SPECIAL PROCEEDINGS—1958

MARIA ASUNCION SY-QUIA *

Definition and scope of special proceedings

The Rules of Court defines an action as an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong and classifies every other remedy as a special proceeding.[1] Thus an action is distinguished from a special proceeding in that the former contains a formal demand of a right while the latter is but a petition for a declaration of a right, status or a fact.

Rule 73, sec. 1 speaks of the subject-matter of special proceedings and states that rules of special proceedings are provided for the following cases:

1. Settlement of estate of deceased persons
2. Escheat
3. Guardianship and custody of children
4. Trustees
5. Adoption
6. Hospitalization of insanes
7. Habeas corpus
8. Change of name
9. Voluntary dissolution of corporation

Settlement of estate of deceased persons
Extrajudicial settlement by agreement between heirs

The case of *Salacup v. Court of Appeals and Sinopera*[2] involves an application of sections 1 and 4 of Rule 74.[3] It appears that Teodoro Tolete died intestate in 1945. He left four parcels of land in San Manuel, Pangasinan. His heirs were his widow, Leoncia de Leon, and several nephews and nieces, children of deceased brothers and sisters.

On July 25, 1946, without any judicial proceedings, his widow executed an affidavit stating that the deceased left no heirs except herself. After the affidavit of adjudication was registered, she executed a deed of sale of all the properties left by the deceased in favor of petitioner Sampilo, who in turn sold them to petitioner Salacup. This sale was also registered.

In 1950, Sinopera instituted proceedings for the administration of the estate of the deceased, and having secured the administration of the estate, she brought the present action to recover from the widow one-half share of the properties. Notice of *lis pendens* was filed and recorded on the certificates of title covering the properties, though this was done subsequent to the registration of the deed of sale in favor of Salacup.

The defense pleaded prescription, the action having been brought almost four years after the affidavit of adjudication was registered and claimed that

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[1] Rule 2, sec. 1, RULES OF COURT.

[2] G.R. No. L-10474, February 28, 1958.

[3] Rule 74, sec. 1 of the RULES OF COURT provides for the extrajudicial settlement of an estate by agreement between the heirs.

Rule 74, sec. 4 of the RULES OF COURT provides for the liability of distributees of an estate settled extrajudicially or summarily (when the estate is of small value).

they were innocent purchasers for value. After trial, the court rendered judgment declaring the affidavit of adjudication and the deeds of sale in favor of petitioners all null and void and declaring plaintiff owner of one-half of the properties.

On appeal, the Court of Appeals modified the judgment in the sense that the deeds of sale were null and void only insofar as the properties conveyed exceeded the portion that corresponded to the widow and reserved to Salacup the right to claim and secure adjudication in his favor of whatever portion of said properties may correspond to the widow and also the right to bring action for damages.

The issues before the Supreme Court were whether the administratrix' right of action to recover her and her co-heirs' participation in the properties had prescribed and whether the petitioners were innocent purchasers for value.

The Supreme Court held that the provisions of Rule 74, sec. 4 barring distributees or heirs from objection to an extrajudicial partition after the expiration of two years from such extrajudicial partition is applicable only (1) to persons who have participated or taken part or had notice of the extrajudicial partition, and in addition (2) when the provisions of Rule 74 sec. 1 have been strictly complied with, i.e. that all the persons or heirs of the decedent have taken part in the extrajudicial settlement or are represented by themselves or through guardians. The case fails to comply with both requirements since not all the heirs interested have participated in the extrajudicial settlement.

Rule 74, sec. 4 is not a statute of limitations. It is only a bar against the parties who had taken part in the extrajudicial proceedings, but not against third persons not parties thereto. Even if, however, Rule 74 sec. 4 is considered as a statute of limitations, it is still unavailing to defendant. The action is one based on fraud, as the widow had declared in her affidavit of partition that the deceased left no nephews or nieces, nor other heirs except herself. Plaintiff therefore has four years from the discovery of the fraud within which to bring the action.[4] The defendants have the burden of proof as to their claim of the statute of limitations, which is their defense, and they have not proved that when the action was instituted, four years had elapsed from the date that the interested parties had actual knowledge of the fraud.

