

ENCARNACION LOPEZ VDA. DE BALUYUT, PETITIONER, VS. HON. JUDGE LEONOR INES LUCIANO, PRESI-DING JUDGE, JUVENILE & DOMESTIC RELATIONS COURT, QUEZON CITY, CRISTETA DE CUESTA AND GUA...

G.R. No. L-42215. July 13, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Encarnacion Lopez Vda. de Baluyut appealed by cer-tiorari from (1) the order dated September 25, 1975 of the Juvenile and Domestic Relations Court of Quezon City, declaring her an incompetent and scheduling a hearing to determine who should be appointed as her guardian and (2) its order of December 10, 1975, denying her motion to set aside the declaration of incompetency, which was issued before her counsel could cross-examine the psychiatrist, and scheduling the cross-examination on January 21, 1976 (Special Proceeding No. QC-00939). The antecedents of the appeal are as follows:

Sotero Baluyut, a resident of 59 Quezon Boulevard Extension, Quezon City, died at the age of eighty-six years, leaving an estate allegedly valued at not less than two million pesos. He was survived by Encarnacion Lopez, his seventy-five-year old widow.

Soon after Sotero Baluyut's death, his alleged nephew, Alfredo G. Baluyut, exerted efforts to control the dece-dent's estate. Assisting him in the attainment of that goal were the widow's sisters, Cristeta Lopez Vda. de la Cuesta and Guadalupe Lopez Viray. Their antagonists were the widow and her ally, Jose G. Espino, an alleged natural child of Sotero Baluyut.

On February 20, 1975, or forty-five days after Sotero Baluyut's demise, Alfredo filed a petition in the court of First Instance of Quezon City for the settlement of the decedent's estate. He alleged that Mrs. Baluyut was men-tally incapable of administering her affairs and the de-cedent's estate or of acting as executrix of his will, if any. He prayed that, after hearing, he be appointed administrator and, in the meantime, special administrator (Special Proceeding No. Q-19794. See L-42088, Baluyut vs. Judge Paño, May 7, 1976).

Alfredo did not content himself with the filing of the administration proceeding. On that same day, February 20, he filed in the Juvenile and Domestic Relations Court of Quezon City a petition to declare Mrs. Baluyut an incompe-tent and to place her under guardianship.

He alleged that due to a head injury she "has suffered impairment of her mental faculties" and that "she is no longer competent, physically and mentally", to manage her affairs. He claimed that he was able, qualified and ready to act as her guardian. Evidently, Alfredo sought to immobi-lize Mrs. Baluyut and prevent her from administering the decedent's estate, supposedly a conjugal estate (Special Proceeding No. Q-00925).

After the petition was partially heard, Mrs. Baluyut learned of the guardianship proceeding. She filed a verified opposition wherein she denied the allegations regarding her alleged mental incompetency. She alleged that the

petition was filed after Alfredo's attempts to get possession of the decedent's estate were aborted and after Mrs. Baluyut's residence was ransacked on February 12, resulting in the loss of important papers and cash of not less than one hundred thousand pesos.

She alleged that the documents being used by Alfredo against her were "the 'product not only of an illegal seizure but of a plain and simple robbery"; that the filing of the petition was "an act of disrespect to the deceased", since Alfredo and his cohorts were "cuddled and reared" by the spouses Sotero Baluyut and Encarnacion Lopez; that there could be no justice in declaring her an incompetent just to enable Alfredo to take her properties, and that because of the malicious petition she suffered sleepless nights and serious anxiety.

On April 7 Alfredo filed a motion praying that Mrs. Baluyut be subjected to a neuro-psychiatric examination. She filed a counter-motion to expunge that motion from the record.

On April 15 Alfredo filed an amended petition praying that Mrs. Cuesta and Mrs. Viray be appointed guardians of the person and property of their sister, Mrs. Baluyut. The latter vehemently opposed the amended petition. Later, Alfredo moved orally that he be considered disqualified to act as guardian in view of his appointment as special administrator.

