

JESUS CRISOSTOMO, PETITIONER, VS. PASTOR M. ENDENCIA, JUDGE OF FIRST INSTANCE OF BULACAN, AND RAMON CRISOSTOMO, RESPONDENTS.

G.R. No. 45623. June 30, 1938

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal by way of certiorari from a decision of the second division of the Court of Appeals, promulgated on June 19, 1937, which dismissed a petition for certiorari and set aside a writ of preliminary injunction which had been issued, with the costs to the then petitioner.

In special proceedings No. 3632 of the Court of First Instance of Bulacan, entitled "Guardianship of the Incompetent Petrona Crisostomo", instituted sometime in 1928, the court, on April 21, 1933, appointed the herein petitioner guardian of the person and property of the incompetent. On February 29, 1936, while the incompetent was already released from the National Psychopathic Hospital of Mandaluyon, Province of Rizal, where she had been confined, the petitioner, as such guardian, filed a verified petition asking that the court which took cognizance of the guardianship case declare that the incompetent had recovered her mental faculties, that she was able to take care of her person and to administer her property, cancel the bond filed by the guardian, and order the termination and filing away of the record. The petition was supported and accompanied by a verified statement of the incompetent, who stated under oath that she was then 65 years of age, that she was in good health, that she had recovered her mental faculties and that she was already able to take care of herself and to administer her property. This sworn statement was stamped by the ward with her thumbmark and made under oath on February 15, 1936, before the notary public Victoriano Matienzo. The Petition was likewise supported and accompanied by two medical certificates of Doctors Alfredo L. Guerrero and Ramon Syquia, dated February 15, 1936, who stated that Petrona Crisostomo was under their medical treatment and that she had recovered her mental faculties. On the same date, February 29, 1936, the court which took cognizance of the guardianship case was apprized of the petition and it favorably acted thereon, issuing the order which states: "It having been shown by a verified motion of the guardian and by two medical certificates of well-known doctors that the incompetent Petrona Crisostomo has recovered the full use of her mental faculties and that she is now in a position to take care of her person and administer her own property, and this court having approved the accounts submitted by the said guardian including his administration until February 14 of the current year, the court declares the said Petrona Crisostomo able to take care of her person and to administer her own property, wherefore, it orders the termination of this guardianship, the cancellation of the bond of the guardian and the final filing away of this case. So ordered. Malolos, Bulacan, February 29, 1936. (Sgd.) Sotero Rodas, Judge."

After the lapse of about nine months from the issuance of the order of February 29, 1936, that is, on November 9 of the same year, the respondent Ramon Crisostomo, brother of the incompetent, filed a motion in the guardianship proceedings and in the same court which had taken cognizance of said special proceedings, asking that the restoration order of February 29, 1936 be set aside, that the case be reopened, and that a new guardian of

the person and property of Petrona Crisostomo be appointed, alleging as grounds that the aforesaid order is null and void because entered without notice to the nearest relatives of the incompetent and without hearing and that the latter had not yet recovered her mentality. The petitioner objected to this petition on the ground that the order sought to be annulled had already become final and that the court had already lost jurisdiction to reverse or annul the same, but on December 15, 1936, the respondent judge issued an order annulling that of February 29 of the same year. The said judge having denied the motion for reconsideration filed by the petitioner, the latter sued out a writ of certiorari in the Court of Appeals, which petition was denied, with the costs.

- It is beyond question that the judge who took cognizance of and granted the petition to restore capacity had full jurisdiction, conferred by sections 559, 562 and 575, Chapter XXVII, of the Code of Civil Procedure. The procedure followed by virtue of a petition for restoration of competency is neither new nor independent; it is a continuation of the original guardianship proceedings (32 C. J., sec. 326, p. 674; *Ayers vs. Mussetter*, 46 Ill., 472; *Matter of Osborn*, 74 App. Div., 113; 77 N. Y. S., 423; 11 N. Y. Ann. Cas., 211). If the court had jurisdiction to appoint a guardian of the person and property of the incompetent, it is obvious that it had like jurisdiction to take cognizance of and grant the petition for restoration which was filed.