As to the defense of innocent purchasers for value, the Court of Appeals found that the purchasers had knowledge of facts which should put them on inquiry and investigation as to the possible defects of the title of the vendor.

In the case of *Bagoba et al. v. Fernandez et al.*,[5] collateral relatives of the deceased, extrajudicially partitioned the intestate of said deceased, excluding an illegitimate son. In their affidavits, these collateral relatives stated that deceased died without issue and that they were her only heirs.

The illegitimate son filed the present case, through his attorney-in-fact, to recover the two parcels of land which formed the estate of his mother. The action was brought after the lapse of two years from the extrajudicial partition.

After trial, respondent judge rendered a decision ordering defendants, petitioners herein, to deliver to plaintiff the land in question with the improvements thereon; the court having found that petitioners were possessors in bad faith, not only because they knew of the existence of the illegitimate son, but also because the improvements were made after demand had been made on them to

[4] Act 190, sec. 43, par. 3; CIVIL CODE, Art. 1146.
[5] G.R. L-11539, May, 1958; for a more detailed discussion of this case, see 33 PHIL. L. J. 755 (1958).

leave the properties. Hence this petition for certiorari and mandamus to set aside the order of execution of the decision rendered against petitioners.

The Supreme Court held that on the basis of the facts of the case, the order for the issuance of a writ of execution of the judgment was properly and correctly issued.

Summary settlement of estates of small value

The case of *Chantengco v. Chantengco* [6] raised the question as to whether an estate worth not more than ₱20,000.00 could be settled summarily.

Petitioner Maria Janga, widow of Manuel Chantengco, filed a petition in the Court of First Instance of Pampanga praying that she be appointed administratrix of her husband's estate worth not more than ₱20,000. Oppositors Gertrudes and Lucia Chantengco, sisters of deceased, filed a motion to dismiss on the ground that as their brother left no debts, a fact which may be inferred from the failure of the petitioner to allege otherwise, administration proceedings would only unduly burden the estate. The motion was denied.

Oppositors then filed an answer praying that the petition be denied, or should the probate court find it necessary to appoint an administrator, the Clerk of Court be appointed instead of petitioner who was hostile to them. Petitioner replied that whether the decedent really died without debts could not yet be ascertained until after the lapse of six months from the date of notice to creditors, and that the probate court having acquired jurisdiction to settle the estate of the deceased, it could not be divested of its jurisdiction simply because the heirs were in a legal position to execute an extrajudicial partition.

The Supreme Court stated that the estate of a person who died without debts may be settled summarily only when its gross value does not exceed ₱6,000.00.[7] As the gross value of the estate in question exceeded ₱6,000 it could not be settled summarily. Pursuant to Rule 75, sec. 2, even if the decedent had left no debts, upon the dissolution of the marriage by the death of the husband or the wife "the community property shall be inventoried, administered and liquidated . . ." Being satisfied that the petitioner is competent and qualified for the office or trust, her appointment as administratrix of the decedent's estate is in accordance with law and should not be disturbed.

Allowance or disallowance of will

The grounds for disallowing a will are given in Rule 77, sec. 9 and in art. 839 of the Civil Code. The case of *Matias v. Salud* [8] is an open appeal from an order of the Court of First Instance of Cavite denying probate of the purported will of the late Gabina Raquel. The trial court refused to give credence to the evidence for the proponents on the basis of the experts testimony of Capt. Fernandez of the Philippine Constabulary criminal laboratory, whose testimony was contradicted by the expert for the defense and proponent's witnesses.

The Supreme Court restated the rule that the positive testimony of the three attesting witnesses ought to prevail over the expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities. The Court further stated that the legal requisite that the will should be signed by the testator is satisfied by a thumbprint or other mark affixed

[6] G.R. No. L-10668, October 31, 1958.
[7] Rule 74, sec. 2, RULES OF COURT.
[8] G.R. No. L-10751, June 28, 1958; for a more detailed discussion of this case, see 33 PHIL. L. J. 752 (1958).

by him. Where such mark is affixed by the decedent, it is unnecessary to state in the attestation clause that another person wrote the testator's name at his request. While in some wills the signing by mark was described in the will or in the attestation clause, it does not appear that the Supreme Court has ever held that the absence of such description is a fatal defect. The will having been executed and witnessed as required by law, the same should be admitted to probate. The judgment of the trial court was reversed.