The lower court in its order of April 28, 1975 granted Alfredo's motions that he be considered disqualified to act as guardian and that Mrs. Baluyut should undergo a neuro-psychiatric examination which was scheduled on May 7 at the Philippine General Hospital before Doctors Lourdes V. Lapuz or Baltazar Reyes. The lower court advised Mrs. Cuesta and Mrs. Viray to file their own petition for appointment as guardians of Mrs. Baluyut.

The lower court in its order of June 20, 1975 dismissed Alfredo's petition for guardianship. That ended round one of the guardianship incident.

The second round started on May 6, 1975 when Mrs. Cuesta and Mrs. Viray filed in the same court their petition dated April 28, praying that Mrs. Baluyut be declared an incompetent and that they be appointed as her guardians. They repleaded the material allegations of Alfredo's amended petition (Special Proceeding No. QC-00939).[*]

On the following day, May 7, Mrs. Cuesta and Mrs. Viray filed an urgent ex-parte motion praying that Mrs. Baluyut be ordered to remain at the conjugal residence and that she be placed under the court's protection or in her sisters' custody so that she could be available for psychiatric examination. Without hearing Mrs. Baluyut, the lower court on May 8 granted the motion.

On May 16 Mrs. Cuesta and Mrs. Viray filed an amended petition dated May 8 to cure the deficiencies of their original petition. On May 21 Mrs. Baluyut filed a motion to set aside the May 8 order. On the following day, May 22, Mrs. Baluyut filed a motion to strike out the original petition for guardianship. The motion was alternatively labelled as an opposition to the petition. Those motions were denied in the lower court's order of June 23, 1975.

On June 18 Mrs. Cuesta and Mrs. Viray filed a new petition for guardianship without mentioning their petitions of April 28 and May 8. Mrs. Baluyut's counsel claims that no filing fee was paid for docketing the petition.

On July 21 the lower court issued an order appointing Doctor Lapuz as commissioner to determine the competency of Mrs. Baluyut at an examination scheduled on August 12 at her residence and to report whether she should be placed under guardianship. On August 11 Mrs. Baluyut's counsel manifested that she was ready to submit to neuro-psychiatric examination at her new domicile, 53 East Maya Street, Phil-Am Life Homes, Quezon City.

On September 25 the lower court issued the questioned order declaring Mrs. Baluyut an incompetent on the basis of the report of Doctor Lapuz. Mrs. Baluyut was first examined by Ma. Paz U. Guzman, a psychologist. The latter

found that as of September 11 Mrs. Baluyut was “an integrated well-functioning individual”, “an aware and responsive individual who has a mind of her own”, and “competent enough to understand her position relative to the case involving her”.

Doctor Lapuz found that Mrs. Baluyut was aware of what the present court case was all about; that Mrs. Baluyut spontaneously declared that she preferred to associate with the Espino spouses because they treated her kindly, and that Mrs. Baluyut said that her other relatives were probably envious and desired to get hold of her assets.

The evaluations of the psychologist and the psychiatrist, which according to Mrs. Baluyut's counsel do not sustain the declaration of incompetency, are reproduced below:

"Psychological Evaluation

"Observation and Interview .— Subject came smartly dressed in a jersey gown and looking well groomed. She was bejeweled with several bracelets on both arms, 5 rings, a necklace and watch. She appeared in good physical condition. She walked and seated herself unassisted. She moved about with comfort. She took the test independently except the Personal Data Sheet which she filled out with the assistance of Mr. and Mrs. Espino.

"Her testing behavior was positive. She followed instructions without questions or signs of resistance. She displayed appropriate affect, (sic) was coherent and spontaneously made several relevant remarks in relation to the various test stimuli presented to her. She was friendly and pleasant. However, she reacted indignantly when the Examiner encouraged her to try her best at the tests because the result would be presented to Dra. Lapuz. She denied having met Dra. Lapuz and momentarily refused to go on with the tests saying that she did not care if people thought she was crazy. She was appeased and reassured and was able to resume working at the tests with her full cooperation. She later apologized to the Examiner for her outbursts and for having taken so much of the Examiner's time.

