TOMAS S. CARPIO, ET AL., PETITIONERS, VS. HON. JULIANO AGRAVA, ET AL., RESPONDENTS.

G. R. No. L-20403. November 28, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

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Tomas S. Carpio, et al. filed on May 18, 1962 before the Juvenile and Domestic Relations Court a petition praying that, after hearing, an order be issued for the removal of Ephraim Gochangco as guardian of the person of the ward Justina Santos and appoint in his place Concepcion A. Carpio, Ismaela A. Carpio and Francisca A. Carpio with authority to act as her guardians either singly or jointly.

As grounds for removal, petitioners alleged (1) the animosity which the ward bears towards her guardian; (2) the guardian's disregard of the ward's needs; (3) the guardian's disregard of the ward's health and well-being; and (4) the guardian's intention to gain control of the management and administration of the ward's estate which, if proven, would render the guardian “unsuitable to continue further in his present trust", for which reasons he should be removed, and that at any time since his acceptance of his appointment as guardian in 1959 he did not render an accounting of his expenses for the account of the ward in compliance with the requirement of our law on guardianship. The petition was not verified but a copy thereof was served on the guardian and other interested parties.

Upon receipt of the Carpios' petition, guardian Gochangco, thru his counsel, filed a manifestation denying vehemently each and every charge levelled against him by petitioners that would reflect against his actuation as guardian of the ward Justina Santos. He claims that there is an attempt to poison the mind of the ward against him merely to bolster their desire to remove him and that, while he has not rendered any accounting of his expenses directly to the court, he has, however, done so to the guardian of the estate, the Security Bank and Trust Company, from whom the guardian receives the funds necessary for the living expenses of the ward. This manifestation was verified by the guardian before the Deputy Clerk of Court.

On July 12, 1962, the court a quo issued an order declining to give due course to the petition giving as its reasons the following: "For one thing, it has been held that 'dislike of the ward for the guardian’ is not good ground for removal * * *. The statements that the guardian disregards or does not understand the ward's nesds; that the guardian disregards or has no interest in the ward's health or well-being; and the guardian has an intention to gain control of the management and administration of the ward's estate, in the opinion of the Court, cannot justify a hearing for the reception of the evidence at this time." Whereupon, the Carpios' filed before this Court the present

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petition for certiorari.

In declining to give due course to the petition for removal of respondent guardian, the court a quo made the following comment:

> "It is to be conceded that the Court has power to remove the guardian any time he becomes unsuitable for his trust. However the Court cannot entertain indiscriminately nil petitions for removal based on that ground, otherwise hearings for reception of evidence on that score may be interminable. The Court should have discretion in determining when a trial for the removal of a guardian is warranted by a corresponding petition or by facts brought to its attention.
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> "In the exercise of its discretion as above stated, the Court resolves to deny due course to the petition for removal of the guardian filed by the said Tomas S. Carpio, et al. For one thing it has been held that 'dislike of the ward for the guardian' is not a good ground for removal (30 C.J.S. 60). The statements that the guardian disregards or does not understand, the ward's needs; that the guardian disregard or does not understand, the ward's health or well-being; and the guardian has an intention to have control of the management and administration of the ward's estate in the opinion of the Court, can not justify a hearing for the reception of the evidence at this time."

The question now before us is whether the court a quo has abused its discretion in declining to give due course to the petition for removal on the ground that the reasons alleged therein are not meritorious or do not warrant the effort and time of the court.

It should be noted that the petition for removal is not verified, nor is it accompanied by any supporting affidavit, though at the last page thereof there is a notice addressed to the clerk of court stating that counsel will submit on May 29, 1962, at 9:00 a.m., or as soon as counsel may be heard, the foregoing petition for consideration and resolution.

On said date and hour, counsel for petitioners appeared in court, as well as counsel for respondent, but on that occasion the then presiding judge of the court a qv/t suggested to the lawyers to agree on any other Saturday for hearing of the petition since said judge had no time to hear then the petition. So a new date was agreed upon, but in view of the appointment of the then presiding judge to another position, the petition was not heard on the date set, for which reason the hearing was reset for July 7, 1962, at which time counsel of both petitioners and guardian were present. On that occasion, the new judge stated in open court that if she finds the petition meritorious she would grant the petitioners an opportunity to present evidence, but would like to study the case first. And on that same occasion the judge inquired if the ward could be visited and the guardian's counsel replied that she could in the morning or in the afternoon at any time that would be convenient to the court. Then the court made a remark that it would notify the parties of its visit in due time.

Three days after the hearing of July 7, 1962, the clerk of court informed guardian's counsel of the desire of the judge to visit the ward and suggested that a day be arranged for that purpose. This was done, and on the appointed hour, respondent judge went to the ward's residence at Florentino Torres Street at Santa Cruz, Manila, where she found the ward, the guardian, the latter's counsel, and the entire household staff, including the nurse on duty. And while at the ward's residence respondent judge conversed at length with the ward and inquired about her needs and the manner by which she was being take care of. She likewise inspected the living conditions of the ward and made inquires relative to the care being given to her. The visit lasted almost two hours.

After the visit, respondent judge issued the order now under consideration wherein she stated that, for the reasons therein alleged, she did not find it necessary to give due course to the petition. Apparently, this is due to what she found in her visit to the ward when she had occasion to assess for herself the truthfulness of the charge levelled

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against the guardian that there existed animosity between them, or that the guardian did not have the proper understanding of her needs, health and well-being. She found no basis to sustain the charge levelled against him.

Upon the foregoing facts, which do not appear disputed, we find that the court did not commit any abuse of discretion in declining to give due course to the petition for removal. Indeed, the main claim was that there was intense and unabating animosity between the ward and the guardian or that the latter did not have proper understanding of the ward's needs, health or well-being, a situation which respondent judge found from her visit not to be true. Respondent judge must also have noted that the petition is not verified while the guardian's answer is subscribed and sworn to wherein he vehemently denied the charges levelled against him. The want of verification of the petition must have also convinced respondent judge of the groundlessness of the petition. At any rate, we are not prepared to hold that respondent judge acted improperly in not giving due course to the petition for, as a rule, the matter of removal of a guardian is addressed to the discretion of the court (25 Am. Jur., 39; Padilla Vda. de Bengzon vs. Philippine National Bank, L-17066, December 28, 1961), though it would have been more in keeping with due process if petitioners had been given an opportunity to present their evidence as they requested in their petition. This is required by our rules. But this is obviated by the visit paid by respondent judge to the ward which made the hearing unnecessary.

Wherefore, petition is dismissed. No costs.

Bengzon, C. J., Concepcion, Reyes. J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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