The case of *Gan v. Yap*[9] raised the question as to whether a holographic will may be probated on the testimony of witnesses who have allegedly seen it and who declare that it was in the handwriting of the testator.

It appears that on Nov. 20, 1951, Felicidad Esguerra Alto Yap died, leaving properties in Pulilan, Bulacan, and in the City of Manila. On March 17, 1952, Fausto E. Gan initiated these proceedings in the Court of First Instance of Manila with a petition for the probate of a holographic will allegedly executed by the deceased. Opposing the petition, her surviving husband, Ildefonso Yap, asserted that the deceased had not left any will, nor executed any testament during her lifetime. The will itself was not presented. Petitioner tried to establish its contents and due execution by the statements in open court of persons who claim to have seen the execution or read the contents of the will. After hearing, the lower court refused to admit to probate the alleged will. Hence this appeal.

The new Civil Code revived holographic wills in articles 810-814. This is indeed a radical departure from the form and solemnization provided for wills under Act 190 which required wills to be subscribed by the testator and three credible witnesses on each and every page. When such will is submitted to the courts for allowance, authenticity and due execution are the dominant requirements to be fulfilled. For these purposes, the testimony of one of the subscribing witnesses would be sufficient in the abence of any opposition.[10] If there is any opposition, the three witnesses, if available, must testify.[11]

In the case of holographic wills, no such guaranties of truth and veracity are demanded since they need no witnesses, provided that they are "entirely written, dated and signed by the hand of the testator himself."[12] The law, it is reasonable to suppose, regards the document itself as material proof of authenticity, and as its own safeguard since it could at any time be demonstrated to be—or not to be—in the handwriting of the testator himself. In the probate of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator; if the will is contested, at least three such witnesses shall be required.[13] The witnesses so presented do not need to have seen the execution of the holographic will. They may be mistaken in their opinion of the handwriting, or they may deliberately lie in affirming it is in the testator's hand. However, the oppositor may present other witnesses who also know the testator's handwriting, or some expert witnesses, who after comparing the will with other writings or letters of the deceased have come to the conclusion that such will has not been written by the hand of the deceased. The court, in view of such contradictory testimony may use its own visual sense and decide in the face of the document whether the will submitted to it has indeed been written by the testator. Ob-

[9] G.R. No. L-12190, August 30, 1958.
[10] Rule 77, sec. 5, RULES OF COURT.
[11] Rule 77, sec. 11, RULES OF COURT
[12] CIVIL CODE, Art. 810.
[13] CIVIL CODE, Art. 811.

viously, when the will itself is not submitted, these means of opposition and of assessing the evidence are not available. Then the only guaranty of authenticity—the testator's handwriting—has disappeared.

The Rules of Court approved in 1940 allow proof and probate of a lost or destroyed will by secondary evidence—the testimony of witnesses, in lieu of the original documents.[14] Yet such Rules could not have contemplated holographic wills which could not then be validly made here. Can Rule 77 be extended by analogy to holographic wills? Spanish commentators agree that one of the greatest objections to the holographic will is that it may be lost or stolen—an implied admission that such loss or theft renders it useless. This must be so, because the Spanish Civil Code requires the holographic will to be protocoled and presented to the judge who shall subscribe it, and require its identity to be established by three witnesses who depose that they have no reasonable doubt that the will was written by the testator, and if the judge considers that the identity of the will has been proven, he shall order that it be filed.[15] All of these provisions imply presentation of the will itself.

In view of the foregoing, the Supreme Court held, the execution and the contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses who have seen and/or read such will.

Bonds of executors and administrators

Under Rule 82, sec. 1, before an executor or administrator enters upon the execution of his trust and letters testamentary or of administration issue, he shall give a bond, in such sum as the court directs, subject to the conditions enumerated.