"Test Results .— The Wechsler Adult Intelligence Scale yielded a performance Scale IQ of 80 which places the Subject's intellectual functioning at the Dull Normal range. This represents her current functioning and how she compares with her peer group. The subject scores indicate her weakest area to be in visual-motor functioning. This deterioration appears to be purely a function of impaired vision and reduced motoric speed due to her advanced age rather than a psychogenically based depression.

"Similar impressions were gathered from the Bender-Gestalt reproductions of the subject. Her figures showed integration and accurate perception of the stimuli although her motoric expression is characterized by mild tremors and poor control of the movements of her arm and hand.

"The subject's immediate recall is impaired. However, her long term memory for past events appears to be relatively intact. Specifically, she failed to reproduce from memory a single figure out of several she had previously copied. However, she could recall and recount a conversation that she carried on with her companion some 30 minutes earlier.

"The test data showed no signs of psychosis or severe personality disturbance. Her responses to the projective tests showed that her perception of stimuli is very much like those of the majority. Her percepts tended to be commonplace and ordinary but accurate. There were no bizarre responses. She is aware and is in adequate touch with reality. Allowing for some neurological deterioration due to her age, the subject's cognitive and affective functioning indicates that she is intellectually and emotionally competent. She knows what she wants, and is in control of her volition. However, although she has a strong will and is determined, she is not often physically able to carry out her desires.

"Summary: — The subject's test data point up an integrated well-functioning individual. She reaches Dull Normal limits on the Wechsler Adult Intelligence Scale in comparison to her age group. She is relevant and in touch with reality. No gross pathology is gathered from the tests. Rather the results show an aware and

responsive individual who has a mind of her own. She is competent enough to understand her position relative to the case involving her.

Submitted by:

Ma. Paz U. de Guzman

Clinical Psychologist"

— O —

"Psychiatric Evaluation

"Patient: Encarnacion Baluyot

Widow, 74 years old

Childless

"The patient was referred by the Juvenile and Domestic Relations Court, Quezon City, for a psychiatric evaluation to help determine her competence in handling her finances. She was seen twice by the undersigned in the latter's office at St. Luke's Hospital. At each visit, she was accompanied by Mrs. Jose Espino, a relative, but was interviewed alone.

"She is stylishly dressed and groomed, wearing much jewelry. She cooperates in a friend-ly manner but grows impatient and irritable when the questions obviously test her capacity for intellectual concentrating on the discussion, but on the whole, she gave relevant and coherent answers, which tended to be quite brief. There was prolonged reaction time to questions which tested memory and orientation, indicating quite clearly that memory and orientation are impaired. She seemed to best remember discreet tidbits about the highlights of her life when her late husband was at the peak of his public career. However, she cannot integrate such bits of memory into a full recollection of how her life was at that time. The same was true in response of inquiry about any aspect of her life. She can give one or two very brief statements but fails to pursue further the discussion. There is clearly an impairment of thought processes.

"She is aware however of what the present court case is all about. She declares quite spontaneously that she likes being with the Espino's because she is treated kindly and thoughtfully by them. She mentions other relatives who are probably envious and wish to get hold of her assets.

"Her personal history, pieced together with information from Mrs. Espino, the wife of an adopted son, indicate that she has been a mother to many of her late husband's nieces and nephews, who were sent to school and given a start in life by the couple. She has always been over-concerned with money to the point of eccentricity but has a generous heart. Pampered by her husband, she has always enjoyed being with friends, socializing and still goes off to dance sessions with friends her age. The death of her husband has obviously made her even more dependent and helpless.

"In summary, the subject is a 74-year-old woman in whom the ageing process has rendered the intellectual capacity sufficiently impaired to warrant a recommendation for kind and consistent guidance in the handling of her affairs. She would best be helped by people who are truly interested in her welfare. Being of a kind and dependent nature herself, she need to be looked after. She would be more confused and lost if continuously in the center of hostilities. She needs a simple, well-directed life among kind people who will tend to her

day-to-day activities. She may be able to grasp a situation correctly and superficially but she will need help regarding details and more complex procedures. Psychological testing (Wechsler Adult Intelligence: Bender-Gestalt; Roscharch) shows functions at the dull normal, but otherwise integrated and in touch with reality. The tests also showed impairment for recent memory and in visual-motor functions.

