

EULOGIO TRIA, ADMINISTRATOR OF THE INTESTATE ESTATE OF FRANCISCA PEÑA, PLAINTIFF AND APPELLANT, VS. RAMON ORTIZ, DEFENDANT AND APPELLEE.

G.R. No. 5244. December 02, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Francisca Peña, born on July 23, 1878, inherited certain property from her father, Pedro Peña, and from her grandfather, Clemente Peña. A family council was formed, and Ramon Ortiz was appointed guardian by the said council. Francisca Peña became of age on attaining 23 years on July 23, 1901, and on March 2, 1902, she died, leaving one child, issue of her marriage with Eulogio Tria.

On January 18, 1905, Eulogio Tria, as administrator of the intestate estate of said Francisca Peña, commenced proceedings in the Court of First Instance of Ambos Camarines to compel the rendering of accounts of the guardianship of Francisca Peña, in conformity with the provisions of section 709 of the Code of Civil Procedure. Notwithstanding the fact that Ramon Ortiz alleged that he had presented the said accounts in due form, the court compelled him to render them, and he did so, whereupon the court closed the proceedings by an order dated November 13, 1906, in which he stated that it was probably the intention of the plaintiff to obtain evidence, or to find "Out the condition of the said property during the administration of the defendant; and after having obtained the said-information by means of the accounts rendered, without approving or disapproving them, the court believed that there was nothing more to be done in the matter, but he reserved the plaintiff's right to bring such action as he might deem proper.

On the 7th of December, 1907, he commenced the present suit, in which he asks that the defendant be sentenced to pay him the sum of P63,850, or to deliver 11,650 cavanese of unhulled rice, 226 carabaos, 280 head of cattle, and 130 horses, together with the costs of the proceedings.

After the trial of the case the lower court rendered judgment in the following terms:

"In view of the evidence presented, I find that * * * the defendant has accounted for all the property belonging to the minor Francisca Peña that came into his hands as such administrator, and that he also presented his accounts and resignation to the family council, which approved the one and accepted the other. After his accounts and resignation were presented to and approved by the council, the defendant was relieved from all liability connected with the property of the said minor, and particularly after he had rendered an accounting .that included all the property that he, as such guardian, had taken possession of. Therefore, judgment is entered against the plaintiff, and the complaint is hereby dismissed with the costs against the said plaintiff."

From the above judgment the appellant appealed, presenting to this court a bill of exceptions with the following assignment of errors:

1. In that the court below permitted the defendant to offer evidence with respect to having rendered accounts prior to the order entered in cause No. 478.

2. In having admitted as evidence in the present case the documents Exhibits Nos. 4, 6, 11, and 12 of the appellee.
3. In holding that the defendant was relieved from liability with regard to the property of his ward, absolving him of the complaint with costs against the plaintiff.
4. In overruling the motion for a new trial.
5. In not having ruled on the defense of prescription interposed by the defendant.

With reference to the first assignment, the order of court issued in case No. 478 is the one of November 13, 1906, mentioned in the statement of facts, and which finally closed the proceedings instituted by the plaintiff in January, 1905, to compel the defendant to render an accounting of the property of his ward in conformity with the provisions of section 709 of the Code of Civil Procedure, after the plaintiff had obtained the information necessary to exercise such actions as might lie in the premises, this being the sole object of said proceedings according to said section of the Code of Civil Procedure, which finally provides:

"* * * and such interrogatories and answers shall be in writing and signed by the party examined, and filed in the clerk's office."

We have not to do with a final judgment holding that at no time was any accounting rendered; neither is it a question of going counter to the holdings in another action in allowing in the present case proof of the defense of the plaintiff against the action arising out of a guardianship which expired in 1898.

The documents numbered 4, 6, 11, and 12, referred to in the second assignment of error, were produced by the defendant, and in the opinion of the court below proved that the said defendant had rendered a general final accounting previous to the time of the tendering and acceptance of his resignation in 1898, and he was thereupon released from all responsibility arising from his administration.

With regard to the admission of the above-mentioned documents, the appellant, in discussing his assignment of error, alleges that paragraph 7 of section 383 of the Code of Civil Procedure has thereby been violated. His allegation lacks foundation, however, as paragraph 7 of the said section is not applicable to the case; it reads as follows:

"Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, can not testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind."

It was agreed between the parties at the trial that the record of the proceedings of the family council "constituted for the minor Francisca Peña, which ought to be in the possession of the new guardian appointed in consequence of the defendant's resignation, could not be found. When the defendant produced in court the above-mentioned documents, three of which were copies of said proceedings, he testified that they were authentic copies of the originals.

