

GUARDIANSHIP OF THE MINORS LUZ AND AMPARO FANLO Y SANZ, FRANCISCO SANZ, PETITIONER AND APPELLEE, VS. CANDIDO FANLO, GUARDIAN AND APPELLANT.

G.R. No. 26203, February 21, 1927

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought by Candido Fanlo for the purpose of reversing an order of the Court of First Instance of Manila, removing him from the position of guardian of the property of two minor children, namely, Luz and Amparo Fanlo y Sanz, who are nieces of the appellant's wife.

It appears that, under an order of August 7, 1925, letters of guardianship were issued to the appellant as guardian of the person and property of Luz and Amparo Fanlo y Sanz, upon execution of a bond by him in the amount of P1,000. On March 1, 1926, Francisco Sanz, maternal uncle of the minors, submitted a motion to the court calling attention to the fact that the appellant had not as yet submitted any inventory of his wards' property as required by law, and representing that he had been judicially declared insolvent: wherefore it was prayed that the appellant should be removed from the office of guardian. To this motion the appellant filed an opposition in which he admitted that, owing to certain liabilities incurred by him as surety for a nephew, he had been compelled to file a petition of voluntary insolvency, at the same time asserting that his management of his wards' estate had been highly beneficial to them and that the motion asking for his removal had been proposed by the motioner, Francisco Sanz, with the ulterior object of frustrating an action which the appellant had caused to be instituted against him in the interest of the wards. Upon consideration of the facts above stated his Honor, the trial judge, entered the order which is the subject of appeal in this case, removing the appellant from the position of guardian of the property of the wards and appointing the Philippine Trust Co. to said position, at the same time leaving the appellant in the position of guardian of the persons of the minors.

In the brief of the appellant attention is directed to the fact that insolvency is not mentioned in section 574 of the Code of Civil Procedure as one of the grounds for the removal of a guardian; and it has been held that the causes enumerated in this section supply the only grounds of removal (*Aleman and Atayde vs. Moreno*, 5 Phil., 172). At the same time it is pointed out that article 237 of the Civil Code, which enumerates insolvents and bankrupts among persons who are ineligible to be guardians, has been repealed by implication.

The proper reply to this argument, in our opinion, is that, while section 574 of the Code of Civil Procedure does not attempt to make an exhaustive enumeration of the grounds of removal, it nevertheless uses a more general and inclusive expression. This is found in the provision to the effect that, when a guardian becomes unsuitable for the office, he may be removed by the court and required to surrender the estate of the ward to the person found to be lawfully entitled thereto. The use of the word "unsuitable" renders unnecessary any exhaustive enumeration of the particular grounds of removal. Moreover, though article 237 of the Civil Code may have been repealed, this has not expunged the element of human nature which makes it of questionable propriety for an insolvent person to

have charge of the estate of a minor. In the case before us the wards are not the children of the appellant, but nieces of his wife; and it is alleged in the application for appointment that the undivided property belonging to them produces from P1,500 to P2,000 per annum. It is well established doctrine that the matter of the appointment and removal of guardians for minor children is a matter reposed largely in the discretion of the Judge of First Instance, who deals directly with the parties and is better qualified than this court to form a correct opinion as to the special needs of wards in particular instances and of the character and qualifications of persons who are proposed for appointment (*Feliciano vs. Camahort*, 22 Phil., 235). While we would not presume to say that the insolvency of a guardian is per se sufficient to require removal in any case, we are constrained to hold that, where the lower court has exercised its discretion by removing a guardian on this ground, such action will not be reversed by this court, in the absence of circumstances showing clear abuse of discretion. In the case before us no such abuse of discretion is apparent.

The order appealed from will therefore be affirmed; and it is so ordered, with costs against the appellant.

Johnson, Villamor, Ostrand, and Romualdez, JJ., concur.

VILLA-REAL, J., with whom concurs MALCOLM, J., dissenting:

I dissent.

Section 574 of Act No. 190 provides as follows:

"Sec. 574. Removal and resignation of guardian.—When a guardian, appointed either by the testator or a court or judge, becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the judge or court may, upon such notice to the guardian as the judge or court may require, remove him, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; upon the resignation or removal of a guardian as herein provided, whether appointed by will or otherwise, the court may appoint another in the place of the guardian who resigns or was removed."

The mere fact that a guardian becomes insolvent in his business does not make him unsuitable to manage the estate of the ward, unless it be shown that his insolvency was due to mismanagement or lack of business ability. Here it is a fact of record that the guardian's financial difficulties were due to mismanagement of others and was not due to his own fault.

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