Lourdes V. Lapuz, M. D."

Mrs. Baluyut's counsel observed that the lower court's order was "issued in a blitz manner", without any hearing on the psychiatrist's report, without giving notice to her, and without giving her a copy of the report. On October 6 she filed a motion for the reconsideration of the order declaring her an incompetent. She called attention to the fact that in the administration proceeding Judge Vicente G. Ericta had declared her "competent" in his order of March 24, 1975 and that Judge Ernani Cruz Paño (the successor Judge Ericta) in his order of November 27, 1975 appointed Mrs. Baluyut as administratrix after concluding that she was competent to act as such, considering the findings of Judge Ericta and of the psychologist and Doctor Lapuz.

The lower court had scheduled a hearing on October 8 to determine who should be appointed guardian of Mrs. Baluyut. Her counsel did not appear at the hearing may be because of his pending motion for reconsideration. At the hearing, Mrs. Cuesta, Mrs. Viray, her husband Atty. Fortunato Viray, Sr. and Alfredo G. Baluyut testified upon direct examination by Atty. Fortunato Viray, Jr. The oral evidence was presented for the purpose of proving that Mrs. Viray was competent to act as guardian of her sister, Mrs. Baluyut.

On October 20 the lower court *motu proprio* issued another order justifying its prior declaration that Mrs. Baluyut is an incompetent. It scheduled the cross-examination of Doctor Lapuz on October 24. The hearing was not held due to the indisposition of Doctor Lapuz. In the meantime, Mrs. Baluyut filed another motion to set aside the declaration of incompetency.

On December 10 the lower court issued another order denying Mrs. Baluyut's motion for reconsideration. It ruled that, as a socio-legal court, it was duly empowered under section 29-B of the charter of Quezon City to avail itself of the consultative services of psychiatrists, psychologists and other qualified specialists (Republic Act No. 4836, creating the Juvenile and Domestic Relations Court by amending Republic Act No. 537, the charter of Quezon City).

The lower court further held that the declaration of incompetency was interlocutory and that a prompt resolution of the issue as to Mrs. Baluyut's incompetency was imperative in view of the verified statements of her two sisters and nephew-in-law that more than one million pesos had been "withdrawn by her through the machinations of third persons".

The instant petition for review was filed on December 29, 1975. In that petition Mrs. Baluyut's counsel assails for the first time the lower court's jurisdiction to declare her an incompetent. She contends that her competency is involved in the administration proceeding pending in Branch XVIII of the Court of First Instance of Quezon City which court (not the Juvenile and Domestic Relations Court) has jurisdiction over the issue as to her competency. She invokes section 29-A of the Quezon City charter which provides that the Juvenile and Domestic Relations Court has exclusive original jurisdiction in guardianship cases (paragraph 2), but which also provides an exception in its last sentence quoted below:

"If any question involving any of the above matters (the seven classes of cases over which the court has exclusive original jurisdiction) should arise as an incident in any case pending in the ordinary court, said incident shall be determined in the main case."

The issues are (1) whether the resolution in the guardianship proceeding of the question as to Mrs. Baluyut's

alleged incompetency should await the adjudication in the administration proceeding (pending in the probate court) of the issue as to her competency to act as administratrix and (2) whether she was denied due process when the Juvenile and Domestic Relations Court summarily declared her an incompetent just one day after it received the psychiatrist's report and before that report was set for hearing.

