

LOURDES S. PASCUAL, COMPLAINANT, VS. JUDGE LEONOR INES LUCIANO, JUVENILE & DOMESTIC RELATIONS COURT, QUEZON CITY, RESPONDENT.*Adm. Matter No. 318-JDRC. December 18, 1973*

Ponente: ANTONIO, J.

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Complainant Lourdes S. Pascual alleges that a "Motion for Appointment of Temporary Guardian" in Special Proceedings No. QC-00444 of the Juvenile & Domestic Relations Court of Quezon City, filed on April 1, 1970, has remained unresolved by respondent Judge for more than ninety (90) days even after the Court of Appeals had lifted its restraining order in CA-G.R.No. 45061-R (Lourdes S. Pascual v. Juvenile & Domestic Relations Court, Quezon City, et al.) on August 3, 1970, and, this notwithstanding, respondent had certified in her Certificate of Service pursuant to Sec. 5 of the Judiciary Act that "beginning July 1, 1971, and every month thereafter up to June, 1972 * * * she had decided and determined 'all special proceedings, applications, petitions, motions * * * which have been under sub-mission for decision or determination for a period of nine-ty (90) days or more.* * *'"

Special proceedings No. QC-00444 was instituted by Vicenta P. Tolentino for the purpose of securing a judicial declaration of her 85-year old widowed mother, Rosa Sempio Pascual, as an incompetent and her appointment as guardian of the proposed ward. This petition was opposed by her sister Lourdes S. Pascual, the herein complainant.

Respondent Judge, in her Answer, denied the charges and averred that on January 12, 1971, after a study grant abroad, notices of hearing were sent to all parties in Special Proceedings No. QC-00444 which was set for February 15, 1971. Respondent further claimed that instead of resolving the pending Motion for Appointment of Temporary Guardian, she had to continue the hearing of the special proceedings in consonance with the resolution of the Court of Appeals in Case CA-G.R. No. 45061-R which sustained her Order of March 17, 1971 "that the finding of incompetency was not final but preliminary and was only for the purpose of staying off any disposition of the incompetent's properties, thus there was need to continue the hearings toward a final finding of incompetency."

She further averred that the motion of March 19, 1971 for the Appointment of Temporary Guardian showed that the compelling reason for the filing of the same by Vicenta P. Tolentino was because she, her brothers and sisters were prevented from visiting their mother by Lourdes Pascual (complainant in this case), and had the latter honored the visitation ordered by the court on April 2, 1971, Vicenta, her brothers and sisters would not have been insistent in moving for the resolution of said motion.

Furthermore, respondent maintained that no prejudice was caused the parties, most especially the complainant, since the care and custody of the incompetent were entrusted to her by virtue of the order of the Juvenile & Domestic Relations Court of Quezon City, dated January 23, 1971, while said court awaited the outcome of the

negotiations for settlement.

Respondent Judge, in addition, claimed that the requirements of Section 5 of the Judiciary Act do not apply to her court for the following reasons:

- The non-inclusion of any provision in R.A. 4836 requiring judges of Juvenile and Domestic Relations Court to decide or resolve cases and/or motions submitted for determination as it did in other laws requiring judges of the Courts of Agrarian Relations (Sec. 150 RA 3844), Circuit Criminal Courts (Sec. 6, RA 5179) and Court of Tax Appeals (Sec. 13, RA 1125) to decide cases submitted for decision within 30 days.
- Section 2 of Republic Act 296 (Judiciary Act) expressly provides that the Courts referred to in said Act are only the "Supreme Court, Court of Appeals, the Court of First Instance, and City and Municipal Courts and there arises a prima facie presumption that Judges of the Juvenile and Domestic Relations Courts are not included in Section 5 of the same Act because of the well-settled rule: Expressio unius est exclusio alterius.
- Due to the peculiar nature of procedures followed by said courts, such that a "system of conciliations, no matter how long drawn, should be an essential part of its procedure," and " * * * Efforts should be made to establish an effective working relationship between law and the behavioral sciences for the purpose of reconstructing a family's troubled situation." ("Family Courts - Gimmick or Panacea," Australian Law Journal, Vol. 43, Dec. 1969).

