

**MANUEL L. FERNANDEZ, PETITIONER, VS. HON. ELOY B. BELLO,
JUDGE COURT OF FIRST INSTANCE OF PANGASINAN, RESPONDENT.***G.R. No. 14277. April 30, 1960*

Ponente: LABRADOR, J.

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Petition for certiorari with injunction filed by Atty. Manuel L. Fernandez to annul two orders dated June 16 and July 29, 1958, of the Court of First Instance of Pangasinan, Hon. Eloy B. Bello, presiding. The first order reprimands petitioner for his improper conduct as counsel in Special Proceedings No. 3931, entitled "Guardianship of the Minors Federico and Pedro both surnamed Perreyras, Timotea Perreyras, petitioner-guardian," orders him to return to the guardian within 15 days the sum of P200.00 collected by him, and causes a copy of the order to be sent to the Supreme Court for corresponding disciplinary action on the petitioner (Annex J). The second order denies petitioner's motion for reconsideration and warns him not to use improper terms in his pleadings. (Annex L.)

The circumstances leading to the issuance of the above orders may be briefly stated as follows: Timotea Perreyras, through Atty. Manuel L. Fernandez as her counsel, instituted Special Proceedings No. 3931, for her appointment as guardian over the persons and properties of her brothers, the minors Federico and Pedro Perreyras. Upon her appointment and upon her qualifying as such, she petitioned the court for authority to sell a nipa land owned in common with the wards for the purpose of paying outstanding obligations to Maximiano Umangay. The request was granted by Judge Villamor, and on August 24, 1951, a deed of sale, prepared and notarized by Atty. Manuel L. Fernandez, was executed by the guardian in favor of Maximiano Umangay for the sum of P1,000. This sale was approved by Judge Pasicolan on December 17, 1952 (Annex C).

The nipa land sold by the guardian had previously been sold with right to repurchase to Ricardo Perreyras and Maximiano Umangay by Florentino Perreyras, father (now deceased) of the guardian and the wards. The interest in the land of Ricardo Perreyras and Maximiano Umangay were, in turn, sold for P200.00 to Atty. Manuel L. Fernandez. Of the purchase price of P1,000, P200.00 was paid to Atty. Manuel L. Fernandez, redemption price of the nipa land and as assignee of the credit in favor of Maximiano Umangay and Ricardo Perreyras. The other P200.00 was given to said attorney, in payment of his legal fees for services rendered by him as counsel of the father of the wards in a civil case. However, the record does not show that these payments were authorized by the court.

On January 21, 1958, Judge Eloy Bello, who took over the court from Judge Pasicolan, issued an order requiring Timotea Perreyras to show cause why she should not be punished for contempt for failing to account for the property and money of the wards. After hearing' the guardian Timotea Perreyras, the court issued another order dated January 20, 1958, exonerating her of the contempt charges, disapproving all payments made by her, including that made to Atty. Manuel L. Fernandez, and requiring Attys. Manuel L. Fernandez and Braulio Fernandez to show cause why they should not be suspended from the practice of law and declared in contempt of court. In the same order, the court charged said attorneys of having abused their relationship with the guardian and

having taken money from her without previous approval of the court (Annex D). Atty. Braulio Fernandez submitted a written explanation, and the court, considering it satisfactory, exonerated him of the preferred charges. On January 30, 1958, the court again issued another order directing Atty. Manuel L. Fernandez to submit in ten days a written answer to the charges stated in the order of January 27, 1958 (Annex G). On February 1, 1958, he submitted an explanation (Annex H.), admitting receipt of the sum of P400.00 from the guardian, but alleging that when he received the amount he was no longer the attorney of the guardian as their relation had terminated when the guardian secured the services of Atty. Braulio Fernandez; that he acted in good faith and the guardianship proceedings were instituted by him only to help the minors the action being less expensive than an intestate proceeding, and that he was paid only P50.00 for his services to the guardian. So he asked that the charges be dismissed and that the guardian be warned not to make unjustifiable complaints against him.

On February 10, 1953, Timotea Perreyras and Maximiano Umangay were summoned to appear for further examination on the proceeds of the sale of the nipa land. After hearing their testimonies, the court on June 16, 1958, found Atty. Manuel L. Fernandez guilty of contempt of court because he had taken the amount of P100.00 from the proceeds of the sale without previous approval from the court. The court also found the conduct of counsel to be anomalous for the reason that he instituted the guardianship proceedings only to enable him to collect unpaid attorney's fees due him from the father of the wards (Annex J). This is the first order sought to be annulled in this appeal. The second order is that denying the motion for reconsideration of respondent attorney.