Jurisdictional issue. – The lower court has exclusive original jurisdiction to entertain the proceeding for the guardianship of Mrs. Baluyut as an alleged incompetent. (As to rulings on the original exclusive jurisdiction of the Juvenile and Domestic Relations Courts, see *Perez vs. Tuason de Perez*, 109 Phil. 654; *In re Angela Tuason de Perez*, L-28114, October 30, 1970, 35 SCRA 608; *Rayray vs. Chae Kyung Lee*, L-18176, October 26, 1966, 18 SCRA 450; *Paterno vs. Paterno*, L-23060, June 30, 1967, 20 SCRA 585; *Bartolome vs. Bartolome*, L-23661, December 20, 1967, 21 SCRA 1324; *Eusebio vs. Eusebio*, L-39581, March 31, 1976).

However, as noted earlier, Mrs. Baluyut's competency to act as administratrix is in issue in Special Proceeding No. Q-19794 of the Court of First Instance of Rizal, Quezon City Branch XVIII. That proceeding was instituted by Alfredo G. Baluyut for the settlement of the estate of Sotero Baluyut, the deceased spouse of Mrs. Baluyut. Alfredo alleged in his petition that Mrs. Baluyut was mentally incapable of administering the estate. She characterized that allegation as libelous. She prayed in a counter-petition that she be appointed administratrix.

The probate court appointed her as administratrix after finding that she was sui juris or was still in possession of her *capacidad de obrar o capacidad de ejercicio*. In fact, she qualified as administratrix on November 29, 1975. This Court in *Baluyut vs. Judge Paño*, supra, set aside that appointment, not because Mrs. Baluyut was an incompetent but because the persons contesting her capacity to act were not given an adequate opportunity to be heard and to present evidence.

We hold that in consonance with the last sentence of section 29-A of the charter of Quezon City the guardianship proceeding should be suspended and should await the adjudication of the issue as to Mrs. Baluyut's competency to act as administratrix.

It is true as observed by Justices Barredo and Antonio during the deliberation on this case, that the incompetency to act as executor or administrator cannot be equated with the incompetency that justifies the placing of a person under guardianship. From the fact that a person may be incompetent to act as executor or administrator, it does not follow that he could be placed under guardianship. But if a person is competent to act as executor or administrator, then he is not the incompetent person envisaged in the law of guardianship.

Section 29-A in divesting the Juvenile and Domestic Relations Court of jurisdiction or authority to resolve questions already in issue as an incident in any case pending in the ordinary court has a salutary purpose. That provision or exception is designed to obviate the rendition of conflicting rulings on the same issue by the Court of First Instance and the Juvenile and Domestic Relations Court.

Issue as to alleged denial of due process.— As previously stated, the lower court appointed Doctor Lapuz as "commissioner to determine the competency" of Mrs. Baluyut. She was directed to recommend whether Mrs. Baluyut needed a guardian for her person and property. Doctor Lapuz took her oath as commissioner. She referred Mrs. Baluyut to Ma. Paz U. de Guzman for psychological evaluation. The psychologist found that Mrs. Baluyut was "an integrated well-functioning individual", "competent enough to understand her position relative to the case involving her".

Doctor Lapuz interviewed Mrs. Baluyut alone "for a psychiatric evaluation". The psychiatrist in her report did not categorically recommend that a guardian be appointed for the person and property of Mrs. Baluyut. Doctor Lapuz said that Mrs. Baluyut needed "kind and consistent guidance in the handling of her affairs" and required "help

regarding details and more complex procedures". (Mrs. Baluyut's, counsel volunteered the hearsay information that the psychologist and psychiatrist were allegedly surprised that the court declared her an incompetent on the basis of their reports, considering that their evaluations were favorable to her. Pages 10 and 20 of memorandum).

The lower court did not notify the parties of the filing of the psychiatrist's report, did not give them a chance to register their objections and did not set the report for hearing as required in sections 9 to 11, Rule 33 of the Rules of Court. Instead, on the day following the receipt of the report, the lower court declared Mrs. Baluyut an incompetent within the meaning of Rule 92 of the Rules of Court, which provides that the word "incompetent" includes "persons not being of unsound mind, but by reason of age, disease, weak mind, and another similar causes, cannot without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation" (Sec. 2).

