

SUGA SOTTO YUVIENCO, PETITIONER, VS. HON. MATEO CANONoy, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, MARCELO SOTTO AND PASCUALA SOTTO PAHANG, RESPONDENTS.*G.R. No. L-23352. June 30, 1971*

Ponente: DIZON, J.

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This is an original action for mandamus instituted by Dra. Suga Sotto Yuvienco to compel the Honorable Mateo Canonoy, presiding Judge of Branch III, Court of First Instance of Cebu, to approve, sign and certify to this Court the Record on Appeal she had filed in Special Proceeding No. 2232-R entitled "In the Matter of the Guardianship of the Person and Property of Don Filemon Sotto, Incompetent, Pascuala Sotto Pahang, Petitioner", and to order respondent Marcelo Sotto to pay the costs of suit.

On or about July 24, 1962, in the Special Proceeding aforesaid the respondent Judge appointed (a) Dra. Suga Sotto Yuvienco as guardian of the person (with a bond of P2,500.00) of the incompetent, Don Filemon Sotto - hereinafter referred to as the ward - of Cebu City, 93 years of age, sick and confined at the Perpetual Succour Hospital of the same city since March 9, 1962; and (b) Rev. Father Sergio Alfara and Cesar Sotto as co-guardians of the properties of the same ward, with a bond of P5,000.00 each, subject to the condition, among others, that the appointments were to be subject to the discretion of the court until December 31, 1963, by which time the actions for compulsory acknowledgment as natural children of the ward filed by Pascuala Sotto Pahang, Matilde Sotto Palicte, Amelia Sotto and Marcelo Sotto were expected to have been terminated. The court said further:

"x x x. Moreover, the petitions of Pascuala Sotto Pahang, Matilde Sotto Palicte and others for judicial acknowledgment as natural children of Don Filemon Sotto are still pending hearing and decisions by the Court and whatever arrangement the Court may make at present will necessarily be affected by the decisions in said cases. If they thus establish their status as acknowledged natural children, then they would be the nearest kins and their combined word will bear much weight." (p. 120, Record on Appeal or p. 6, decision, Spec. Proceedings No. 2232-R - Annex "1").

Having been subsequently declared by competent court as the illegitimate children of the ward in separate civil cases, namely: (1) Nos. R-7413, entitled "Marcelo Sotto vs. Filemon Sotto, et als.,"; (2) R-6926, entitled "Pascuala Sotto Pahang vs. Filemon Sotto, et als.,"; and (3) R-6890, entitled "Matilde Sotto Palicte vs. Filemon Sotto, et als.,", Marcelo, Pascuala and Matilde filed on December 16, 1962 a joint motion praying the court to appoint them as follows: Marcelo Sotto, as guardian of the property of the ward; and Pascuala Sotto Pahang, Matilde Sotto Palicte and Marcelo Sotto, as co-guardians of his person, effective January 1, 1964. An opposition thereto was filed by Dra. Suga Sotto Yuvienco, until then the guardian of the person of the ward, claiming that the appointment of the movants would defeat the appeals involving their status as illegitimate children pending before the Supreme Court, and claiming further that it would be best for the estate of the ward to maintain the status quo until movants' status shall have been finally decided on appeal.

On December 28, 1963, the respondent Judge extended the terms of Dra. Sotto and Atty. Cesar Sotto as guardians of the person and property of the ward, respectively, until June 30, 1964 to enable them to clear their accounts, but on January 3, 1964, His Honor terminated their services effective July 1, 1964 retaining, however, the services of Marcelo Sotto and Pascuala Sotto Pahang as guardians of the estate and person of the ward, with bonds of five thousand and two thousand pesos, respectively, until further orders of the Court. A motion to reconsider and set aside the order just mentioned was filed in due time by Dra. Suga Sotto Yuvienco, and an opposition thereto was filed by Pascuala and Marcelo.

Meanwhile, intervenor Amelia Sotto, who also claimed to be an illegitimate child of the ward and whose case for acknowledgment (Case No. 7417, entitled "Amelia Sotto vs. Filemon Sotto, et als.,") was still pending, moved on May 5, 1964 for the retention of the services of Cesar Sotto as one of the co-guardians of the estate of the ward.

In view of the conflicting attitudes of the parties who claimed to be the heirs of the ward, the Court, on May 30, 1964, issued an order in effect holding in abeyance the termination of the services of Cesar M. Sotto and Dra. Suga Sotto Yuvienco as guardians of the proper-ties and person of Don Filemon Sotto, and directed the parties to hold a conference on June 13, 1964 and submit a formal compromise agreement thereafter.