In the case of *Pacific Union Insurance Co. v. Narvasa*[16] petitioner posted a bond in behalf of the executor and for the benefit of the heirs, legatees or creditors of the deceased. The executor failed to perform his duties as such, and by court order was relieved of his trust. Prior to his removal, he was ordered to render his accounts, but failed to do so even after repeated demands. The court then ordered the confiscation of the bond. Before execution of the order, petitioner was given an opportunity to cause the submission of the accounting called for in the order but failed to do so. The bond was confiscated by virtue of a court order.

The Supreme Court upheld the action of the lower court since it had ordered the confiscation and execution of the bond after the petitioner had been given an opportunity to cause the submission by the executor of his accounts, and upon failure of the latter to submit—it could not have been said that the lower court issued the order of confiscation without giving petitioner its day in court.

Revocation of administration

Rule 83, sec. 2 enumerates the grounds on which the court may remove or accept the resignation of the executor or administrator. Such an enumeration is not exclusive. Thus in the case of *Tambunting de Tengco v. Tambunting*[17] Augusto Tambunting was removed from the position of administrator of the Testate Estate of the deceased Clara Tambunting de Legarda, the court holding

[14] Rule 77, sec. 6, RULES OF COURT.
[15] Spanish Civil Code, Arts. 689-693.
[16] G.R. No. L-10696, May 28, 1958; for a more detailed discussion of this case, see 33 PHIL. L. J. 754 (1958).
[17] G.R. No. L-10135, March 28, 1958.

that he could not efficiently discharge his duties as administrator in view of his position as manager of the R.F.C. branch in Naga City. Adequacy of transportation and communication alone would not insure a consistent management and care of the interest of the estate of the deceased situated in Manila. An administrator should be able to devote his time and mind to the burden of his trust. Tambunting's position in Naga would prevent him from doing so.

Claims against estate

Under Rule 87, sec. 2, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one month.

The case of *Paulin v. Aquino* [18] clarified the meaning of the phrase "within a time not exceeding one month." On June 24, 1953, an order for the issuance of letters of administration to Matilde Aquino was issued, fixing a period of six months within which claims against the estate may be filed. Paulin, the claimant in this case, filed a claim on April 30, 1954. It appeared that on March 30, 1955, considerable time after the period for filing claims had expired, the court made a finding that the administratrix had fraudulently omitted certain assets in her inventory. On May 5, 1955, Paulin filed a motion to extend the period for filing of claims from six months to twelve months but the motion was denied. Again, on June 30, 1955, Paulin moved for permission to file a claim against the estate on the ground that the fraudulent omission by the administratrix in her inventory had induced him not to file his petition or his claim. The petition was again denied by the lower court inasmuch as the last day to file claims was on January 2, 1954, even if the period were extended for one month, the motion made in June, 1955, would be far beyond the expiration of the period to file claims.

The Supreme Court held that the lower court was in error. It seems that the lower court was under the impression that the one month extension period allowed for filing of claims should start from the expiration of the period previously fixed for the filing of claims. This was a mistaken belief, since the one month period should begin only from the order authorizing the claim. In the case at bar, the order of final distribution had not yet been entered. Further, the fraudulent manipulations by the administratrix should be considered as sufficient justification for allowing an extension. The order appealed from was reversed.

Sales, mortgages and other encumbrances of property of decedents

In the case of *Roa v. de la Cruz* [19] Maria C. Roa was the universal heir of the late Potenciana Ducuco and was appointed administratrix of the latter's estate. In view of Roa's failure to pay the professional fees of her lawyer for services rendered in her behalf, the probate court allowed the sale at public auction of any property of the said administratrix with which to satisfy the attorney's fees due. Pursuant to said order, properties of Roa were sold at public auction in favor of Segunda de la Cruz-Aguas. The sale was approved by the probate court subject to administratrix' right of redemption. Later, Roa withdrew the balance of the proceeds of the sale still in the hands of the sheriff. Roa failed to redeem the properties within the one-year period. She instituted

[18] G.R. No. L-11267, March 20, 1958; for a more detailed discussion of this case, see 33 PHIL. L. J. 450 (1958).
[19] G.R. No. L-10877, February 28, 1958.

an ordinary civil action with the Court of First Instance of Pampanga to annul the sale at public auction of the properties. To this complaint defendant spouses filed a motion to dismiss on the ground that the judicial sale having been affirmed by the probate court, said order constituted *res judicata* on the matter. The court, sustaining the motion, dismissed the case.

