

ENRIQUE T. JOCSON AND JESUS T. JOCSON, PETITIONERS AND APPELLANTS, VS. THE EMPIRE INSURANCE COMPANY, OPPOSITOR AND APPELLEE, AND INTESTATE ESTATE OF AGUSTIN A. JOCSON REPRESENTE...*G. R. No. 10792. April 30, 1958*

Ponente: REYES, A., J.

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Appeal from an order of the Court of First Instance of Iloilo, certified to us by the Court of Appeals on the ground that the questions involved are purely legal.

It appears that in Special Proceedings No. 734 of the Court of First Instance of Iloilo, Agustin A. Jocson was, on October 3, 1950, appointed guardian of the persons and properties of his then minor children, Carlos, Rodolfo, Perla, Enrique and Jesus, and as such guardian, he had a bond filed with the Empire Insurance Co. as surety. Among the properties of the minors were sums of money from war damage payments which formed part of their inheritance from their mother, who died in 1934, and a total of P18,000 of such war damage payments was deposited in the bank by the guardian Jocson to the account of the minors. In the course of the guardianship. Jocson submitted periodic accounts to the court, among them those for expenses incurred for the education and clothing of the wards for the period from October 2, 1950 to October 2, 1951 and again for the period from October 13, 1951 to March 16, 1953, the portions of the said expenses corresponding to the minors Enrique and Jesus being, respectively, P400.20 and P330.40 for the first period, and P850.26 and P1,410.10 for the second period. The accounts were approved by the court.

Jocson died on February 12, 1954, and to succeed him, Perla, who together with her brothers Carlos and Rodolfo, had already attained majority, was appointed guardian of the remaining minors Enrique and Jesus. On September 29 of that year, Perla filed a petition in the guardianship proceedings to have the accounts of the deceased guardian, Jocson, reopened, claiming that the disbursements made from the guardianship funds for the education and clothing of the minors Enrique and Jesus were illegal. Upon coming of age, Enrique and Jesus adopted the petition as their own and then moved that the disbursements in question be declared illegal and that Jocson's bond as guardian to be made to answer therefor.

The motion was opposed by the Empire Insurance Co., the surety on the bond, as well as by the administratrix of the intestate estate of Jocson, and the court, after considering the written arguments submitted by the parties, rendered an order denying it and declaring the bond cancelled and the guardianship terminated. The movants appealed, and it is that appeal that has been certified to us by the Court of Appeals.

It is appellants' contention that the expenses for their education and clothing during their minority were part of the support they were entitled to receive from their father, so that when the latter paid those expenses from the guardianship funds, he made illegal disbursements therefrom for which his bond as guardian should be made to answer.

The contention is clearly without merit. Support does include what is necessary for the education and clothing of the person entitled thereto (Art. 290, New Civil Code), But support must be demanded and the right to it established before it becomes payable (Art. 298, New Civil Code; *Marcelo vs. Estacio*, 70 Phil., 215). For the right to support does not arise from the mere fact of relationship, even from the relationship of parents and children, but "from imperative necessity without which it cannot be demanded, and the law presumes that such necessity does not exist unless support is demanded" (Civil Code of the Philippines, Annotated, Tolentino, Vol. 1, p. 181, citing 8 Manresa 685). In the present case, it does not appear that support for the minors, be it only for their education and clothing, was ever demanded from their father and the need for it duly established. The need for support, as already stated, cannot be presumed, and especially must this be true in the present case where it appears that the minors had means of their own. In the circumstances, the disbursements made by the deceased guardian Jocson, with the approval of the court, for the education and clothing of the appellant minors cannot be said to be illegal, so that the lower court did not err in holding the guardian's bond not liable for the same. Furthermore, the claim for support should be enforced in a separate action and not in these guardianship proceedings.

In view of the foregoing, the order appealed from is affirmed, but without costs since this is a paupers' appeal.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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