

[G. R. No. L-11721. March 26, 1958]

INOCENCIA ESPINOSA, PETITIONER, VS. HON. BERNABE DE AQUINO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF TARLAC, BRANCH I AND JULIA ESPINOSA, RESPONDENTS.

D E C I S I O N

FELIX, J.:

Special Proceedings No. 892 of the Court of First Instance of Tarlac was instituted by Julia Espinosa seeking to declare her sister Inocencia Espinosa an incompetent and to have the latter's properties placed under guardianship. Although the petition filed therein does not appear to be among the records of this case, it could be gathered from other pleadings that in 1955, Inocencia Espinosa was already *99 years old*; that she was legally married on *March 9, 1950*, to Vicente Figueroa, *about 40 years of age*; and that the properties owned by Inocencia were worth not less than P65,000 nor more than P75,000.

On August 17, 1955, Vicente Figueroa opposed the petition by filing a motion to dismiss on the ground that it suffered from jurisdictional defects; that petitioner had no capacity to file the petition; that the validity of their marriage cannot be questioned in a guardianship proceeding; that petitioner was neither the proper party to seek the nullification of the transactions entered by him in behalf of their conjugal partnership, nor said proceeding the proper place to question said transactions. This motion was denied by the lower court for lack of merit, but petitioner was ordered to amend her petition so as to conform to the provisions of Section 2, Rule 97 of the Rules of Court.

In accordance therewith, petitioner filed a second amended petition contending that some 3 years previous to the institution of said proceeding, Inocencia Espinosa was married to one Vicente Figueroa, who was approximately 40 years of age; that considering that the former was around 100 years at that time and of ill-health, petitioner believed that the marriage was vitiated by fraud or deceit; that Inocencia Espinosa owned properties worth not less than P65,000 but not more than P75,000 which were under the administration of said

Vicente Figueroa, although the administration of said paraphernal properties was not transferred to the latter in a public instrument as required by the Civil Code; and that in the management of said properties, Figueroa did not exercise the diligence of a good father of a family. It was thus prayed that a person other than Vicente Figueroa be appointed guardian over the person and properties of Inocencia Espinosa. To this amended petition, the spouses Vicente Figueroa and Inocencia Espinosa filed an opposition alleging that said oppositors started living together as husband and wife since 1927, although they contracted marriage only on March 9, 1950; that at the start of their cohabitation, Inocencia Espinosa owned only some parcels of land with a total area of 300,786 square meters, but from that time on, through their work or industry, other properties were subsequently acquired in barrios Tibag; San Juan de Mata; Sula; Sapang Maragul; San Isidro, Poblacion, Tarlac, Tarlac; and in Mambalan, Sta. Ignacia, with a total area of 1,304,226 square meters, besides work animals, a house and other personal effects. Oppositors also denied that Inocencia Espinosa was an incompetent for the reason that while it was true that she was 99 years old, her age had not affected her mental faculties or judgment nor made her an easy prey to deceit or exploitation; that the motive behind the petition was petitioner's impatience to inherit from Inocencia Espinosa to the exclusion of Vicente Figueroa; that the latter had managed and administered the properties belonging to his wife frugally; that the expenditures incurred by him were brought about by his wife's recurring illness, the expenses in sending a niece of the latter to school, and for the benefit of the conjugal partnership. As special defenses, oppositors contended that petitioner had no capacity to file the petition and that the proceeding was not the proper action for the purpose of questioning the validity of their marriage. Thus, oppositors prayed that the petition be dismissed or in the event that the Court would hold Inocencia Espinosa an incompetent, to appoint Vicente Figueroa as guardian over her person and properties. After the Court had conducted an ocular observation and examination of oppositor Inocencia Espinosa, an order dated *September 25, 1956*, was issued declaring her an incompetent based on the finding that said oppositor was actually in the state of senility on account of her advanced age and that she was already physically and mentally infirm. As petitioner apparently withdrew her opposition to the appointment of Vicente Figueroa as guardian of the incompetent, the Court appointed him as such guardian over the properties of his wife.

