

FELICIANO FRANCISCO, PETITIONER, VS. HON COURT OF APPEALS AND PELAGIO FRANCISCO, RESPONDENTS.

G.R. No. 57438. January 31, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

This petition for review on certiorari seeks the annulment of the decision and resolution of the defunct Court of Appeals, now Intermediate Appellate Court, dated April 27, 1981 and June 26, 1981, respectively, dismissing the petition for certiorari filed by petitioner Feliciano Francisco docketed as CA-G.R. No. 12172 entitled "Feliciano Francisco versus Judge Jesus R. De Vega and Pelagio Francisco." In the said petition for certiorari, petitioner Feliciano Francisco challenged the validity of the Order of the Court of First Instance of Bulacan, Fifth Judicial District, Branch II, now Regional Trial Court, granting execution pending appeal of its decision by relieving petitioner Feliciano Francisco as guardian of incompetent Estefania San Pedro and appointing respondent herein, Pelagio Francisco, in his stead.

The antecedent facts as recited in the appealed decision of the Court of Appeals showed that:

"Petitioner is the duly appointed guardian of the incompetent Estefania San Pedro in Special Proceedings No. 532 of the Court of First Instance of Bulacan presided over by respondent Judge. On August 30, 1974 respondent Pelagio Francisco, claiming to be a first cousin of Estefania San Pedro, together with two others, said to be nieces of the incompetent, petitioned the court for the removal of petitioner and for the appointment in his stead of respondent Pelagio Francisco. Among other grounds, the petition was based on the failure of the guardian to submit an inventory of the estate of his ward and to render an accounting.

"It would seem that petitioner subsequently rendered an accounting but failed to submit an inventory, for which reason the court on March 20, 1975 gave petitioner ten (10) days within which to do so, otherwise he would be removed from guardianship. Petitioner thereafter submitted an inventory to which respondent Pelagio Francisco filed an objection on the ground that petitioner actually received P14,000.00 for the sale of a residential land and not P12,000.00 only as stated in the deed of sale and reported by him in his inventory. The respondent Judge found the claim to be true, and, in his order of April 17, 1980 relieved the petitioner as guardian.

"On motion of petitioner, however, the respondent Judge reconsidered his finding, relying on the deed of sale as the best evidence of the price paid for the sale of the land. In his order dated September 12, 1980, respondent Judge acknowledged that his finding was 'rather harsh and somewhat unfair to the said guardian.' Nevertheless, respondent Judge ordered the retirement of petitioner on the ground of old age. The order states in part as follows:

‘...considering the rather advanced age of the present guardian, this Court is inclined and so decrees, that he should nevertheless be, as he is hereby, retired to take effect upon the appointment by this court and the assumption of office of his replacement, who shall be taken from the recommendees of the parties herein. For this purpose, the present guardian is hereby given twenty (20) days from receipt of a copy of this order within which to submit his proposal for a replacement for himself and to comment on petitioner's recommendee, add

the latter a like period within which to comment on the present guardian's proposed substitute, after which the matter will be deemed submitted for resolution and final action by the court:

'SO ORDERED.'

"Petitioner filed a motion for reconsideration, contending that he was only 72 years of age and still fit to continue with the management of the estate of his ward as he had done with zeal for the past twelve years. In an order dated November 13, 1980 the court denied his motion. Accordingly, on December 17, 1980, petitioner filed a notice of appeal 'from the order issued by the court on November 13, 1980' and paid the appeal bond. On February 2, 1981 he filed the record on appeal.[1]

"Meanwhile, on January 27, 1981, the court, on motion of private respondent, re-quired petitioner to submit within three days his nomination for guardian of Estefania San Pedro as required in its order of September 12, 1980. In issuing the order, the court stated that 'an indefinite discontinuance in office would defeat the intent and purpose of the said order of September 12, 1980 relieving the present guardian.'

"Petitioner's motion for reconsideration was denied. Hence, this petition. (referring to CA-G.R. No. SP-1217)"

On December 5, 1980, before the appeal was perfected, Pelagio Francisco filed an "Omnibus Motion" with the court a quo with the prayer (1) to restrain guardian from exercising office; (2) order guardian to surrender to court all properties of the ward; and (3) appoint new guardian.[2]

Petitioner, on December 9, 1980 filed his opposition to the omnibus motion claiming that the same was premature.[3] The trial court, however, disregarded the opposition and required petitioner on January 27, 1981 to submit within three (3) days his nomination for guardian of Estefania San Pedro as required in its order of September 12, 1980, the court holding that "an indefinite continuance in office would defeat the intent and purpose of the said order of September 12, 1980, relieving the present guardian." [4]

Petitioner moved for reconsideration of the said order,[5] but the trial court overruled the same on March 4, 1981.[6] Subsequently, on March 11, 1981, the court a quo appointed respondent Pelagio Francisco as the new guardian of the person and property of the incompetent Estefania San Pedro.[7]

On March 13, 1981, petitioner filed with the defunct Court of Appeals a petition for certiorari challenging the validity of the order of the trial court granting the execution pending appeal of its decision and appointing respondent Pelagio Francisco as the new guardian despite the fact that respondent is five (5) years older than petitioner, docketed as CA-G.R. No. 12172.

