

IN RE GUARDIANSHIP OF THE INCOMPETENT JOSE R. DE INCHAUSTI, MARIA CONSUELO RICO VDA. DE INCHAUSTI, PETITIONER AND APPELLANT, VS. MANUEL SOLER, OPPONENT AND APPELLEE.

G.R. No. 15119. January 19, 1920

Ponente: STREET, J.

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STREET, J.:

On January 18, 1915, an order was entered in the Court of First Instance of the city of Manila, upon the application of Maria Consuelo Rico, viuda de Inchausti, appointing her guardian of the person and property of her son Jose R. de Inchausti, on the ground that the latter had become demented and incapable of properly caring for himself and estate. Soon after this step had been taken, the ward was, upon the advice of physicians, sent to Barcelona, Spain, where he has continued to reside.

On August 30, 1915, Manuel Soler, a resident of the city of Manila, in the character of friend to the incapacitated person, filed a petition in the guardianship proceedings, asking the court to rehabilitate him and bring the guardianship to an end. This motion was opposed by the mother of the incapacitate, in her character as guardian, on the grounds (1) that the ward had not been given sufficient notice of the hearing and (2) that it had not been satisfactorily shown that he is now capable of taking care of himself and property. Upon hearing the petition the trial judge overruled both of these objections and adjudged the ward, Jose R. de Inchausti, to be of sound mind. A further order was made requiring the guardian to render her account within the period of thirty days from the date upon which the order should become final. From this decision the guardian appealed.

Section 562 of the Code of Civil Procedure, which deals with the subject of the judicial restoration of incompetents to capacity, declares that, upon receiving the petition, the court shall appoint a day for the hearing and cause notice of the same to be given to the ward. In the present case the clerk, by order of the court, sent a cablegram to the United States Consul at Barcelona, requesting him to notify Jose R. de Inchausti that the petition for his restoration to capacity would be heard in the Court of First Instance of Manila on October 19, 1918. In reply to this, a cablegram was received from Barcelona on October 14, 1918, signed by the Consul General of the United States in that city, advising that Inchausti had been duly notified according to instructions. The trial judge held that notice to the ward had been given as required by law, and he proceeded, on the appointed day, to dispose of the petition upon its merits in accordance with the proof then submitted.

In our opinion there was no error in the action thus taken. The notification of the ward required in section 562 of the Code of Civil Procedure is not intended as a personal service of process in the sense necessary to give the court jurisdiction over the ward. It is, therefore, of no moment that the person to be notified was living in a foreign country and thus beyond the territorial jurisdiction of the Manila court. Nor is the manner in which the court procured service of the notice of any importance. It is sufficient that the notice was given. The court in which the guardianship was pending already had jurisdiction of the cause and the parties; and notification to the ward—where

the petition to rehabilitate him is presented by a friend—is required merely as an assurance that the individual chiefly concerned shall have cognizance of what is being done. It at least gives him an opportunity to advise the court in case action taken by the mover of the petition was officious or unauthorized. That the messages were sent and received by cable, as above stated, affords sufficient evidence, in the absence of anything to the contrary, that notification was duly effected, as reported in the return of the Consul General.

Upon the question of the propriety of the order declaring the ward to be of sound mind and requiring the guardian to submit her accounts, we are of the opinion that the proof fully sustains the action taken by the court. In this connection it appears that the violent access of dementia which manifested itself prior to the original appointment of the guardian passed off after Inchausti was taken away from Manila in 1915 and the same extreme manifestations of derangement have not reappeared. Furthermore, the evidence shows that at the time the petition for his rehabilitation was heard, the ward was in normal mental state and had been in this condition for a period sufficiently long to justify the belief that he is permanently restored. Under these circumstances it would be highly improper to prolong the guardianship.

The opposition to the termination of the guardianship seems to be based chiefly on the fear, entertained by his mother, that Inchausti, if placed in control of the large property to which he is heir, will prove to be a spendthrift. Even though this fear should be well-founded, it affords no reason for maintaining a guardianship which had its origin in his mental incapacity. Of course if he is, or should hereafter prove to be, a spendthrift, proper proceedings can be instituted to protect him from wasteful proclivities. But present mental capacity being proved, he is entitled to be discharged from tutelage.

The order appealed from is affirmed, and the cause is remanded to the court of origin for further proceedings in conformity with said order. No special pronouncement will be made as to costs. So ordered.

Torres, Johnson, Araullo, Malcolm, and Avanceña, JJ., concur.

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