

**DELFIN NARIO, AND ALEJANDRA SANTOS-NARIO,
PLAINTIFFS-APPELLANTS, VS. THE PHILIPPINE AMERICAN LIFE
INSURANCE COMPANY, DEFENDANT-APPELLEE.**

G.R. No. L-22796. June 26, 1967

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Direct appeal, on pure question of law, from a decision of the Court of First Instance of Manila, in its Civil Case No. 54942, dis-missing plaintiffs' complaint as well as from a later order of the same court, denying a motion to set aside and/or reconsider said decision of dismissal.

The facts of this case may be stated briefly as follows:

Mrs. Alejandra Santos-Nario was, upon application, issued, on June 12, 1959, by the Philippine American Life Insurance Co., a life insurance policy (No. 503617) under a 20-year endowment plan, with a face value of P5,000.00. She designated thereon her husband, Delfin Nario, and their unemancipated minor son, Ernesto Nario, as her irrevocable beneficiaries.

About the middle of June, 1963, Mrs. Nario applied for a loan on the above stated policy with the Insurance Company, which loan she, as policy-holder, has been entitled to avail of under one of the provisions of said policy after the same has been in force for three (3) years, for the purpose of using the proceeds thereof for the school expenses of her minor son, Ernesto Nario. Said application bore the written signature and consent of Delfin Nario in two capacities: first, as one of the irrevocable beneficiaries of the policy; and the other, as the father-guardian of said minor son and irrevocable beneficiary, Ernesto Nario, and as the legal administrator of the minor's properties, pursuant to Article 320 of the Civil Code of the Philippines.

The Insurance Company denied said application, manifesting to the policyholder that the written consent for the minor son must not only be given by his father as legal guardian but it must also be authorized by the court in a competent guardianship proceeding.

After the denial of said policy loan application, Mrs. Nario signified her decision to surrender her policy to the Insurance Company, which she was also entitled to avail of under one of the provisions of the same policy, and demanded its cash value which then amounted to P520.00.

The Insurance Company also denied the surrender of the policy, on the same ground as that given in disapproving the policy loan application; hence, on September 10, 1963, Mrs. Alejandra Santos-Nario and her husband, Delfin Nario, brought suit against the Philippine American Life Insurance Co. in the above mentioned court of first instance, seeking to compel the latter (defendant) to grant their policy loan application and/or to accept the surrender of said policy in exchange for its cash value.

Defendant Insurance Company answered the complaint, virtually admitting its material allegations, but it set up the affirmative defense that inasmuch as the policy loan application and the surrender of the policy involved acts

of disposition and alienation of the property rights of the minor, said acts are not within the powers of the legal administrator, under article 320 in relation to article 326 of the Civil Code; hence, mere written consent given by the father-guardian, for and in behalf of the minor son, without any court authority therefor, was not a sufficient compliance of the law, and it (defendant Insurance Company) was, therefore, justified in refusing to grant and in disapproving the proposed transactions in question.

There having been no substantial disagreement or dispute as to any material fact, the parties, upon joint motion which the lower court granted, dispensed with the presentation of evidence and submitted their respective memoranda, after which the case was considered submitted for decision.

The lower court found and opined that since the parties expressly stipulated in the endorsement attached to the policy and which formed part thereof that -

"It is hereby understood and agreed that, notwithstanding the provisions of this Policy to the contrary, inasmuch as the designation of the beneficiaries have been made by the Insured without reserving the right to change said beneficiaries, the Insured may not designate a new beneficiary or assign, release or surrender this Policy to the Company and exercise any and all other rights and privileges hereunder or agree with the Company to any change in or amendment to this Policy, without the consent of the beneficiaries originally designated.";

that under the above quoted provision, the minor son, as one of the designated irrevocable beneficiaries, "acquired a vested right to all benefits accruing to the policy, including that of obtaining a policy loan to the extent stated in the schedule of values attached to the policy (Gercio vs. Sun Life Assurance of Canada, 48 Phil. 53, 58)"; that the proposed transactions in question (policy loan and surrender of policy) involved acts of disposition or alienation of the minor's properties for which the consent given by the father-guardian, for and in behalf of the minor son, must be with the requisite court authority (U.S.V.A. vs. Bustos, 92 Phil. 327 Visaya vs. Suguitan, G. R. No. L-8300, November 18, 1955, 99 Phil. 1004 [unrep.]); and in the case at bar, such consent was given by the father-guardian without any judicial authority; said court, agreeing with defendant's contention, sustained defendant's affirmative defense, and rendered, on January 28, 1964, its decision dismissing plaintiffs' complaint.

