

IN RE GUARDIANSHIP OF THE MINORS MANUEL LIWAG, PACIFICO LIWAG AND MERCEDES LIWAG, JOSEFA ONGPAUCO, GUARDIAN AND APPELLANT; MANUEL LIWAG, WARD AND APPELLEE.*G. R. No. 44302. January 29, 1937*

Ponente: AVANCENA, C.J.

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Pablo Liwag, married to Josefa Ongpauco with whom he had three children named Manuel, Pacifico and Mercedes, died on December 11, 1931, leaving, among other properties, two insurance policies for P46,647.76 of which his said children were the beneficiaries. On the 24th of said month, Josefa Ongpauco, upon her petition, was appointed guardian of her said three children who were then minors. It is stated in the appointment that when the guardian collects the proceeds of the two insurance policies, she shall be obliged to deposit them in any bank in the name of the wards.

On October 15, 1932, the wards filed a petition in court praying that their mother, the guardian, be dismissed from her charge without prejudice to her being ordered to deposit the proceeds of the insurance in a bank. On the 5th of the following month, however, the wards filed another petition withdrawing the former one on the ground that they found the guardian's oral explanations of the investments made by her of a part of the guardianship funds satisfactory and because of her promise to render a detailed account of said investments.

On December 20, 1933, the ward Manuel, having become of age, asked the court to order the guardian to turn over to him one-third of the guardianship funds due him. This petition gave rise to several incidents, among them that of the guardian's having been compelled to render accounts of the proceeds of the insurance policies. It should be noted that the intestate proceedings of the deceased, wherein said guardian was appointed administratrix, had been instituted at the same time as these guardianship proceedings. According to the accounts presented by the guardian in these guardianship proceedings, she had spent the entire proceeds of the insurance policies in the payment of debts and other necessary care to protect and avoid the sale of the properties under her administration and in which she and her wards were the only persons interested. However, the court, in connection with Manuel's petition, issued its order of June 13, 1935, disapproving the account presented by the guardian and ordering her to deposit the funds of the guardianship in the office of the clerk of court, warning her that if she failed to comply with said order she would be placed under arrest and detained until she complied therewith.

The guardian, on the 22d of said month, filed a motion for reconsideration of said order, supporting it with an agreement entered into between her and her wards who, in consideration of this agreement, asked that the order of June 13, 1935, be set aside and that the guardian be relieved of all obligation. The wards state in this agreement that they acknowledge the legality of the investments made by the guardian of the guardianship funds, having been used in urgent payments for the benefit of the intestate estate of their deceased father, and because she made said investments in the best of faith, with no intent of gain and with no other purpose than to safeguard the

well-being and prosperity of her children, acknowledging her inability, thereby, to comply with the order in question. This notwithstanding, the ward Manuel Liwag, repudiating the agreement for the reasons stated in his petition of the 25th of said month of June, asked that the guardian be placed under arrest and detained until she complied with the order of the court of June 13. Acting upon this petition, the court, in its order of July 1, of said year, ordered the arrest and detention of the guardian until she complied with the order of June 13, 1935. The appeal now under consideration by this court was taken from said order.

It is inferred from the foregoing, with reference to this appeal, that two resolutions were entered by the court: That of December 24, 1931, stating that the guardian, after collecting the proceeds of the insurance policies, would be obliged to deposit them in a bank, and that of June 13, 1935, ordering her to deposit all the guardianship funds with the clerk of court.

Technically, the resolution of December 24, 1931, did not contain, in the strict sense, an order to the guardian to deposit the proceeds of the insurance policies in a bank, and it cannot be a ground for an action for contempt.

As to the order of June 13, 1935, it refers to an act which the guardian can no longer perform, inasmuch as the guardianship funds which the court orders her to deposit with the clerk of court are no longer in her possession, having used them, as already stated, in paying obligations for the purpose of protecting the properties under her administration. On the other hand, she cannot replace this amount with her own funds because her property consisting of her share in the conjugal partnership with her deceased husband, is still subject to liquidation in the intestate proceedings.

"With respect to the court's resolution disapproving the guardian's accounts, it appears that said accounts include expenses incurred for the benefit of the intestate estate of the deceased as well as of the guardianship. The disapproval of these accounts is well taken with respect to those referring to expenses incurred for the benefit of the intestate estate, for which the proceeds of the insurance policies which belong to the guardianship should not be used.

For the foregoing reasons, the court's resolution of June 13, 1935, is set aside in so far as it orders the arrest and detention of the guardian until she deposits all the funds of the guardianship with the clerk of court, and it is affirmed in so far as it disapproves the guardian's accounts relative to expenses incurred for the benefit of the intestate estate, all without prejudice to the guardian's rendering to the court accounts of the expenses incurred exclusively for the benefit of the guardianship and without prejudice, further, to the civil liability she may have incurred in the performance of her duties, without special pronouncement as to costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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