The Court of Appeals dismissed the petition on April 23, 1981, the pertinent portion of its decision reading as follows:

"The Rules of Court authorizes executions pending appeal 'upon good reasons to be stated in a special order.' (Rule 39, Sec. 2). In the case at bar, the retirement of petitioner was ordered on the ground of old age. When this ground is considered in relation to the delay of the petitioner in the making of an accounting and the submission of an inventory, the order amounts to a finding that petitioner, considering his 'rather advanced age,' was no longer capable of managing the estate of his ward. (Rule 97, Sec. 2). Given this finding, it is clear that petitioner's continuance in office would not be in the best interest of the ward.

"It is of course true that the order of removal is not yet final. Considering the time it normally takes for appeals to be finally determined, as well as the purpose of the order under appeal, which would be frustrated if it is not immediately executed, we cannot say that respondent acted with grave and irreparable damage and that the order of September 12, 1980 is not yet final, petitioner has not demonstrated that in ordering execution pending appeal, the respondent Judge committed a grave abuse of discretion.

"Indeed, the granting of execution pending appeal lies within the sound discretion of a court. Appellate courts will not interfere to modify, control or inquire into the exercise of this discretion, unless it be shown that there has been an abuse of that discretion. (2 Moran, Comments on the Rules of Court, 260 (1979).

"WHEREFORE, the petition for certiorari is DISMISSED, without pronouncement as to costs.

"SO ORDERED."[8]

Petitioner subsequently filed another motion for re-consideration advancing the following arguments: that to grant execution pending appeal would render petitioner's appeal moot and academic; that "advanced age" was not one of the grounds raised by private respondent in the court below; that the court a quo abused its discretion in appointing respondent as guardian despite the fact that private respondent is five (5) years older than petitioner.[9]

The respondent appellate court, in its resolution dated June 26, 1981, denied petitioner's motion for reconsideration, the court finding it unnecessary to repeat the discussion of the arguments which it had already considered and only entertained the argument regarding the competency of the respondent as the new guardian. On this point, respondent Court ruled:

"The order of March 11, 1981 appointing respondent Francisco as guardian was never assailed in the petition in this case. As already stated, this case concerns the validity only of the orders of January 27, 1981 and March 4, 1981 which required petitioner to recommend his own replacement, otherwise the court would appoint a new guardian. It does not appear that petitioner objected to the appointment of respondent Francisco on the ground now invoked, namely, that Francisco is in fact older than petitioner. Nor does it appear that petitioner filed a motion for reconsideration of the order of March 11, 1981, calling attention to the fact that respondent Francisco is older than petitioner. In short, the point now raised does not appear to have been urged in the lower court so that the latter could have rectified the error, if it was error at all. For this reason, it is not proper ground for certiorari before this Court, much less for a motion for reconsideration.

"WHEREFORE, the motion for reconsideration is DENIED for lack of merit.

"SO ORDERED."[10]

In the petition at bar, petitioner contends that (a) The Honorable Court of Appeals has committed grave abuse of discretion in holding that the removal of petitioner as guardian of the ward Estefania San Pedro on the ground of old age is a good ground for the execution of the decision pending appeal; and (b) The Honorable Court of Appeals committed grave misapprehension and misinterpretation of facts when it declared that petitioner did not question the appointment of private respondent as guardian in his stead on the ground that the latter is older than the former by five (5) years.

A guardianship is a trust relation of the most sacred character, in which one person, called a "guardian" acts for another called the "ward" whom the law regards as incapable of managing his own affairs.[11] A guardianship is designed to further the ward's well-being, not that of the guardian. It is intended to preserve the ward's property, as well as to render any assistance that the ward may personally require. It has been stated that while custody involves immediate care and control, guardianship indicates not only those responsibilities, but those of one in loco parentis as well.[12]

Having in mind that guardianship proceeding is instituted for the benefit and welfare of the ward, the selection of a guardian must, therefore, suit this very purpose. Thus, in determining the selection of a guardian, the court may consider the financial situation, the physical condition, the sound judgment, prudence and trustworthiness, the morals, character and conduct, and the present and past history of a prospective appointee, as well as the probability of his being able to exercise the powers and duties of guardian for the full period during which

guardianship will be necessary.[13]