Unable to secure reconsideration of the trial Court's ruling, petitioner appealed directly to this Court, contending that the minor's interest amounted to only one-half of the policy's cash surrender value of P520.00; that under Rule 96, Section 2 of the Revised Rules of Court, payment of the ward's debts is within the powers of the guardian, where no realty is involved; hence, there is no reason why the father may not validly agree to the proposed transaction on behalf of the minor, without need of court authority.

The appeal is unmeritorious. We agree with the lower court that the vested interest or right of the beneficiaries in the policy should be measured on its full face value and not on its cash surrender value, for in case of death of the insured, said beneficiaries are paid on the basis of its face value and in case the insured should discontinue paying premiums, the beneficiaries may continue paying it and are entitled to automatic extended term or paid-up insurance options, etc., and that said vested right under the policy cannot be divisible at any given time. We likewise agree with the conclusion of the lower court that the proposed transactions in question (policy loan and surrender of policy) constitute acts of disposition or alienation of property rights and not merely that of management or administration because they involve the incurring or termination of contractual obligations.

As above noted, the full face value of the policy is P5,000.00 and the minor's vested interest therein, as one of the two (2) irrevocable beneficiaries, consists of one-half (1/2) of said amount or P2,500.00.

Article 320 of the Civil Code of the Philippines provides -

"The father, or in his absence the mother, is the legal administrator of the property pertaining to the child under

parental authority. If the property is worth more than two thousand pesos, the father or mother shall give a bond subject to the approval of the Court of First Instance.",

and article 326 of the same Code reads -

"When the property of the child is worth more than two thousand pesos, the father or mother shall be considered as guardian of the child's property, subject to the duties and obligations of guardians under the Rules of Court."

The above quoted provisions of the Civil Code have already been implemented and clarified in our Revised Rules of Court which provides -

"Sec. 7. Parents as guardians.- When the property of the child under parental authority is worth two thousand pesos 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 two thousand pesos, 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 section 2 hereof. For good reasons, the court may, however, appoint another suitable person." (Rule 93).

It appearing that the minor beneficiary's vested interest or right on the policy exceeds two thousand pesos (P2,000.00); that plaintiffs did not file any guardianship bond to be approved by the court; and as later implemented in the abovequoted Section 7, Rule 93 of the Revised Rules of Court, plaintiffs should have, but had not, filed a formal application or petition for guardianship, plaintiffs cannot possibly exercise the powers vested on them, as legal administrators of their child's property, under articles 320 and 326 of the Civil Code. As there was no such petition and bond, the consent given by the father-guardian, for and in behalf of the minor son, without prior court authorization, to the policy loan application and the surrender of said policy, was insufficient and ineffective, and defendant-appellee was justified in disapproving the proposed transactions in question.

The American cases cited by appellants are not applicable to the case at bar for lack of analogy. In those cases, there were pending guardianship proceedings and the guardians therein were covered by bonds to protect the wards' interests, which circumstances are wanting in this case.

The result would be the same even if we regarded the interest of the ward to be worth less than P2,000.00. While the father or mother would in such event be exempt from the duty of filing a bond, and securing judicial appointment, still the parent's authority over the estate of the ward as a legal-guardian would not extend to acts of encumbrance or disposition, as distinguished from acts of management or administration. The distinction between one and the other kind of power is too basic in our law to be ignored. Thus, under Article 1877 of the Civil Code of the Philippines, an agency in general terms does not include power to encumber or dispose of the property of the principal; and the Code explicitly requires a special power or authority for the agent "to loan or borrow money, unless the latter act be urgent or indispensable for the preservation of the thing under administration" (Art. 1878, no. 7). Similarly, special powers are required to effect novations, to waive any obligation gratuitously or obligate the principal as a guarantor or surety (Do., nos. 2, 4 and 11). By analogy, since the law merely constitutes the parent as legal administrator of the child's property (which is a general power), the parent requires special authority for the acts above specified, and this authority can be given only by a court. This restricted interpretation of the parent's authority becomes all the more necessary where as in the case before us, there is no bond to guarantee the ward against eventual losses.

Appellants seek to bolster their petition by invoking the parental power (*patria potestas*) under the Civil Code of 1889, which they claim to have been revived by the Civil Code of the Philippines (Rep. Act 386). The appeal profits them nothing. For the new Civil Code has not effected a *restitutio in integrum* of the Spanish *patria*

potestad; the revival has been only in part. And, significantly, the Civil Code now in force did not reenact Article 164 of the Civil Code of 1889, that prohibited the alienation by the parents of the real property owned by the child without court authority and led the commentators and interpreters of said Code to infer that the parents could by themselves alienate the child's movable property. The omission of any equiv-alent precept in the Civil Code now in force proves the absence of any authority in the parents to carry out now acts of disposition or alienation of the child's goods without court approval, as contended by the appellee and the court below.

WHEREFORE, the decision appealed from is affirmed. Costs against appellants Nario.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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