On June 23, 1964, acting finally on the motion for the reconsideration of its order of January 3, 1964, the respondent Judge extended the terms of office of Dra. Suga Sotto Yuvienco and Cesar M. Sotto as guardians of the person and estate of the ward until September 30, 1964 to enable them to clear their accounts.

Not satisfied with the orders of (a) December 28, 1963, (b) January 3 and (c) June 23, 1964, Dra. Suga Sotto Yuvienco attempted to appeal to this Court on questions of law, but co-guardian Marcelo Sotto moved for the dismissal of the appeal on three grounds, namely: (1) that appellant had no right to appeal since she had no vested right to the position she was holding; (2) that the orders appealed from were not appealable not being final determinations granting or denying substantial rights, and that (3) the appeal was merely dilatory. Replying to said motion appellant argued that none of the grounds relied upon by movant was a legal ground for the dismissal of an appeal.

On July 31, 1964, the Court issued an order dis-missing petitioner's appeal on the ground that under Sec. 3, Rule 97 of the New Rules of Court, "the guardian of any person may be discharged by the Court when it appears, upon the application of the ward or otherwise, that the guardianship is no longer necessary." Hence, the petition for mandamus now before Us.

Respondents' answer admits some of the material averments of the petition and denies the others, and alleged the following affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES:

1. That this Honorable Court has no jurisdiction to issue writ of mandamus against the respondent Judge.
2. That the petitioner has no right of appeal since under the orders of Decem-ber 28, 1963 and January 3 and June 23, 1964, she is not the aggrieved party but the favored party (See Annex "C").
3. That the orders sought to be appealed are not appealable under Rule 109 of the Rules of Court (See Annex "C").
4. That the order, Annex "C", dismiss-ing the appeal is valid and in conformity with the Rules of Court and jurisprudence.
5. That the lower court has the authority to determine whether an order in special proceedings is appealable or not."

The only issue to be resolved is whether or not the respondent Judge gravely abused his discretion in dismissing petitioner's appeal on the grounds stated in his order of July 31, 1964.

Petitioner's petition for mandamus is based on the provisions of Section 14, Rule 41 of the New Rules of Court to this effect:

"When erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by the trial court, a proper petition for mandamus may be filed in the appellate court."

It is petitioner's contention that having served a notice of appeal upon herein respondents, and filed the notice of appeal with the Court below together with an appeal bond and a record on appeal, within the reglementary period, her appeal was deemed perfected and it became the duty of the respondent Judge to give due course to it.

On the other hand, respondents argue that petitioner's contention is without merit because the subsequent order of the respondent Judge extending the terms of Dra. Suga Sotto Yuvienco and Cesar M. Sotto up to June 30, 1964, and the second order extending their terms to September 30, 1964 to enable them to wind up and settle their accounts, are not new adjudications or decisions but were issued merely to supplement the order of June 24, 1962 from which petitioner did not appeal.

On October 22, 1964 We issued a resolution, upon petitioner's posting of a bond of P5,000.00, for the issuance of a writ of preliminary injunction enjoining the respondent Judge from enforcing the order terminating the term of office of petitioner as guardian of the person of the ward.

Two pertinent principles are well settled in this jurisdiction: (a) one is that mandamus would lie only to compel a tribunal, board or officer to comply with a purely ministerial duty, or to allow a party to exercise a right or to occupy and enjoy the privileges of an office to which he is lawfully entitled; (b) the other is that for the writ of mandamus to issue, petitioner must establish a clear legal right to the relief sought, and a mandatory duty on the part of the respondent in relation thereto.

In the light of the above principles, the petition before Us must fail.

It is obvious from the facts set forth above that the respondent Judge appointed petitioner on June 24, 1962 as guardian of the person of the ward with a term expiring on December 31, 1963. As petitioner did not appeal said order became final and executory. Moreover, petitioner actually accepted the terms of the order because she took her oath as guardian and actually discharged her functions as such in accordance therewith. In the light of these circumstances, We believe not only that the subsequent orders extending petitioner's term as guardian were issued in accordance with the sound discretion of the respondent Judge but also that petitioner is now estopped from contesting the authority of the lower court to issue said order and the subsequent ones of the same nature.

Upon the other hand, the law empowers a Guardianship Court to appoint guardians for the person of an incompetent under such terms and conditions as it may deem necessary; to terminate their term upon a showing that the guardianship is no longer necessary, or to modify the original conditions of the appointment whenever proper. In this case there is nothing in the record showing that the order appointing and the order terminating petitioner's term were issued capriciously. To the contrary, it appears that they were issued subject to conditions which the appointees accepted voluntarily.

In view of all the foregoing, the writ prayed for is denied, and the writ of preliminary injunction issued heretofore is set aside. With costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Castro, J., took no part.

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