

FIRST DIVISION

[G.R. No. 191993, December 05, 2012]

**EDUARDO T. ABAD, PETITIONER, VS. LEONARDO BIASON AND
GABRIEL A. MAGNO, RESPONDENTS.**

R E S O L U T I O N

REYES, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision^[1] dated August 28, 2009 and Resolution^[2] dated April 19, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 90145.

The facts show that on March 19, 2007, petitioner Eduardo Abad (Abad) filed a petition for guardianship over the person and properties of Maura B. Abad (Maura) with the Regional Trial Court (RTC), Dagupan City, Branch 42, which was docketed as Sp. Proc. No. 2007-0050-D. In support thereof, Abad alleged that he maintains residence at No. 14 B St. Paul Street, Horseshoe Village, Quezon City and that he is Maura's nephew. He averred that Maura, who is single, more than ninety (90) years old and a resident of Rizal Street, Poblacion, Mangaldan, Pangasinan, is in dire need of a guardian who will look after her and her business affairs. Due to her advanced age, Maura is already sickly and can no longer manage to take care of herself and her properties unassisted thus becoming an easy prey of deceit and exploitation.^[3]

Finding the petition sufficient in form and substance, the RTC gave due course to the same and scheduled it for hearing. When the petition was called for hearing on April 27, 2007, nobody entered an opposition and Abad was allowed to present evidence *ex parte*. After Abad formally offered his evidence and the case was submitted for decision, Atty. Gabriel Magno filed a Motion for Leave to Intervene, together with an Opposition-in-Intervention. Subsequently, on June 14, 2007, Leonardo Biason (Biason) filed a Motion for Leave to File Opposition to the Petition and attached therewith his Opposition to the Appointment of Eduardo Abad as Guardian of the Person and Properties of Maura B. Abad. Specifically, Biason alleged that he is also a nephew of Maura and that he was not notified of the pendency of the petition for the appointment of the latter's guardian. He vehemently opposed the appointment of Abad as Maura's guardian as he cannot possibly perform his duties as such since he resides in Quezon City while Maura maintains her abode in Mangaldan, Pangasinan. Biason prayed that he be appointed as Maura's guardian since he was previously granted by the latter with a power of attorney to manage her properties.^[4]

On September 26, 2007, the RTC rendered a Decision,^[5] denying Abad's petition and appointing Biason as Maura's guardian. The RTC disposed thus:

WHEREFORE, the petition is hereby denied. Petitioner Eduardo T. Abad is found to be disqualified to act as guardian of incompetent Maura B. Abad. Oppositor Leonardo A. Biason is established by this Court to be in a better position to be the guardian of said incompetent Maura B. Abad.

The Court hereby fixes the guardianship bond at [P]500,000.00 and the letters of guardianship shall be issued only upon the submission of the bond, conditioned on the following provisions of the Rule 94[,] Section 1, of the 1997 Rules of Civil Procedure:

- a. To make and return to the Court within three (3) months true and complete inventory of all the estate, real and personal, of his ward which shall come to his possession or knowledge or to the possession or knowledge of any other person for him;
- b. To faithfully execute the duties of his trust, to manage and dispose of the estate according to these rules for the best interests of the ward, and to provide for the proper care, custody x x x of the ward;
- c. To render a true and just account of all the estate of the ward in his hands, and of all proceeds or interest derived therefrom, and of the management and disposition of the same, at the time designated by these rules and such other times as the court directs, and at the expiration of his trust to settle his accounts with the court and deliver and pay over all the estate, effects, and moneys remaining in his hands, or due from him on such settlement, to the person lawfully entitled thereto;
- d. To perform all orders of the court by him to be performed.

SO ORDERED.^[6]

Unyielding, Abad filed a motion for reconsideration of the foregoing decision but the RTC denied the same in an Order dated December 11, 2007.

Abad filed an appeal to the CA. He argued that the RTC erred in disqualifying him from being appointed as Maura's guardian despite the fact that he has all the qualifications stated under the Rules. That he was not a resident of Mangaldan, Pangasinan should not be a ground for his disqualification as he had actively and efficiently managed the affairs and properties of his aunt even if he is residing in Metro Manila. Moreover, he was expressly chosen by Maura to be her guardian.^[7]

Abad further averred that no hearing was conducted to determine the qualifications of Biason prior to his appointment as guardian. He claimed that the RTC also overlooked Maura's express objection to Biason's appointment.^[8]

On August 28, 2009, the CA issued a Decision,^[9] affirming the decision of the RTC, the pertinent portions of which read:

The petitioner-appellant may have been correct in arguing that there is no legal requirement that the guardian must be residing in the same dwelling place or municipality as that of the ward or incompetent, and that the *Vancil vs. Belmes* case cited by the court *a quo* which held that "courts should not appoint as guardians persons who are not within the jurisdiction of our courts" pertains to persons who are not residents of the country.

However, we do not find that the court *a quo*, by deciding to appoint the oppositor-appellee as guardian, has fallen into grievous error.

For one, the oppositor-appellee, like petitioner-appellant, is also a relative, a nephew of the incompetent. There are no vices of character which have been established as to disqualify him from being appointed as a guardian.

x x x x

Anent the claim of the petitioner-appellant that he has been expressly chosen by her aunt to be her guardian as evidenced by her testimony, although it could be given weight, the same could not be heavily relied upon, especially considering the alleged mental state of the incompetent due to her advanced age.

x x x x

WHEREFORE, premises considered, the instant petition is **DISMISSED** for lack of merit. The assailed decision of the Regional Trial Court of Dagupan City, Branch 42 is **AFFIRMED IN TOTO**.

SO ORDERED.^[10]

Dissatisfied, Abad filed a motion for reconsideration but the CA denied the same in a Resolution^[11] dated April 19, 2010, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.^[12]

On June 7, 2010, Abad filed a Petition for Review on *Certiorari* with this Court. Subsequently, Maura filed a Motion for Leave to Intervene,^[13] together with a Petition-in-Intervention.^[14]

The instant petition raises the following assignment of errors: