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Special Proceedings MIS Office Normal JOJO 3 88 2002-01-14T03:28:00Z 2002-01-14T08:17:00Z 3 1180 6729  
Supreme Court of the Philippines 56 13 8263 9.2720 110

### 3. GUARDIANS

#### 1. Necessity For Guardianship

A court will have no jurisdiction to render judgment against one adjudged physically and mentally incompetent to manage her affairs where no guardian was appointed upon whom summons and notice of the proceedings might be served.<sup>137</sup>

1. The 'incompetent' as the subject of guardianship.- The incompetent includes (1) persons suffering from the penalty of civil interdiction; (2) hospitalized lepers; (3) prodigals; (4) deaf and dumb who are unable to read and write; (5) those who are of unsound mind even though they may have lucid intervals; and (6) those who are not of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.<sup>138</sup>

#### 2. Parents as guardians

When the property of the child under parental authority is worth Php 2,000.00 or less, the father or the mother, without the necessity of court appointment, shall be his legal guardian. When the property of the child is worth more than Php 2,000.00, the father or the mother shall be considered guardian of the child's property, with the duties and obligations of guardians under these rules, and shall file the petition required by the rules. For good reasons the court may, however, appoint another suitable person.<sup>139</sup>

#### 2. Jurisdiction and Venue

##### 1. Where to file petition for guardianship

Any relative, friend, or other person on behalf of a resident minor or incompetent who has no parent or lawful guardian, or the minor himself if fourteen years of age or over, may petition for the appointment of a general guardian for the person or estate, or both, of such minor or incompetent.<sup>140</sup>

##### 2. Transfer of venue

If the ward transfers his bona fide residence, the court may transfer the guardianship case to the court of the place of his residence wherein he has acquired real property, and additional court fees are not required.<sup>141</sup>

#### 3. Petition For Guardianship

##### 1. Who may file

Any relative, friend or other person on behalf of a resident minor or incompetent who has no parent or lawful guardian, or the minor himself if fourteen years of age or over, may petition for the appointment of a general guardian for the person or estate, or both, of such minor or incompetent.<sup>142</sup>

## 2. Contents of petition

The petition shall allege:

- (1) The jurisdictional facts;
- (2) The minority or incompetency;
- (3) The names, ages and residences of the relatives of the minor or incompetent, and of the persons having him in their care;
- (4) The probable value and character of his estate; and
- (5) The names of the person for whom letters of guardianship are prayed.<sup>143</sup>

## 3. Notice of hearing

Reasonable notice of the hearing of the petition shall be given to the persons mentioned in the petition residing in the province, including the minor if above 14 years of age or the incompetent himself. The court may direct other general or special notice to be given.<sup>144</sup>

## 4. Grounds for opposition

The petition may be opposed on the grounds of (a) majority of the alleged minor; (b) competency of the alleged incompetent; or (c) unsuitability of the proposed guardian.<sup>145</sup>

## 5. Order

At the hearing, the alleged incompetent must be present as much as possible. Evidence will be heard and if it be proved that the person in question is a minor or incompetent, the court shall appoint a suitable guardian of his person or estate, or both.<sup>146</sup>

## 6. Guardian for the estate of a nonresident

On notice, by publication or otherwise, and after the hearing, a guardian may be appointed for the estate in the Philippines of a nonresident minor or incompetent.<sup>147</sup>

## 4. Guardian's Bond

The guardian shall give a bond conditioned: (a) to make a true and complete inventory within three months; (b) to manage and dispose of the estate, and to provide for the proper care, custody and education of the ward; (c) to render a true and just account; and (d) to perform all orders of the court.<sup>148</sup>

### 1. New bond

A new bond may be required and the old sureties discharged whenever it is deemed necessary, after due notice to interested persons, when no injury can result therefrom to those interested in the estate.<sup>149</sup>

### 2. Bond to be filed; actions thereon

Every bond of a guardian shall be filed in the office of the clerk of the court. In case of the breach of a condition thereof, it may be prosecuted in the same proceeding or in a separate action.<sup>150</sup>

## 5. General Powers and Duties

The guardian has the care and custody of the person of the ward and/or the management of his estate. The guardian should pay the ward's just debts from his personal property and income of his real estate; if insufficient,

out of the sale or encumbrance of real estate as authorized by the court. The estate should be managed frugally.<sup>151</sup>

1. A person suspected of embezzling or concealing property of the ward may be asked to appear for examination.<sup>152</sup>

2. After making an inventory after three (3) months, the guardian is required to file an inventory and accounting annually.<sup>153</sup>

3. Compensation and expenses

The guardian is allowed reasonable expenses and such compensation as the court deems just, not exceeding 15% of the net income of the ward.<sup>154</sup>

