks with disfavor upon the haphazard declaration of annulment of marriages by default.” He contends that when he failed to appear at the scheduled hearings, the trial court should have ordered the prosecuting officer to intervene for the state and inquire as to the reason for his non-appearance.^[20]

Articles 48 and 60 of the Family Code read as follows:

“ARTICLE 48. In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecution attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.”

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“ARTICLE 60. No decree of legal separation shall be based upon a stipulation of facts or a confession of judgment.

In any case, the Court shall order the prosecuting attorney or fiscal assigned to it to take steps to prevent collusion between the parties and to take care that the evidence is not fabricated or suppressed.”^[21]

A grant of annulment of marriage or legal separation by default is fraught with the danger of collusion.^[22] Hence, in all cases for annulment, declaration of nullity of marriage and legal separation, the prosecuting attorney or fiscal is ordered to appear on behalf of the state for the purpose of preventing any collusion between the parties and to take care that their evidence is not fabricated or suppressed. If the defendant spouse fails to answer the complaint, the court cannot declare him or her in default but instead, should order the

prosecuting attorney to determine if collusion exists between parties.^[23] The prosecuting attorney or fiscal may oppose the application for legal separation or annulment through the presentation of his own evidence, if in his opinion, the proof adduced is dubious and fabricated.^[24] Our Constitution is committed to the policy of strengthening the family as a basic social institution.^[25] Our family law is based on the policy that marriage is not a mere contract, but a social institution in which the state is vitally interested. The state can find no stronger anchor than on good, solid and happy families. The break up of families weakens our social and moral fabric and, hence, their preservation is not the concern alone of the family members.

The facts in the case at bar do not call for the strict application of Articles 48 and 60 of the Family Code. For one, petitioner was not declared in default by the trial court for failure to answer. Petitioner filed his answer to the complaint and contested the cause of action alleged by private respondent. He actively participated in the proceedings below by filing several pleadings and cross-examining the witnesses of private respondent. It is crystal clear that every stage of the litigation was characterized by a no-holds barred contest and not by collusion.

The role of the prosecuting attorney or fiscal in annulment of marriage and legal separation proceedings is to determine whether collusion exists between the parties and to take care that the evidence is not suppressed or fabricated. Petitioner's vehement opposition to the annulment proceedings negates the conclusion that collusion existed between the parties. There is no allegation by the petitioner that evidence was suppressed or fabricated by any of the parties. Under these circumstances, we are convinced that the non-intervention of a prosecuting attorney to assure lack of collusion between the contending parties is not fatal to the validity of the proceedings in the trial court.

Petitioner also refutes the testimonies of private respondent's witnesses, particularly Dr. Samuel Wiley and Ms. Adelita Prieto, as biased, incredible and hearsay. Petitioner alleges that if he were able to present his evidence, he could have testified that he was not psychologically incapacitated at the time of the marriage as indicated

by the fact that during their first ten years, he and private respondent lived together with their children as one normal and happy family, that he continued supporting his family even after he left the conjugal dwelling and that his work as owner and operator of a radio and television corporation places him in the public eye and makes him a good subject for malicious gossip linking him with various women. These facts, according to petitioner, should disprove the ground for annulment of his marriage to petitioner.

Suffice it to state that the finding of the trial court as to the existence or non-existence of petitioner's psychological incapacity at the time of the marriage is final and binding on us.^[26] Petitioner has not sufficiently shown that the trial court's factual findings and evaluation of the testimonies of private respondent's witnesses *vis-a-vis* petitioner's defenses are clearly and manifestly erroneous.^[27]

IN VIEW WHEREOF, the petition is denied and the decision dated July 29, 1994 of the Court of Appeals in CA-G.R. CV No. 37925 is affirmed.

SO ORDERED.

Regalado, Romero and Mendoza, JJ., concur.
Torres, J., is on leave.

[1] Amended Complaint, Records, pp. 22-30.

[2] Records, pp. 96-118.

[3] Exhibits "O," and "P;" Records, pp. 113-118.

[4] Records, pp. 126-127.

[5] *Id.*, p. 128.

[6] *Id.*, pp. 132-133.

[7] *Id.*, pp. 136-139.

[8] *Id.*, pp. 143-145. Despite petitioner's opposition, the court, on September 9, 1991, granted said motion and declared the establishment between husband and wife of the regime of complete separation of property and adjudicated to private respondent the conjugal home and lot on which the conjugal home stands.

[9] *Id.*, pp. 215-216.

[10] CA-G.R. CV No. 37925, Rollo, pp. 33-40.

[11] *Mateo vs. Court of Appeals*, 196 SCRA 280 [1991]; *Torno vs. Court of Appeals*, 166 SCRA 742 [1988].

- [12] Revised Rules of Court, Rule 39, Section 7.
- [13] Petitioner's Reply to Comment, p. 3; Rollo, p. 110.
- [14] Records, pp. 151-152.
- [15] Petitioner's Reply to Comment, p. 3; Rollo, p. 110.
- [16] Palanca vs. American Food Mfg. Co., 24 SCRA 819 [1968]; Duran vs. Pagarigan, 106 Phil. 907 [1960].
- [17] Court of Appeals Decision, p. 6; Rollo, p. 38.
- [18] Somoso vs. Court of Appeals, 178 SCRA 654, 660 [1989]; Ibabao vs. Intermediate Appellate Court, 150 SCRA 76 [1987]; Rizal Commercial Banking Corporation vs. Lood, 110 SCRA 205 [1981].
- [19] Ibabao vs. Intermediate Appellate Court, supra., at 86; Manila Electric Co. vs. Court of Appeals, 187 SCRA 201 [1990].
- [20] Petition, p. 4; Rollo, p. 15.
- [21] Taken from Articles 88 and 101 of the Civil Code of the Philippines which were also taken from Article 85 of the Old Civil Code.
- [22] Dean Francisco Capistrano, member of the Civil Code Commission. cited in I Francisco, Revised Rules of Court in the Philippines 1026 [1973].
- [23] Rule 18, Section 6 provides:
Sec. 6. No defaults in actions for annulment of marriage or for legal separation. — If the defendant in an action for annulment of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated.
- [24] San Gabriel vs. San Gabriel, (CA) 56 O.G. 3555, Nov. 27, 1959.
- [25] Sec. 12, article II.
- [26] cf. Periquet, Jr. vs. Intermediate Appellate Court, 238 SCRA 697, 710 [1994].
- [27] Philippine Bank of Commerce vs. Aruego, 102 SCRA 530 [1981]; Bank of the Philippine Islands vs. de Coster, 47 Phil. 594 [1925].