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FIRST DIVISION

[G.R. Nos. L-49311-12. March 27, 1979]

REV. FR. PASCUAL YPIL, *petitioner, vs.* **HON. BERNARDO LL. SALAS, SPOUSES GRATAMENA LAO and JOSE NUÑEZ, JOSEFA MATA ESPERA and her spouse, WILFREDO O. YAP, owner of Joyce's Hot Pan de Sal, LIZA ALLEGO, owner of Liza Allego Hardware Store,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; DEATH OF PARTY; EFFECT. — Where the plaintiff is suing as guardian, the legal representative of the real party in interest who is the incompetent ward, and the ward dies during the pendency of the case instituted by his guardian on his behalf, and where it appears that the guardian was thereafter appointed administrator of the intestate estate of the incompetent ward, Rule 3, Sec. 17, Rules of Court, applies. Under the said rule, the court shall order the legal representative of the deceased in his capacity as administrator of the estate to appear for and in behalf of the interest of the deceased. There is no necessity of filing new actions for it would serve no useful purpose in the speedy and inexpensive administration of justice since the parties are already before the court and the issues have already been joined. Moreover, the actions or claims survive being for annulment of deeds of sale of real property belonging to the estate.

APPEARANCES OF COUNSEL

Jesus Yray for petitioner.

Amadeo D. Seno, Honorato S. Hermosisima, Vicente Jaime and *Diomedes Caue* for respondents.

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DECISION

GUERRERO, *J.*:

Petitioner seeks the review of two orders of dismissal issued by respondent Judge, the first dated June 8, 1978 in Civil Case No. DC-105 entitled "Rev. Fr. Pascual Ypil, as guardian of the properties of the incompetent *Antonio Lao,* Plaintiff *vs. Charlie F. Adlawan and Spouses Ramon M. Durano and Beatriz D. Durano*, Defendants," Court of First Instance of Cebu, Branch XVII in Danao City which order reads:

"*The ward, Antonio Lao, is already dead. As a matter of fact, a* separate action is presently pending for the appointment of an administrator. On the other hand, this case was prosecuted by the plaintiff in his capacity as guardian of his properties by virtue of the order in Sp. Proc. No. 123-JD dated September 4, 1975. The death of the ward necessarily terminates the guardianship. Thereafter, all powers and duties of the guardian ceases, except the duty to make a proper accounting and settlement in court.

THE FOREGOING CONSIDERED, this case is hereby dismissed, but without prejudice."

Petitioner moved on 29 June 1978 to reconsider the above-quoted order of dismissal arguing that the case is a real action which survives even with the death of the real party in interest who was under guardianship, citing Sec. 17, Rule 3 of the Rules of Court. The motion was, however, denied by the court in its order of July 5, 1978 as follows:

"It should be noted that this case was filed by the plaintiff strictly in his capacity as guardian of the properties of the deceased having specific preference to SP. PROC. NO. 123-JD and the Order dated September 4, 1975. Otherwise stated, his authority stemmed from said order. The observation is repeated that with the death of the ward, termination of guardianship follows as a matter of consequence. As of the time of his death, all powers and duties of the guardian likewise ceased. *The authority to continue this case under such capacity can* hardly be validated even assuming pendency of Sp. Proc. No. DC-16, entitled Intestate Estate of Antonio Lao in which the plaintiff at the same time was apparently the private choice as administrator.

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Up to the present his appointment has not yet been formally extended. His appearance pursuant to Rule 3, Sec. 17 of the Rules of Court in effect would be a premature commission. There is no assurance either that the plaintiff would be the person who will eventually be appointed administrator until after the formal order has been issued.

THE FOREGOING CONSIDERED, the Order of Dismissal but Without Prejudice dated June 8, STANDS."

The second order of dismissal sought to be reviewed is that issued by the same respondent Judge, same court, dated June 29, 1978 in Civil Case No. DC-125 entitled "Rev. Fr. Pascual M. Ypil, as Judicial Guardian of the incompetent *Antonio Lao,* Plaintiff *vs. Spouses Gratamena Lao and Jose Nuñez, et al.*, Defendants," for annulment of deeds of sale and cancellation of tax declarations, in practically the same tenor as that issued in Civil Case No. DC-105.

In both cases, petitioner as plaintiff below filed notices of appeal on July 26, 1978 and as the appeals involve purely a question of law, the appeals were directed to the Supreme Court. The records on appeal having been approved, and forwarded to this Court, in a Resolution dated October 13, 1978 of the First Division, petitioner was required to pay the docket and legal research fund fees and to file petitions for review on *certiorari*, which petitioner has complied and the same are now before Us for resolution.

