

**ANDREA OLARTE, PETITIONER, VS. DIOSDADO ENRIQUEZ,
INOCENCIA OLARTE ENRIQUEZ AND THE HON. GREGORIO D.
MONTEJO, JUDGE OF THE COURT OF FIRST INSTANCE OF
ZAMBOANGA CITY, RESPONDENTS.**

G.R. No. 16098. October 31, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

On July 6, 1959, herein respondents Diosdado Enriquez and Inocencia O. Enriquez filed a petition in Special case No. 336 of the Court of First Instance of Zamboanga for the removal of Andrea Olarte, herein petitioner, as guardian of the minors Eduardo, Jose, Amparo and Pilar, all surnamed Olarte. Andrea Olarte opposed the petition but the lower court in its order of July 18, 1959 granted the motion, relieving her as guardian of the minors above named and appointing in her stead respondent Diosdado Enriquez.

Motion for reconsideration of the order having been denied, Andrea Olarte filed a notice of appeal on August 6, 1959. On the 13th of the same month, the respondent spouses, alleging that the order removing Andrea Olarte was interlocutory, filed an opposition to the approval of the record of appeal and two days later moved for the immediate execution of the said order. The motion for immediate execution was granted. To stay execution, petitioner Andrea Olarte filed a motion for the approval of a supersedeas bond, but this appears to have also been denied.

On September 25, 1959, the lower court issued another order denying the motion for the approval of the record on appeal and the appeal bond, on the theory that the appeal is premature, the order complained of not being appealable pending the submission and approval of the final accounts. Contending otherwise, Andrea Olarte filed the present action for certiorari for the annulment of the order disapproving the record on appeal and appeal bond. Upon the petitioner filing the required bond, the writ of preliminary injunction prayed for was issued. The writ was subsequently amended on petitioner's motion by requiring the respondents to re-deliver to petitioner all the disputed properties turned over by her to the guardian appointed in her place.

The decisive question to be determined is whether or not an order removing a guardian and appointing another in his stead is appealable. The answer must be in the affirmative. Section 1, Rule 105, relating to appeals in special proceedings, provides in part as follows:

Section 1. Orders or judgments from which appeals may be taken. -An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance where such order or judgment:

* * * * *

"(e) Constitutes, in proceedings relating to the settlement of the estate of deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator;"

Under the above provisions, it is apparent that an order removing a guardian is an order constituting a final determination of his rights and consequently said guardian may appeal therefrom. Under the Code of Civil Procedure (Act No. 190), the rule was the same. Thus, in the cases of *Moreno vs. Gruet* (1 Phil., 217) and *Aleman vs. Sweeney* (2 Phil., 654), it was held that an order removing a guardian is appealable. In the recent case of *Espinosa vs. de Aquino, et al.* (103 Phil., 195; 55 Off. Gaz., [24] 4455), this Court also held that a guardian declared to be incompetent may appeal from the order declaring him as such. This is in conformity with the general rule that "any order, judgment, or decree of the probate court capable of being enforced, or taking effect without further, order, may be appealed from; and that no action of the probate court can be appealed from which requires a subsequent order or judgment to give it effect." (*Kaw Singco vs. Abeto*, 72 Phil., 67.)

Wherefore, the writ of certiorari prayed for is granted, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.

Writ granted.

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