

G.R. No. 1693

[G.R. No. 1693. November 22, 1905]

FRANCISCO MARTINEZ GARCIA, PETITIONER, VS. JOHN C. SWEENEY, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

WILLARD, J.:

This is an original action of mandamus in this court, brought for the purpose of compelling the defendant, a judge of the Court of First Instance of Manila, to admit an appeal.

In a proceeding pending in that court, brought under section 559 of the Code of Civil Procedure for the purpose of securing the appointment of a guardian of Francisco Martinez Garcia, on the ground that he was incompetent to manage his estate, that court on the 14th day of November heard the evidence in the case, and then determined that a guardian should be appointed, and named one Moore as such guardian. No written decision or order containing this determination appears in the record, and it is apparent that it consisted in a verbal announcement to the parties present when the hearing was finished.

On the 16th day of November, 1903, Francisco Martinez Garcia presented a written statement to the court in which he said that he was satisfied with the decision of the court so far as it related to the appointment of a guardian, but he objected to the appointment of Moore.

On the 17th of November the court made an order in writing, annulling the appointment of Moore as guardian, and leaving the matter of the selection of the guardian temporarily in abeyance.

On the 19th of November, 1903, the judge made and entered a final

judgment in the action, declaring that Francisco Martinez was a spendthrift and prodigal, and that he was mentally and physically incapable and incompetent to manage his estate or to care for himself, and he appointed Charles C. Cohn guardian of his person and estate.

On the 20th of November, 1903, Francisco Martinez filed in court a written statement saying that he was satisfied with the appointment of Cohn as his guardian, and he asked the court to appoint Cohn also as administrator of the property of his deceased wife.

On the 8th of December Martinez filed a written notice of appeal from the final judgment of the 19th of November, 1903.

The court, on the 31st day of December, 1903, made an order refusing to allow the appeal.

Thereupon, and on the 4th day of January, 1904, Francisco Martinez Garcia commenced this original action in this court for the purpose of compelling the judge of the court below to admit the appeal. In the complaint in the action in this court no reference was made to the written documents filed by Martinez in which he consented to the decision of the court declaring that he was a spendthrift, and to the final judgment appointing Cohn as his guardian. The defendant appeared and demurred to the complaint on the ground that the facts therein contained did not state a cause of action. This demurrer was overruled by this court on the 3d day of February, 1904.

The defendant then answered, alleging, among other things, that by the documents presented by Martinez on the 16th and 20th of November, he waived his right to appeal. Testimony was taken by a commissioner appointed by this court. The case has been argued upon its merits, and is now before us for final decision.

The decision upon the demurrer settled the question as to whether a person declared a spendthrift, and incompetent to manage his estate by an order of the Court of First Instance has a right to appeal therefrom. This court, in overruling the demurrer, held that he had such right, and the only question in the case that remains to be decided is whether he waived that right of appeal by consenting to the

judgment. A majority of the court is of the opinion that the presentation of the two documents of the 16th and 20th of November was a waiver of the right to appeal, and that after he had so expressed his consent to the judgment he could not afterwards remove the case to this court for the purpose of having that judgment, to which he had thus consented, reversed.

The order heretofore issued by this court on the 3d day February, 1904, granting a preliminary injunction in this action, is hereby vacated. Let final judgment be entered in this case in favor of the defendant, with costs. So ordered.

Arellano, C. J., Johnson, and Carson, JJ., concur.