It is claimed by petitioner in this appeal that the proceedings conducted in the court below are irregular because no formal charge was filed against him. There is no merit in this contention. The court *motu proprio* preferred the charges in its order dated January 20, 1958, and in another order dated January 27, 1958, the petitioner was duly advised thereof and was given an opportunity to file a written answer thereto. It has been held in the following case that there has been sufficient compliance with the requirements of law:

"The institution of charges by the prosecuting officer is not necessary to hold person guilty of civil or criminal contempt amenable to trial and punishment by the court. All that the law requires is that there be a charge in writing duly filed in court and an opportunity to the person charged to be heard by himself or counsel. The charge may be made by the fiscal, by the judge, or even by a private person. The above requirements were complied with by the filing of the order of September 30, and the giving of full opportunity to the respondent to appear and defend himself. The contention that a formal information filed by a prosecuting officer is necessary to begin proceedings must be overruled." (*People vs. E. M. Venturanza, et al.*, Defendants, Jose Y. Torres, appellant, 98 Phil., 211; 52 Off. Gaz. [2] 769.)

The court below found petitioner guilty of contempt of court on two grounds, the first is that he instituted the guardianship proceedings for the sole purpose of facilitating payment to him of the debts of the wards. The facts do not, however, bear out this finding. Before the guardianship proceedings were instituted, the wards were indebted in the sum of P200.00 to Ricardo Perreyras and Maximiano Umangay, and as the wards had no money with which to pay the debt, the only way to settle it is by selling the nipa land. But the land could not have been sold by the minors without intervention of a guardian. So the petitioner must have believed that guardianship proceedings was the proper remedy. The judges of the court below, from whom Judge Bello took over, must have been satisfied that the procedure taken by the petitioner was more beneficial to the wards when they appointed a guardian and approved the sale of the land. As there is no evidence of bad faith on the part of petitioner, the finding on this point of the court below should be reversed.

However, the finding of the court that the purchase price of the land is P1,000 was in *custodia legis* and could not be taken and used in payment of debts without its previous authority is correct. As a lawyer the petitioner is charged with the knowledge that the property and effects of the wards are under the control and supervision, of the court, and that they could not be taken and expended without the latter's permission, more especially so when

the money taken was to pay the debt of the father of the wards. The reprimand is, therefore, fully justified. But the order for the refund of the P200.00 and the closing of the guardianship proceedings after such return, would deprive petitioner of the fees that he was entitled to receive from the father of the guardian and the wards, for services rendered in a civil case, which services are admitted to have been due from their father. While the reprimand is in order for petitioner's mistake, the mistake is no sufficient ground for the non-payment of the fees he lawfully earned and which his client could not pay before his death. The duty of courts is not alone to see that lawyers act in a proper and lawful manner; it is also their duty to see that lawyers are paid their just and lawful fees. Certainly the court can not deny them that right; there is no law that authorizes them to do so.

In his answer before this Court respondent judge justifies his order for the return of the P200.00 on the ground that petitioner is "below average standard of a lawyer." The opinion of a judge as to the capacity of a lawyer is not the basis of the right to a lawyer's fee. It is the contract between the lawyer and client and the nature of the services rendered. Petitioner claims that he won a civil case for his client, the deceased father of the guardian and the wards. That P200.00 is the amount of the fee of petitioner is admitted by the guardian. We find that the court's order directing petitioner to return the P200.00, and in effect denying him the right to collect the same, is not justified, to say the least. This portion of the final order is hereby modified in the sense that the return of the P200.00 is without prejudice to petitioner's right to demand payment for the services rendered the deceased out of the proceeds of the property left by him (deceased).

In this Court the judge below desires that portions of petitioner's motion for reconsideration be stricken out for employing strong language. We believe the said strong language must have been impelled by the same language used by the judge below in characterizing the act of the petitioner as "anomalous and unbecoming" and in charging petitioner of obtaining his fee "through maneuvers of documents from the guardian-petitioner." If any one is to blame for the language used by the petitioner, it is the judge himself who has made insulting remarks in his orders, which must have provoked petitioner, and the judge below has nothing to blame but himself. If a judge desires not to be insulted he should start using temperate language himself; he who sows the wind will reap a storm.

Wherefore, the orders are modified as above indicated. Without costs.

Paras, C. J., Montemayor, Bautista Angelo, Endencia, Barrera, and Gutierrez David, JJ., concur.
Concepcion, J., reserves his vote.

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