Vicente Figueroa thereafter filed a manifestation and motion for reconsideration dated October 2, 1956, signifying his willingness to enter as guardian of the paraphernal properties of his wife and prayed that a nominal bond in a sum not more than P1,000 be fixed for said purpose. However, on *October 10, 1956*, *Inocencia Espinosa*, through counsel,

filed a notice of appeal from the Court's order of September 27, 1955, denying oppositor's motion to dismiss; the order of November 23, 1955, denying oppositor's motion for reconsideration and from the order of September 25, 1956, declaring her an incompetent. Simultaneously, said oppositor filed an appeal bond. Acting on the said petition for the approval of the record on appeal, the lower Court, denied the same on the ground that an appeal cannot be taken from the orders of September 27, and November 23, 1955, both being interlocutory, neither from the order of September 25, 1956, declaring her incompetent for the reason that while an incompetent may appeal from an order declaring her as such, the right could no longer be invoked where the incompetent waived the same in writing. The Court maintained that the *manifestation* made by Vicente Figueroa, husband of the movant and who was actively opposing the petition, gave the impression that Inocencia Espinosa must have consented to her being declared an incompetent and to her husband's appointment as guardian of her paraphernal properties. And on October 11, 1956, the Court ordered Vicente Figueroa to file a bond in the amount of P1,000 to qualify as guardian, of the properties of his wife and to submit, within 30 days, an inventory of such properties.

As the motion for the reconsideration of the order disallowing the record on appeal and the appeal bond was denied, Inocencia Espinosa filed the instant petition for mandamus to compel the respondent Judge to approve the same, with prayer for the issuance of a writ of preliminary injunction to restrain said respondent from enforcing its aforementioned order of October 11, 1956, ordering Figueroa to qualify as guardian of her properties. This Court, in its resolution of December 21, 1956, gave due course to the petition and a writ of preliminary injunction was consequently issued upon petitioner's filing a bond in the sum of P1,000.

Considering that the lower court recognizes the fact that an incompetent may appeal from the order declaring him as such incompetent, the only issue in the instant action is whether the acceptance by the husband of his appointment as guardian of his wife's paraphernal properties has the effect of waiver on the part of the latter of her right to perfect an appeal.

A person declared by a final judgment or order to be an incompetent has certainly the right to appeal therefrom, although just like any other right, same may be waived, as when such person consents thereto in writing (*Garcia vs. Sweeney*, 5 Phil., 344). In the instant case while it is true that the spouses Inocencia Espinosa and Vicente Figueroa were the oppositors to the petition filed with the court below and that the latter was most active in sustaining the competency of his wife, considering the nature of the action, there could have been no privy of interest between the husband and the wife and the husband's subsequent

complacency or acquiescence to the other declaring her an incompetent cannot be taken to prejudice her right to appeal therefrom. It is to be noted that the lower court, in disallowing her appeal, merely relied on the manifestation made by Vicente Figueroa, through counsel, signifying his willingness to act as guardian of his wife's properties. While it naturally gives rise to the inference that he submits to the order declaring her unfit to manage her properties, it could be observed that said pleading was filed only in his behalf to the exclusion of the other oppositor. The subsequent filing by Inocencia Espinosa of a notice of appeal with prayer for the approval of the appeal bond and record on appeal unmistakably leads to the conclusion that she does not share her husband's view or stand. We have to recognize the fact that no one could be more interested in sustaining his competency to manage his properties than that person himself, and as the manifestation of a husband cannot be given effect as to wrest from the wife her right to appeal in the absence of an express consent thereto in writing or evidence of her amenability to an order declaring her an incompetent, We see no reason why Inocencia Espinosa cannot be allowed to perfect her appeal.

We realize, however, that Inocencia Espinosa was in a state of physical and mental infirmity due to senility and advanced age, she being over 100 years old, and We entertain no doubt that she was in the condition she was found by the trial Judge. Nevertheless, and although it may not be very likely that her infirmity might have improved and the chances are that the old lady may not have anything to do with the institution of the present proceedings to force her alleged appeal brought up to this Court—a recourse which may be nothing but a scheme of a party interested in delaying as long as possible any check by the Court in the administration of the paraphernal property of Inocencia Espinosa—with only said possibilities or even probabilities, We cannot find our way clear under the law and jurisprudence on the matter to uphold the order of the lower court refusing to give due course to the appeal of said Inocencia Espinosa.

Wherefore, the order of the lower Court of October 25, 1956, is hereby set aside and the said Court is ordered to give due course to the appeal of Inocencia Espinosa. Without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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