On appeal, the issue was whether the validity of the sale ordered and approved by the probate court may still be assailed in a separate civil action.

The Supreme Court held that the power of the probate court to order the payment of attorney's fees carries with it the power to affirm and declare as valid a judicial sale resorted to for that purpose. In the instant case, the sale at public auction was conducted pursuant to a lawful order; and to which appellant apparently acquiesced as evidenced by her conduct in requesting the withdrawal of the balance of the proceeds of the sale still remaining in the hands of the sheriff. The order of the probate court approving said sale had long become final, and considering that the issue regarding the validity of such judicial sale had already been settled in the special proceedings, there is no reason for the non-application to them of the doctrine of *res judicata*. In both instances, the same conduct of the purchaser which was said to be irregular and improper is the basis of the actions and claims that such sale was rendered void thereby; both actions involve the same parties and the same relief is prayed for. There can be no doubt that the two actions are identical, which follows that the judgment held in one (the special proceeding) constitutes a bar to the present. The action of the lower court was sustained.

Distribution and partition of the estate

In the case of *Marbella v. Kilayko* [20] collateral relatives of the deceased (who died intestate) entered into a project of partition dividing and distributing the properties left by him. This agreement was duly approved by the court, which had previously appointed Kilayko as administratrix of the estate. The proceedings were finally terminated on Nov. 14, 1953.

On October 1, 1954, Marbella, a half-sister of the deceased, instituted a civil action praying that the partition be declared null and void, or at least voidable, and to declare her as the rightful heir.

Defendants filed a motion to dismiss on the ground of *res judicata*, the order approving the project of partition having become final. The lower court sustained the defendants.

On appeal, the Supreme Court stated that as the order of the lower court adjudicated the properties to appellants who are not entitled to the inheritance in view of the existence of plaintiff's superior right, the order is reviewable and subject to readjustment within two years after the settlement and distribution of the estate; and thus cannot have the effect of barring a subsequent action by the rightful heir for the recovery of the properties belonging to the intestate.

It is interesting to note that in this case the Supreme Court refers to Rule 74, sec. 4, which applies when there has been a settlement and distribution of an estate through an extrajudicial settlement by agreement between heirs or a summary settlement of an estate of small value. In the *Marbella* case there was a judicial settlement of the estate.

[20] G.R. No. L-11141, June 27, 1958; for a more detailed discussion of this case, see 33 PHIL. L. J. 756 (1958).

General Guardians and Guardianship

Appointment of guardians

A person declared by final judgment or order to be an incompetent has the reight to appeal therefrom. Like any other right, his right to appeal may be waived, as when the incompetent consents thereto in writing. The case of *Espinosa v. Aquino* [21] raised the question as to whether the acceptance by the husband of his appointment as guardian of his wife's paraphernal properties has the effect of waiver on the part of the latter of her right to perfect an appeal.

Special proceedings were instituted by Julia Espinosa seeking to declare her sister Inocencia, married to Vicente Figueroa, an incompetent and to have the latter's properties placed under guardianship. These proceedings were opposed by Inocencia and her husband. After an examination, an order was issued declaring Inocencia an incompetent and as she apparently withdrew her opposition to the appointment of Figueroa as guardian, the court appointed him as guardian over the properties of his wife.

Inocencia appealed, but the lower court held that an appeal could not be taken from the order declaring her an incompetent, for while an incompetent may appeal from an order declaring her as such, that right could no longer be maintained where the incompetent waived the same in writing. The lower court held that the manifestation made by Figueroa, husband of the movant, and who was actively opopsing the petition, gave the impression that Inocencia must have consented to her being declared an incompetent and to her husband's appointment as guardian of her paraphernal properties.