The declaration was made although the guardianship court had not examined the alleged incompetent. Mrs. Baluyut's counsel in a pleading dated October 21, 1975 called the guardianship court's attention to the fact that in the administration proceeding Judge Ericta had already found in his order of March 24, 1975 that she was "healthy and mentally qualified". That conclusion was based on the following examination made by Judge Ericta:

"COURT: Will you (addressing Mrs. Baluyut) take the witness stand and we will find out if you are mentally deranged as alleged in the petition (for letters of administration filed by Alfredo G. Baluyut).

Interpreter (To the witness):

Q. Do you swear to tell the truth and nothing but the truth? — A. Yes, I do.

Q. Please state your name, age, address, civil status, and other personal circumstances? —

A. ENCARNACION LOPEZ VDA. DE BALU-YUT, 70 years old, widow, and residing at Quezon Boulevard, corner Banawe, Quezon City.

Court: Ready?

Atty. Santiago: Yes, Your Honor.

Court: No, I will be the one to ask the question. x x x.

Court (to Mrs. Baluyut): When were you born? ?

A. 1901, sir.

Court: The exact month and date? — A. March 25, 1901.

Q. (by Court): Where? — A. Lingayen Pangasinan.

Q. Who is your father? — A. Jose Lopez.

Q. Who is your mother? — A. Carmen Escano.

Q. Did you go to school? — A. Yes, your Honor.

Q. What is your highest educational attainment? — A. I am a teacher.

Atty. Salunat: At this juncture, your Honor, may we ask that the question(s) of the Court be translated in the Spanish dialect (language)?

Court: She can answer and understand my question in English.

Atty. Salunat: She finds difficulty, your Honor.

Court: If she finds difficulty, advise her to do so.

Atty. Salunat: Yes, your Honor.

Court: All right. What is your highest educational attainment? – E. Lopez Vda. de Baluyut: I am a teacher but I never teach. I don't need to work.

Court: What? – A. I am a senior teacher, your Honor.

Q. Do you have any children? – A. I had one who died.

Q. Do you have any grandchildren of that child of yours who died? – None, sir. He was very young when he died.

Q. How do you earn your livelihood? – A. From my properties.

Q. Where are your properties located? – A. They are in San Jose, Nueva Ecija.

Q. Where else? – A. In my house.

Q. Where is your house? – A. At the corner of Quezon Boulevard and Banawe, Quezon City.

Q. All right, I think that is enough in the meantime.

x x x x x x x x x x

Court: All right.

"ORDER

"Submitted for resolution is a motion dated March 19, 1975, asking for the setting aside of the appointment of Alfredo G. Baluyut as special administrator by order of the court dated February 24, 1975.

"This Court was misled in appointing him as special administrator by the allegation in the petition that the widow Encarnacion Vda. de Baluyut is no longer mentally capable of administrator (administering) her personal properties.

"During the hearing of this motion for reconsideration, the Court placed the widow Encarnacion Lopez Vda. de Baluyut on the witness stand and asked a series of questions to determine her mental capacity.

"The cross-examination by the Court shows this woman is healthy and mentally qualified.

"In view hereof, the Court sets aside the order dated February 24, 1975, appointing Alfredo G. Baluyut, petitioner here as special administrator. x x x."

The lower court, upon being apprised of the foregoing conclusion of the probate judge, should have at least tried to take judicial notice of what was happening in the administration proceeding. The voice of prudence should have cautioned the guardianship court to avoid the issuance of a declaration contradicting the probate court's pronouncement on Mrs. Baluyut's capacity to act.

As shown in *Baluyut vs. Judge Paño*, supra, Judge Ernani Cruz Paño, who succeeded Judge Ericta, confirmed the latter's finding in his (Judge Paño's) order of November 27, 1975. After interrogating Mrs. Baluyut, he was convinced of her "capacity and sufficient understanding".

The guardianship court denied Mrs. Baluyut's motion for reconsideration and affirmed its declaration on her supposed incompetency.

In this appeal, Mrs. Baluyut contends that she was denied due process of law when the guardianship court

summarily announced its verdict on her incompetency notwithstanding that her lawyer had not cross-examined the psychiatrist.

