

43 Phil. 301

[G. R. No. 17257. April 15, 1922]

**CLEMENTE MANOTOC, PETITIONER AND APPELLANT, VS. FLORA SMITH,
GUARDIAN AND APPELLEE.**

D E C I S I O N

STATEMENT

February 23, 1916, the appellant was appointed guardian of the person and property of Ricardo Santiago Manotoc y Smith, duly qualified and entered upon the discharge of his duty. October 4, 1920, he tendered his resignation, stating that, on account of his health and advanced age, he could not properly discharge his duties, and that the defendant was the mother of the minor and a resident of the barrio of Concepcion, municipality of Malabon, Province of Rizal, and asking the court to fix the time and place for the hearing; that notice thereof should be given; and to approve his final account and discharge him as guardian. Upon being advised of the resignation, the defendant, who is the mother of the minor, on October 14, petitioned the court to be appointed as his guardian. October 15, 1920, the plaintiff filed his inventory, showing that the gross estate of his ward was P88,467.98. October 16, 1920, the court accepted the resignation of the plaintiff as guardian, and appointed the defendant as his successor. October 18, 1920, the guardian filed the following writing:

“Now comes the undersigned, Clemente Manotoc y Salomon, and hereby withdraws his writing under date of October 4, 1920, wherein he presented his resignation of his duties as guardian of the minor Ricardo Santiago Manotoc y Smith.”

October 19, 1920, the plaintiff filed written objections to the appointment of the defendant upon the ground that it was not for the best interests of the minor. October 23, 1920, the

court overruled the motions and objections, from which the plaintiff appealed, claiming that the court erred in accepting the resignation of the plaintiff and the appointment of the defendant as guardian, and in denying plaintiff's motion for a reconsideration.

Johns, J.:

For the reasons therein assigned, and on October 4, the plaintiff tendered his resignation as guardian of Ricardo Santiago Manotoc y Smith, a minor, and on October 14, the defendant, who is the mother of the minor, petitioned the court that she be appointed in his stead. Plaintiff filed his inventory October 15. On October 16, his resignation was accepted, and the defendant was appointed his successor. After the court accepted plaintiff's resignation and appointed the defendant, the plaintiff then undertook to recall his resignation, and on October 19, made formal objections to the appointment of the defendant. In legal effect, the appellant contends that the lower court could not appoint his successor until such time as his final account was audited and approved, and even so that the appointment of the defendant was not for the best interests of the minor. The defendant is the mother of the minor, and the code expressly provides for the appointment of the mother, and gives her a preference right.

Appellant's counsel cite 21 Cyc, p. 52, which says:

"At common law a guardian was not allowed to resign except for strong reasons showing that the best interests of the ward demanded it. And under modern statutes in force in most of the states resignation of the office of guardian is not an absolute right, but is subject to a determination of its propriety by the court. The resignation, even if accepted, does not become effective until final accounting and discharge by the court on proper notice to all parties, unless no estate came into the guardian's hands."

That was the common law, but in the same section it is also said:

"There is no question, however, as to the power of the court to accept the resignation of a guardian. A decree or order accepting a resignation may be vacated where the resignation and its acceptance are shown to be a fraudulent imposition."

In the instant case, the court accepted plaintiff's resignation, and there is no allegation or proof of fraud. Subject to the provisions of the code, giving her a preference right, the appointment of the defendant as guardian of her son as largely a matter in the discretion of the lower court.

We deem it fair to say that the plaintiff performed well his duties in the administration of his ward's estate, and should be commended for his services.

Be that as it may, this court has no right to assume that a mother will not be faithful in the discharge of her duties as guardian of her own son.

Judgment is affirmed, with the costs in favor of the defendant. So ordered.

Araullo, C. J., Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.
