

AQUILINA LARGADO, PETITIONER AND APPELLEE VS. JUDGE LUPO A. MASAGANDA, ETC., ET AL., RESPONDENTS. ANGELO DE LOS REYES, RESPONDENT AND APPELLANT.

G . R. No. L-17624. June 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On January 7, 1960, Angelo de los Reyes filed a petition before the Justice of the Peace Court of Unisan, Quezon, praying that he be appointed guardian of the persons and properties of certain minors.

The petition was given due course and was set for hearing on January 27, 1960. Aquilina Largado, mother of the minors, because of the failure of her counsel to appear, was declared in default. Two hours later, the counsel appeared and moved for the reconsideration of the order of default, but the same was denied. Thereupon, the justice of the peace court issued an order appointing Angelo de los Reyes guardian as prayed for.

On February 6, 1960, Aquilina Largado filed a motion to dismiss on the ground that said justice of the peace court has no jurisdiction to appoint a guardian under Republic Act No. 2613, which was enacted on August 1, 1959. This motion was also denied.

On February 17, 1960, Aquilina Largado filed a petition for certiorari with preliminary injunction before the Court of First Instance of Quezon praying for the nullification of the orders entered by the Justice of the Peace Court of Unisan as above specified on the ground of lack of jurisdiction reiterating the same reasons already advanced in her motion to dismiss. And acting on it, the court a quo granted ex parte the writ prayed for. In the meantime, respondents gave their answer justifying the appointment made by the Justice of the Peace Court of Unisan, and after issues were joined, the court a quo rendered decision holding that the Justice of the Peace Court of Unisan has no jurisdiction to appoint a guardian because the same is prohibited by Republic Act No. 2613.

In due time, petitioner took the present appeal.

The issue posed before us is whether a justice of the peace court has jurisdiction to appoint a guardian at the time the present petition was filed before the Justice of the Peace Court of Unisan.[1]

The court a quo answered the question in the negative relying on Section 10 of Republic Act No. 2613, which was enacted on August 1, 1959. Indeed, said section, which amends Section 88 of Republic Act No. 296, known as the Judiciary Act of 1948, provides that the jurisdiction of the justice of the peace courts shall not extend, among others, to the appointment of guardians even if the Secretary of Justice has ruled otherwise in an opinion rendered in 1959. In this respect, we agree with the court a quo, since the provisions of said Act are clear.

The contention that the insertion of the term "guardian" in said Section 10 was only due to an over-sight as opined by the Secretary of Justice may have some basis, considering the intent of Congress in approving Republic Act 2613; nevertheless, we are of the opinion that the mistake cannot be corrected by executive fiat, but by legislation. This is what Congress in effect did when on June 17, 1961 it approved Republic Act No. 3090 rectifying the

mistake committed (Section 5). However, since said Act does not contain any saving clause, its provisions cannot be given retroactive effect.

The foregoing discussion makes it unnecessary to dwell on the background of the law relative to the jurisdiction of justice of the peace courts on matters pertaining to the appointment of guardians.

Wherefore, the decision appealed from is affirmed, without costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] It was filed on January 7, 1960.

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