A guardian is or becomes incompetent to serve the trust if he is so disqualified by mental incapacity, conviction of crime, moral delinquency or physical disability as to be prevented from properly discharging the duties of his office.[14] A guardian, once appointed may be removed in case he becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty (30) days after it is due to render an account or make a return.[15]

We agree with the trial court and the appellate court that there is need far petitioner Feliciano Francisco to be retired from the guardianship over the person and property of incompetent Estefania San Pedro. The conclusion reached by the trial court about the "rather advanced age" of petitioner at 72 years old (petitioner is now 76 years old) finding him unfit to continue the trust cannot be disturbed. As correctly pointed out by the appellate court, this finds direct support in the delay of the accounting and inventory made by petitioner. To sustain petitioner as guardian would, therefore, be detrimental to the ward. While age alone is not a controlling criterion in determining a person's fitness or qualification to be appointed or be retained as guardian, it may be a factor for consideration.[16]

Considering the difficult and complicated responsibilities and duties of a guardian, We sustain the immediate retirement of petitioner Feliciano Francisco as guardian affirming thereby the rulings of both the trial court and the appellate court.

With respect to the issue of execution pending appeal in appointing respondent Pelagio Francisco as guardian to succeed petitioner while the latter's appeal was still pending, We hold and rule that respondent appellate court correctly sustained the propriety of said execution pending appeal. Upon urgent and compelling reasons, execution pending appeal is a matter of sound discretion on the part of the trial court,[17] and the appellate court will not interfere, control or inquire into the exercise of this discretion, unless there has been an abuse thereof,[18] which We find none herein.

Inasmuch as the primary objective for the institution of guardianship is for the protection of the ward, there is more than sufficient reason for the immediate execution of the lower court's judgment for the replacement of the first guardian. We agree with the reason given by the appellate court in sustaining execution pending appeal that "an indefinite continuance in office would defeat the intent and purpose of the order of September 12, 1980, relieving the present guardian (Feliciano Francisco)."

As to the issue concerning the appointment of respondent Pelagio Francisco as the new guardian, We likewise agree with the respondent appellate court in denying in its resolution of June 26, 1981 for lack of merit the motion for reconsideration filed by petitioner questioning the appointment of private respondent Pelagio Francisco. We also find no abuse of discretion committed by the appellate court.

The rule is well-established that appellate courts may not entertain issues brought before it for the first time on appeal. (Jose Matienzo vs. Martin Servidad, 107 SCRA 276; Garcian vs. Court of Appeals, 102 SCRA 597; Director of Lands vs. Dano, 96 SCRA 160).

WHEREFORE, IN VIEW OF THE FOREGOING, the assailed decision and resolution of the respondent court dated April 27, 1981 and June 26, 1981, respectively, are hereby **AFFIRMED**. Costs against petitioner.

Petition denied.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., and De Castro, JJ., concur.

Aquino, J., concurs in J. Abad Santos' opinion. The removal of a guardian, like the removal of an administrator, may be immediately executory (*Borromeo Bros. Estate, Inc vs CA*, 105 Phil. 466).

Abad Santos, J., concurs and would have simply denied the petition for lack of merit without an extended decision.

Escolin, J., in the result.

[1] C.A. Decision dated April 23, 1981, Rollo, pp. 50-51.

[2] Annex "N", Records, p. 56.

[3] Annex "O", Records, p. 59.

[4] Annex "P", Records, p. 63.

[5] Annex "Q", Records, p. 64.

[6] Annex "R", Records, p. 66.

[7] Rollo, p. 48.

[8] Rollo, p. 53.

[9] Rollo, p. 54.

[10] Annex "U", Rollo, p. 65.

[11] 25 Am. Jur., p.7.

[12] 39 C.J.S., p. 2.

[13] 39 C.J.S., pp. 38-39.

[14] 25 Am. Jur., p. 29.

[15] Sec. 2, Rule 97 of the Revised Rules of Court.

[16] 39 C.J.S., p. 39.

[17] Sec. 2, Rule 39 of the Rules of Court provides: "On Motion of the prevailing party with notice to the adverse party the court may, in its discretion order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order x x x" *Jaca vs. Davao Lumber Co.*, 113 SCRA 107; *Ricardo Lu and Venus M. Lu vs. Valeriano*, 111 SCRA 87; *Banco de Oro vs. Bayuga*, 93 SCRA 447; *Lao vs. Mencias*, 21 SCRA 1021; *Astraquillo vs. Javier*, 13 SCRA 125.

[18] *Astraquillo vs. Javier*, *supra*; *Asturias vs. Victoriano*, 98 Phil. 581; *Nasedo. vs. Yatco*, 80 Phil. 220.

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