The facts of the cases are not disputed. In Civil Case No. DC-105, petitioner as plaintiff therein filed the original complaint as guardian of the properties of incompetent Antonio Lao, the same capacity when he filed the amended complaint. In Civil Case No. DC-125, petitioner as plaintiff therein likewise instituted the compliant as judicial guardian of incompetent Antonio Lao. From the caption alone of the complaints filed in these cases by the petitioner as well as from the various pleadings of the defendants it is clear and evident that the actions were filed by plaintiff in his representative capacity, thereby disclosing his principal being the incompetent Antonio Lao and that said principal was the real party in interest.

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It also appears in the allegations of the original and amended complaints in Civil Case No. DC-105 as well as the complaints in Civil Case No. DC-125 that the real party in interest is the incompetent Antonio Lao. Besides the averments that plaintiff was the "duly appointed guardian of the incompetent Antonio Lao in Sp. Proc. No. 123-JD, Juvenile and Domestic Relations Court of Cebu" under paragraph 1, the succeeding paragraphs allege that the incompetent ward was the original owner of the parcel of land described therein, the alienation of which is sought to be annulled on the ground of fraud and illegality and return thereof to incompetent Lao's estate. Upon these allegations there is no doubt that the actions were instituted in behalf of the real party in interest who is the incompetent Antonio Lao or his estate.

Respondents contend that Fr. Ypil is the plaintiff in both civil cases and not having died, Sec. 17, Rule 3 of the Rules of Court does not apply. We find no merit to this contention. The law provides:

"Sec. 17. Death of party. — After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad-litem* for the minor heirs."

During the pendency of Civil Cases Nos. DC-105 and DC-125, the incompetent ward, Antonio Lao, died intestate on April 5, 1978 at Danao City leaving an estate and his surviving spouse, Rufina Gonzales (second wife), and Dionisio H. Lao (son by the first marriage), and Gratamena Lao (daughter by the second

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marriage) as his only heirs. On April 28, 1978, heir Dionisio H. Lao filed a petition for letters of administration before Branch XVII of the Court of First Instance of Cebu presided over by herein respondent judge, which was docketed as Special Proceedings No. DC-106. On July 26, 1978, herein petitioner, then judicial guardian over the properties of Antonio Lao, was appointed and issued letters of administration.

It may be true as respondents contend that petitioner is the plaintiff in both cases but this is so only in form and in captions thereof. The real truth and substance of the matter is that as plaintiff, petitioner was suing as guardian, the legal representative of the real party in interest who is the incompetent ward and under the peculiar facts of the case wherein admittedly the real party in interest died during the pendency of the civil cases instituted by his guardian in his behalf and admittedly also said guardian was appointed thereafter administrator of the intestate estate of the incompetent ward and issued letters of administration by the same judge presiding and acting in said civil cases, by the Rule cited above finds clear application and implementation. Under said aforementioned Rule, the court shall order the legal representative of the deceased in his capacity as administrator of the estate to appear for and in behalf of the interest of the deceased. It therefore becomes the duty of petitioner to appear as administrator of the estate and no longer as judicial guardian of the incompetent ward. The captions of the pleadings must thus be amended.

There is no necessity of filing new civil actions for it would serve no useful purpose in the speedy and inexpensive administration of justice since the parties are already before the court and the issues have already been joined. Moreover, the actions or claims survive, being for annulment of deeds of sale of real property belonging to the estate. And finally, the doubt entertained by the respondent Judge on the probable appointment of petitioner as administrator of the intestate estate had been finally resolved by the same Judge when he later appointed petitioner as administrator of said estate and issued to him the corresponding letters of administration.

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WHEREFORE, in view of the foregoing, the orders appealed from are hereby set aside and the court *a quo* is hereby directed to continue with the proceedings and act accordingly. Without costs.

Petition granted.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio Herrera, JJ.,* concur.

SECOND DIVISION

[A.C. No. 1664 March 30, 1979]

DOMINGA ROQUE and JOSE G. ZAPLAN, *complainants, vs.* **MAGTANGGOL C. GUNIGUNDO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; DUTIES; INCLUDES DILIGENCE AND FIDELITY IN THE DISPATCH OF CLIENT'S CASE.** — The lawyer's actuation is filing motions for extension on the last day and sending them by registered mail (thus giving the court insufficient time to act before the extension sought had expired) and his omission to verify whether his second motion for extension was granted are indicative of lack of competence, diligence and fidelity in the dispatch of his client's business.

2. **ID.; ID.; ID.; LAWYER MUST ACT PROMPTLY TO AVOID LOSS OF CLIENTS' RIGHT TO APPEAL.** — Where a lawyer's clients waver on whether to appeal the order of dismissal, he should in the meantime, but within the thirty-day period, file his motion for reconsideration. He could easily avoid the loss of his clients' right to appeal by filing the motion for reconsideration within the thirty-day period. He could even withdraw from the case