We hold that Mrs. Baluyut's contention is tenable. A finding that a person is incompetent should be anchored on clear, positive and definite evidence (*Yangco vs. Court of First Instance of Manila*, 29 Phil. 183, 190). That kind of proof has not yet been presented to the guardianship court to justify its precipitate conclusion that Mrs. Baluyut is an incompetent.

Here, we have the sorry spectacle of two courts of Quezon City making divergent findings on Mrs. Baluyut's capacity to act (Art. 37, Civil Code). What the guardianship court did (as the saying goes) was to take the second step before having taken the first step. It declared Mrs. Baluyut as an incompetent and then scheduled the cross-examination of the psychiatrist so that the parties could ascertain whether the declaration of incompetency is correct or not.

In the nature of things, the guardianship court should have first set for hearing the psychiatrist's report and examined Mrs. Baluyut before prematurely adjudging that she is an incompetent. Its hasty and premature pronouncement, with its derogatory implications, was not the off-spring of fundamental fairness which is the essence of due process.

Moreover, the lower court should have adhered strictly to the procedure laid down in Rule 93 of the Rules of Court for appointment of guardians. Rule 93 provides that after the filing of the petition, the court should fix a time and place for hearing and give proper notices. At the hearing, "the alleged incompetent must be present if able to attend, and it must be shown that the required notice has been given. Thereupon, the court shall hear the evidence of the parties in support of their respective allegations" (Sec. 5, Rule 93).

In the instant case, the lower court before hearing the evidence of the parties, particularly Mrs. Baluyut, immediately subjected her to a psychiatric examination. That unorthodox procedure was not warranted. Undoubtedly, the lower court could consult a psychiatrist but the normal procedure is to hear first the evidence of the parties and examine the prospective ward. The testimony of the alleged incompetent himself has peculiar cogency in the determination of whether he should be placed under guardianship (22 ALR 2nd 762).

Issue as to filing and legal research fees . — Mrs. Baluyut's counsel repeatedly asserts that Mrs. Viray and Mrs. Cuesta did not pay the corresponding legal research fees for the docketing of their petition for guardianship.

The cover of the expediente of Special Proceeding No. QC-00939 shows that on May 6, 1975 the sums of thirty-two pesos and two pesos were paid as docket fee and legal research fee under Official Receipts Nos. 8981855 and 8982309, respectively. Mrs. Baluyut's counsel contends that those payments correspond to the petition of Mrs. Viray and Mrs. Cuesta in Special Proceeding No. QC-00925 which was dismissed.

As Mrs. Baluyut did not ask the lower court to resolve this point squarely and as the orders being questioned herein are silent on that matter, we hold that the lower court should first determine whether the legal fees fixed in section 5[e], Rule 141 of the Rules of Court were duly paid by Mrs. Viray and Mrs. Cuesta.

WHEREFORE , the lower court's orders of September 25 and December 10, 1975 are set aside.

The Court a quo is directed to suspend the guardianship proceeding and to await the final verdict of the Court of First Instance of Rizal, Quezon City Branch XVIII on the competency of Encarnacion Lopez Vda. de Baluyut to act as executrix or administratrix of the estate of her deceased husband, Sotero Baluyut.

Should it be finally ruled therein that Mrs. Baluyut is competent to act as executrix or administratrix and should there be no other supervening circumstances that justify the continuation of the guardianship proceeding, then the

same should be dismissed.

The lower court is further directed to determine whether Cristeta Lopez Vda. de Cuesta and Guadalupe Lopez Viray paid docket and legal research fees for their petition. Costs against private respondents.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Martin, JJ., concur.

Concepcion, Jr., J., on leave.

[*] Mrs. Cuesta and Mrs. Viray also instituted a habeas corpus proceeding in this Court in order to have custody of the person of Mrs. Baluyut. Their theory was that she was being detained by Jose G. Espino (Viray vs. Espino, L-42183). The case was referred to the Court of First Instance of Quezon City which in a decision dated April 30, 1976 dismissed the petition.

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