- The principal question involved in the case has reference to the validity of the order of restoration to capacity of February 29, 1936. The court declared it null and illegal for lack of notice and for failure to hold the hearing mentioned in section 562 of the Code of Civil Procedure. It entertained the opinion that the respondent Ramon Crisostomo should have been notified, being one of the nearest relatives of the incapacitated, and that the want of this notice divested the jurisdiction of the judge to issue the aforesaid order. The second division of the Court of Appeals maintained this view. Counsel for the appellant contends that the applicable section is 575 of the same Code and that even applying section 562, the notice and the hearing were unnecessary under the circumstances of the case. We agree with the Court of Appeals in that section 575 is not squarely applicable because its provisions are general in character and that the case should be governed by section 562 because its provisions are special in character and the question at issue directly comes under the said provisions. Section 562 is of the following tenor:

"Sec. 562. Restoration of competency.—Any person who has been declared insane or incompetent, or the guardian, or any relative of such person within the third degree, or any friend, may apply, by petition, to the Court of First Instance of the province in which the appointment of guardians is made, and have the fact of his restoration to capacity judicially determined. The petition shall be verified by oath, and shall state that such person is then sane and competent. Upon receiving the petition, the court must appoint a day for hearing before the court, and shall cause notice of the trial to be given to the guardian of the person so declared insane or incompetent and to the ward. On the trial, the guardian, or relatives of the person so declared insane or incompetent, and in the discretion of the court any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, and may be called and examined by the court on its own motion. If it be found that the person be of sound mind, and capable of taking care of himself and property, his restoration to capacity shall be adjudged and the guardianship of such person, if such person be not a minor, shall cease."

In order that a court taking cognizance of the guardianship of an incompetent may issue a valid order restoring him to capacity it is necessary, under this section, (1) that a verified petition be presented by the incompetent, his guardian, or any relative of such person within the third degree, or any friend of his; (2) that said petition should allege that the incompetent has recovered his mental faculties or his legal capacity, as the case may be; and (3) that upon receiving the petition the court should set the same for hearing and notify the guardian and the incompetent thereof. At the hearing, the guardian, the relatives of the incompetent, and, in the discretion of the court, any other person may oppose the remedy sought. The section does not require notice of the hearing to any other person except the guardian and the incompetent. In the case under study it happened that the verified

petition was signed by the guardian himself and was supported and accompanied by the sworn statement of the incompetent. In the petition it was stated that the incompetent had recovered her mental faculties and this allegation was corroborated by her in her sworn statement when she stated that she had already recovered her mental faculties. In these circumstances the only logical conclusion is that the requisites of section 562 have at least been substantially complied with and that the notice and the hearing were unnecessary and superfluous. It is true that under the section the respondent Ramon Crisostomo could have appeared at the hearing and opposed the petition, but this right given to him by law is not absolute in the sense that he is also entitled to a personal notice. His situation is like that of a person who, not being a defendant in an ordinary action and not having been notified of the complaint, learns of the existence of the suit and discovers that he has a direct interest in the subject matter of the litigation; there is no question that he would be entitled to take part therein as intervener, but he cannot successfully ask for the annulment of the judgment to be rendered on the ground that he had a right to be cited or notified and to be present at the trial because it happened that he had an interest in the case.

Section 562, like the other provisions of the Code of Civil Procedure, should be liberally interpreted pursuant to the provision of section 2 thereof in order to promote its object and assist the parties in obtaining speedy justice. If, as it seems, the intention of the respondent Ramon Crisostomo is to annul the donation which the incompetent made of her property in favor of the petitioner, the courts are open for him to bring an action for that purpose.

- The order issued by the respondent judge on December 15, 1936, annulling that of February 29 of the same year is, in our opinion, null and void because the court was without jurisdiction to enter the same after the accounts of the guardian had been approved, his bond cancelled and the record of the guardianship proceedings deemed closed and filed away definitely. When the respondent Ramon Crisostomo filed his motion asking the annulment of the order of February 29, 1936, the latter had already become final and binding upon the parties. The guardianship case was no longer before the court because the accounts of the guardian had been definitely approved, his bond had been cancelled, he had been relieved of his charge, and the incompetent had recovered her capacity before the law.

- Another of the reasons taken into account in denying the writ of certiorari filed by the herein petitioner is that the order of December 15, 1936, was appealable and the petitioner could have perfected an appeal therefrom if he so desired. It is a fact, however, that the petitioner did not appeal from the order and the appeal does not now lie because the period therefor provided by law has long expired. The remedy by certiorari may be successfully invoked both in cases wherein an appeal does not lie and in those wherein the right to appeal having been lost with or without the appellant's negligence, the court has no jurisdiction to issue the order or decision which is the subject matter of the remedy.

In view of the foregoing, the appealed judgment is reversed and the order of December 15, 1936 entered by the respondent judge is set aside, with the costs of this instance to the other respondent Ramon Crisostomo. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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