4. Grounds for removal

A guardian may be removed when (a) he becomes insane, (2) is otherwise incapable of discharging his trust, (3) is unsuitable therefor, (4) has wasted or mismanaged the estate, or (5) has failed for thirty (30) days to render an account or make a return.<sup>155</sup>

5. Advanced age

The conclusion by the trial court that the guardian of advanced age is not fit to continue, is not to be disturbed, particularly with his delay in making an accounting and filing an inventory. While age alone is not a controlling criterion, it may be a factor for consideration.<sup>156</sup>

6. Sale or encumbrance:

1. Real property of the ward may be sold or encumbered by authority of the court upon a verified petition when the income is not sufficient to maintain the ward and his family or to educate him, or when it is for his benefit that the property be sold, mortgaged or otherwise encumbered and the proceeds put out at interest or invested in some productive security, or in the improvement or security of other real estate of the ward.<sup>157</sup>

2. Bond for the sale

The original bond of the guardian shall answer for the proceeds of the sale, but the court may require an additional bond.<sup>158</sup> The order to sell is valid for one (1) year.<sup>159</sup>

3. A court order authorizing the sale of a ward's property, is subject to appeal, not certiorari and mandamus.<sup>160</sup>

7. Petition for termination of Guardianship

1. A person who has been declared incompetent for any reason, or his guardian, relative, or friend, may file a verified petition to have his present competency judicially determined. If it be found after hearing that the person is no longer incompetent, his competency shall be adjudged and the guardianship shall cease.<sup>161</sup>

2. Grounds for removal

A guardian may be removed when (a) he becomes insane, (b) is otherwise incapable of discharging his trust, (c) is unsuitable therefor, (d) has wasted or mismanaged the estate, or (e) has failed for thirty (30) days to render an account or make a return.<sup>162</sup>

3. Other termination

Marriage or voluntary emancipation of a minor ward terminates the guardianship of the person of the ward, and

shall enable the minor to administer his property as though he were of age, but he cannot borrow money or alienate or encumber real property without the consent of his father or mother, or guardian. He can sue and be sued in court only with the assistance of his father, mother or guardian. Upon the application of the ward or otherwise, the guardians may be discharged if the guardianship is no longer necessary.<sup>163</sup>

#### 4. Advanced age

The conclusion by the trial court that the guardian of advanced age is not fit to continue, is not to be disturbed, particularly with his delay in making an accounting and filing an inventory. While age alone is not a controlling criterion, it may be a factor for consideration.<sup>164</sup>

#### 5. Guardianship court

The guardianship court cannot adjudicate title.<sup>165</sup>

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<sup>137</sup> Gorostiaga v. Sarte, 68 Phil. 4 [1939].

<sup>138</sup> Rules of Court, Rule 92, Sec. 2.

<sup>139</sup> Ibid, Rule 93, Sec. 7.

<sup>140</sup> Rules of Court, Rule 93, Sec. 1.

<sup>141</sup> Ibid, Rule 92, Sec. 3.

<sup>142</sup> Rules of Court, Rule 93, Sec. 1.

<sup>143</sup> Rules of Court, Rule 93, Sec. 2.

<sup>144</sup> Ibid, Sec. 3.

<sup>145</sup> Ibid, Sec. 4.

<sup>146</sup> Rules of Court, Rule 93, Sec. 5.

<sup>147</sup> Ibid, Rule 93, Sec. 6.

<sup>148</sup> Rules of Court, Rule 94, Sec. 1.

<sup>149</sup> Ibid, Sec. 2.

<sup>150</sup> Rules of Court, Rule 94, Sec. 3.

<sup>151</sup> Rules of Court, Rule 96, Sec. 4.

<sup>152</sup> Ibid, 6, Sec. 6.

<sup>153</sup> Ibid, Secs. 7 and 8.

<sup>154</sup> Rules of Court, Rule 96, Sec. 8.

<sup>155</sup> Ibid, Rule 97, Sec. 2.

<sup>156</sup> Francisco v. Court of Appeals, No. L-57438, January 31, 1984, 127 SCRA 371.

157 Rules of Court, Rule 95, Sec. 1.

158 Ibid, Sec. 4.

159 Ibid.

160 . Lopez v. Teodoro, 86 Phil. 499 [1950].

161 Rules of Court, Rule 97, Sec. 1.

162 Rules of Court, Rule 97, Sec. 2.

163 Ibid, Sec. 3.

164 Francisco v. Court of Appeals, supra, note 156.

165 Parco v. Court of Appeals, G. R. No. L-33152, January 30, 1982, 111 SCRA 262.

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