There is no question that the court, before ordering the appointment of a guardian for an incompetent, must have before it competent evidence which are clear and definite, demonstrating the facts necessary to sustain the order. As stated by Justice Moreland, "to declare a person of full age to be incompetent to manage his affairs and thereby depriving him of the possession of a right to hold and manage his property, is a serious thing. It takes from him one of the greatest privileges of life in contravention of those fundamental rights which all men naturally have to possess, control, manage and enjoy their own property. It is for this reason that the courts generally hold that the statute permitting a declaration of incompetency and the appointment of guardians for the property of incompetents must be strictly followed * * * and any material departure therefrom, * * * results in a loss of jurisdiction." (Yangco vs. Court of First Instance of Manila, 29 Phil., 183, 186, 187.) It is for this reason that respondent, apparently aware of her duty and responsibility under the circumstances, clarified her order of March 10, 1970 to the effect that the declaration therein of Rosa S. Pascual's incompetency is only preliminary, the purpose being "to stay off any disposition of the properties of the wards in view of the preliminary findings of the Court." Such clarificatory order was necessary in view of the tenacious opposition of the complainant to the declaration by the court of the incompetency of her mother, Rosa Sempio Vda. de Pascual. As a matter of fact, the complainant assailed on certiorari with the Court of Appeals in CA-G.R. No. 45061-R the validity of the order of respondent of March 10, 1970, declaring Rosa S. Pascual as incompetent, but this was dismissed by the appellate court, upon its understanding that the declaration of incompetency was not final, and respondent has expressly granted complainant opportunity to prove her mother's competency.

It was, therefore, prudent for respondent to have deferred resolution of the aforementioned Motion for the Appointment of a Guardian for the proposed ward until after she has received all the evidence proposed to be submitted by the complainant on the alleged competency of her mother. Thus, on January 12, 1971, in conformity with the findings of the Court of Appeals, respondent set the case for hearing on February 14, 1971 to accord opportunity to the herein complainant, Lourdes S. Pascual, to present evidence on the competency of her mother, such as the testimony of Dr. Lilian Lee and other neurologists whom said party proposed to present. On February 14, 1971, however, the hearing was postponed upon motion of counsel for complainant on the ground that they were working for the amicable settlement of the case, and the trial was, therefore, reset for March 3, 1971, but, on this latter date, Dr. Lee failed to appear despite due notice and, consequently, the hearing was again

postponed. After several postponements, it was only on June 23, 1971 when respondent issued an order declaring in effect that Rosa S. Vda. de Pascual was an incompetent; but, since there was need for ascertaining the probable value and character of the estate of the said ward, and the suitability of the person sought to be appointed as guardian, the hearing was again reset for June 25, 1971, but the same was postponed upon motion of the complainant. Thus, as explained by respondent in her order of October 17, 1972, at the time of the death of the ward on September 12, 1972, no guardian could be appointed for the ward, either over her person or property, because of the bit-ter conflict among the parties as to the suitability of the proposed guardian and the absence of any complete or true in-ventory of the property of said ward which would indicate the probable value and character of her estate. It is, therefore, evident that if the appointment of a guardian over the person or property of Rosa S. Vda. de Pascual was delayed, it was due to the fault of the parties themselves. Until the reception of the evidence on the aforesaid matters was completed, it could not be said that the Motion for the Appointment of a Guardian has been "under submission for decision or determination" within the intent and meaning of Section 5 of the Judiciary Act. This aside from the fact that respondent, in deferring resolution of the aforesaid motion, was apparently motivated by good faith. Certainly a Judge cannot be dealt with in a disciplinary action for an act done in good faith.

On the question posed by respondent whether or not Section 5 of the Judiciary Act of 1948 (Republic Act No. 296), as amended, is applicable to Judges of Juvenile & Domestic Relations Courts, suffice it to state that the latter have the same qualifications, rank and salary and enjoy the same privileges as those of Judges of Courts of First Instance. Considering that the aforesaid Section 5 was intended to prescribe a uni-form rule of conduct for all judges of inferior courts, it would be rather absurd to exclude Judges of Juvenile & Domestic Relations Courts from such requirement.

WHEREFORE, in view hereof the charges of complain-ant against respondent are hereby dismissed.

Zaldivar, Ruiz Castro, Teehankee, Barredo, Makasiar, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

Makalintal, C.J., concurs in this opinion and in the reservation of Mr. Justice Fernando.

Fernando, J., concurs in a separate opinion.

CONCURRING
FERNANDO, J.:

I concur with the well-reasoned opinion of Justice Antonio insofar as it would exculpate respondent Judge Leonor Ines Luciano. A careful study of the records fails to reveal any justification for the unwarranted charge against her actuaciones. Whatever responsibilities the law thrusts upon her had been more than fully met. It is not in keeping with the consti-tutional purpose of vesting the Court with administrative supervision over inferior court judges[1] if such a power would not lend itself to being utilized not only to discipline judges but also to make clear beyond peradventure when such is the case that trivial and unfounded complaints against them are to be so emphatically characterized. Such an approach is dictated not so much by what fairness to respondent dictates but much more so by the need to caution disgruntled litigants desirous of bending the occupants on the bench to their will, irrespective of the law on the matter, against filing flimsy and insubstantial charges of this character.

I cannot however join my brethren insofar as it would characterize the contention of respondent on whether or not the ninety-day period applied to Juvenile and Domestic Relations Court judges as "absurd." On that point, I would reserve my vote.

[1] According to Art. X, Sec. 6 of the Revised Constitution: "The Supreme Court shall have administrative supervision over all courts and the personnel thereof."

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