

## **IN RE GUARDIANSHIP OF THE MINORS PABLO RIVERA ET AL. MARIANO VELAYO, PETITIONER AND APPELLANT, VS. CLARO PATRICIO, OPPONENT AND APPELLANT.**

*G.R. No. 26593. March 24, 1927*

Ponente: OSTRAND, J.

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### **OSTRAND, J.:**

On December 29, 1922, one Josefa Patricio employed Mariano Velayo to represent her as a lawyer in an action to be brought against her father Claro Patricio for the recovery of her inheritance from her mother Cecilia Rivera, which inheritance was under the administration and control of Claro Patricio. The employment of Velayo was evidenced by a written contract which provided for the payment to him of a fee of 50 per cent of the value of the property which might be recovered in the proposed action.

The action, civil case No. 23528 of the Court of First Instance of Manila, was brought on January 6, 1923 and prosecuted in the name of Josefa Patricio, but on July 5, 1924, while the action was still pending, she died and a few days later Velayo filed a motion in the case asking that Josefa's children, Pablo, Gerundia, Carmen and Rosa Rivera and Rosario Patricio, all minors, be substituted as plaintiffs. The motion was granted on July 14, 1924, and a guardian ad litem appointed.

The case was not decided by the Court of First Instance until February 28, 1925, when judgment was rendered in favor of the minors for the sum of P12,868.47, with legal interest from the date of the filing of the complaint. Upon appeal to this court the amount of the judgment was increased to the sum of P22,454.69, including the accrued interest. In the meantime an administrator of the estate of the deceased was appointed as was also a committee on claims which, on April 15, 1926, began to hold its sessions to pass upon claims against the estate.

Sometime in March or April, 1926, Claro Patricio was appointed guardian of the minors and on July 21 of the same year, Attorney Velayo filed a petition in the guardianship proceedings setting forth that, under his contract with Josefa Patricio, he was entitled to the sum of P11,227.34, as fees for his services in civil case No. 23528 of the Court of First Instance of Manila and prayed that, as the services had inured to the benefit of the minors, their guardian be ordered to pay him the said sum of P11,227.34. The guardian opposed the petition on the ground that the minors were not bound by the contract with their deceased mother and that the claim should have been presented to the committee on claims against the estate of the deceased. The court below held that the contract with Josefa was unconscionable, but allowed Velayo a fee of P7,000 and ordered the guardian to pay the same out of funds pertaining to the estate of the minors. From this order both Velayo and the guardian appealed.

Upon appeal the petitioner argues that the children of Josefa Patricio are bound by the contract with the petitioner and that no evidence having been presented by the respondent to show that the contract was unconscionable, the court below should have allowed fees in the full amount claimed by the petitioner and provided for in the contract. The respondent insists in his contention before the lower court that the contract in question was not binding on the minors and that the petitioner should have presented, his claim to the commissioners on claims. He further argues

that the amount allowed the petitioner as fees is excessive.

We agree with the respondent that the contract upon which the petitioner's claim is based, is not binding upon the minors and that if the petitioner proposed to rely on that contract, he should have proceeded against the estate of the person with whom the contract was made; the children were not parties to the contract and neither they, nor their guardian, appear to have had any knowledge of its existence. Instead of substituting the minors for their deceased mother as plaintiffs in case No. 23528, the petitioner should have followed the procedure prescribed by section 119 of the Code of Civil Procedure and applied for the appointment of an administrator of the estate who could then, with the consent of the probate court, have continued the pending action.

Inasmuch as the action resulted to the benefit of the minors, the petitioner may, perhaps, recover from them, or their estate, a reasonable compensation for his services upon a quantum meruit and we have felt strongly tempted to prevent further litigation by following the example of the court below and here give the petitioner a judgment for what we, upon the facts before us, would consider a reasonable compensation for his services.

But in attempting to do so, we would encounter the difficulty that the petitioner so far has proceeded upon the theory that the minors were bound by the contract entered into between him and their mother and that, therefore, the question of the value of his services has not been put properly in issue. As a consequence, the respondent has relied entirely on the quite sufficient defense that the minors had nothing to do with the contract and that, therefore, the proceedings were improperly instituted. Upon the pleadings, the respondent was fully justified in so doing and in omitting to present evidence as to the value of the petitioner's services. In these circumstances, to award compensation on a quantum meruit would virtually deprive the minors of their day in court and would constitute an irregularity, which an appellate court, called upon to correctly interpret the law, cannot countenance.

The order appealed from is therefore reversed and the petition denied without costs in this instance. So ordered.

Johnson, Street, Villamor, Romualdez, and Villa-Real, JJ., concur.

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MALCOLM AND JOHNS, JJ., dissenting:

We dissent and entertain the opinion that the petitioner, Mariano Velayo, should be allowed P3,500 as a reasonable amount for his professional services.

The facts are correctly stated by the trial judge. They disclose a contract made by Attorney Velayo and Josef a Patricio whereby Velayo was to obtain 50 per cent, if he was successful in pressing the suit of his client. He did institute action and successfully, for he obtained a judgment for P22,454.69. On the death of Josefa Patricio, he substituted the minors and a guardian ad litem for the deceased.

We also agree with the trial judge that the written contract for services is unconscionable and unreasonable, but would further limit the recovery to one-half of that allowed by His Honor which, as was first indicated, would be P3,500. This result will do justice to all the parties, and will avoid further litigation.

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