As to the third assignment of error, the conclusions of the lower court appear to be in accordance with the law and the evidence considered in the judgment. The evidence in question is a copy of the record of the meeting held by the family council of the minor Peña on September 21, 1898, which is as follows:

"The protutor said that he had examined, as appears hereunder, the accounts relating to the entire administration, by the guardian, of the estate of the late Don Pedro Peña, father of the said Doña Francisca Peña Fernandez, and finds the same to be just and proper, and consequently, in accordance with the request of

the guardian, is of the opinion that they should be approved. After careful examination and full discussion, the members of the council agree thereto, and there being no remarks to offer, and complying with the provisions of article 282 of the Civil Code, they unanimously agree to approve (censurar favorablemente) the accounts of the guardianship * * * The said Ortiz is hereby granted the necessary authority to make formal delivery to the newly appointed tutor Don Jose Peña and protutor Don Emilio Puentevella * * * who examined the items of expenditure in said account * * * to the new members or any of the interested persons (the council), grants power to exact from the former guardian, Don Francisco Alvarez, upon his return from political exile, or from whomsoever it devolves upon to render an accounting for his administration * * * as well as from Don Estanislao Alarcon, the receiver of the inventoried property situated in Caramoan * * * and our solicitor, Don Francisco Borrás or Don Ramon Ortiz, resigned, shall continue to maintain the rights of this council, the expenses to be defrayed by the funds of the guardianship or of the property left by the deceased Don Pedro Peña; * * * let a copy of the above-cited proceedings and of the present one be issued to the said Don Ramon Ortiz to be forwarded to the Court of First Instance through the justice of the peace inclosing a copy of the accounts * * * and let the bond given by the said Ortiz be canceled."

This was subscribed by the president and members of the council, and the tutor and the protutor.

The family council has the exclusive right to pass upon (censurar) all kinds of accounts which it is the duty of the guardian to render, whether annual, general, or final; the latter arising either from the termination of the guardianship, or by reason of the death, relief, removal, or resignation of the guardian. (Civil Code, arts. 279, 280, and 282.)

Censurar accounts means, as Manresa observes, to approve or to reject accounts; the Diccionario de la Lengua defines it as "to form an opinion of some work or writing," not merely in the sense of "correcting, reproving, or remarking unfavorably on a thing" (2 Manresa, Civ. Code, 340). This interpretation agrees with the law itself, under which the family council, in passing upon accounts, renders a decision or resolution with respect to and approves or rejects them. Treating of annual accounts, article 279 of the code provides "that these accounts shall be examined by the protutor and audited by the council," and "if the guardian does not agree to the decision of the council, he may apply to the courts * * *," by which it is seen that censurar means to resolve (resolver), to determine, or decide.

From what has been cited of the record of the proceedings of September 21, 1898, it appears: First," that upon the resignation of the guardian, Ramon Ortiz, he was relieved by Jose Peña; second, that said new guardian and the protutor Emilio Puentebella passed upon the items of expenditure shown in the general account rendered by Ramon Ortiz upon resigning office; and, third, that said general account was reviewed and expressly approved by the family council.

Following the provisions of article 279, article 280 says:

"The guardian, who may be replaced by another, shall, as well as his heirs, be obliged to render a general account of his guardianship to the one taking his place, which shall be examined and audited in the manner prescribed in the preceding article. The new guardian shall be liable to the minor for any losses and damages, should he not demand and examine the accounts of his predecessor."

This action was instituted for the losses and damages that the plaintiff considers were caused to his first wife, the minor Francisca Peña, by reason of the fact that the defendant, her guardian, had not made the general accounting which it was his duty to render of his administration. By law, the party against whom such action should be brought is Jose Peña, the person who succeeded Ramon Ortiz, as such guardian. The new guardian is, under the law liable to the minor for losses and damages for not having demanded and received an accounting from his predecessor.

As a matter of fact, however, he did examine the accounts, as shown by the proceedings of the family council. There was no necessity for him either to demand or to receive an accounting from his predecessor, as would have been necessary in case of a removal from office, or from the heirs, as would have been required in the event of the death of such predecessor. The latter resigned his guardianship in July, 1898, as appears by document No. 11, which, together with document No. 12, was accepted without objection by the appellant, and on September 21 of the same year, upon again presenting his resignation, he submitted his accounts, which had already been examined by the protutor, who was the person who proposed to the family council that the accounts be approved.

The court below therefore rightly concluded that the general accounts of guardian Ramon Ortiz had been approved by the family council, and that once so approved the defendant was relieved from all liability in connection with the property of the said minor.

Furthermore he was relieved of all responsibility, because any that might have arisen since the 21st of September, 1898, reposed upon the new guardian, Jose Peña, the only person who since that time was responsible to the minor Francisca Peña for any losses and damages; he, being the person whose duty it was to demand them from his predecessor, either did not know how or did not wish to comply with his duty. He in turn was obliged to render a general accounting of his guardianship to the minor upon her becoming of age, and was then the only person who should account for everything pertaining to the guardianship.

The last two assignments of error are not in accordance with the law, inasmuch as the motion for a new trial was rightly overruled, and because, no ruling having been made in the judgment relative to the defense of prescription, only the defendant had the right to allege such error in this instance.

For the reasons above set forth the judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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