The instant petition for mandamus was filed, with a prayer for the issuance of a writ of preliminary injunction to restrain the respondent Judge from enforcing his order to Figueroa to qualify as guardian of the paraphernal properties.

The Supreme Court granted the petition. In this case, said the Court, while it is true that the spouses were the oppositors to the petition filed with the lower court and that the latter was most active in sustaining the competency of the wife, considering the nature of the action, there could have been no privity of interest between the husband and the wife. The husband's subsequent acquiescence to the order declaring the wife an incompetent cannot be taken to prejudice her right to appeal. The subsequent filing of a notice of appeal with a prayer for the approval of the appeal bond and record on appeal by Inocencia unmistakably leads to the conclusion that she does not share her husband's view or stand.

The case of *Diaz v. Perez* [22] was a petition for certiorari to annul the order denying petitioner's motion to cancel the notice of *lis pendens*.

On August 18, 1956, three children and two grandchildren of the petitioner filed a petition in the Court of First Instance of Rizal to declare her incompetent to take care of herself and manage her properties, roughly estimated at half a million pesos, and to appoint a guardian of her person and her properties. Pending hearing, a notice of *lis pendens* had been annotated on her Transfer Certificate No. 32872 by reason of the guardianship proceedings. Petitioner filed a motion to cancel the *lis pendens* which was denied by the court. Her motion to reconsider having been denied, she filed a notice of appeal, record on

[21] G.R. No. L-11721, March 26, 1958; for a more detailed discussion of this case, see 33 PHIL. L. J. 448 (1958).
[22] G.R. No. L-12058, May 30, 1958.

appeal and appeal bond. The court disapproved the record on appeal, holding that the orders are interlocutory. Hence this petition for mandamus and certiorari, to compel approval of the record on appeal and to annul the order refusing cancellation of the notice of *lis pendens*.

The Supreme Court said that mandamus does not lie since the order is interlocutory. As to certiorari, petitioner may not seriously urge lack of jurisdiction. In asking the court to annul the *lis pendens*, she admitted its jurisdiction to annul— and also to refuse annulment. Here there is no abuse of discretion because the *lis pendens* had been annotated for the purpose of advising anyone who might wish to buy the realty that there is in court a petition to declare petitioner incompetent to dispose of her properties so that such purchaser might make the necessary inquiries and take steps to protect his interest; bearing in mind that if she could be declared incompetent, his purchase will or might be affected adversely. It is a proper cautionary measure which the courts should be slow to disturb, unless the petition for guardianship was *prima facie* unconvincing, or was not made in good faith.

Republic Act 145

The Supreme Court stated in the case of *P.N.B. v. Ebreo* [23] that the provisions of R.A. 145 which prohibit a person assisting a claimant in the preparation and prosecution of his claim for benefits under the laws of the U.S. administered by the U.S.V.A. from charging or receiving any fee or compensation exceeding ₱20 in any one claim does not refer to atorney's fees for services rendered in a guardianship proceeding. In the case at bar, it does not appear what professional service was rendered by the attorney except the drawing up of a petition to require the mother of the minors to turn over to the guardian the "properties" of said minors. Taking into consideration the value of the minors' estate which is ₱4,000, and the professional service rendered in connection with the appointment of a guardian of the minors, the amount of fees to which the attorney is entitled is ₱300 excluding any amount he had advanced for which he must be reimbursed by the guardian bank.

Bonds of guardians

In the case of *Jocson v. Empire Insurance Co.*[24] Agustin Jocson was appointed guardian of the persons and properties of his minor children, and as such guardian he had a bond filed with the Empire Insurance Co. as surety. In the course of the guardianship, Jocson submitted periodic accounts to the court, among them those for expenses incurred for the education and clothing of the wards. These accounts were approved by the court.

After Jocson died, his former wards filed a petition in the guardianship proceedings claiming that the disbursements for their education and clothing were illegal. The court denied the motion and declared the bond cancelled and the guardianship terminated.

The issue was whether expenses for education and clothing during minority are part of the support the minors are entitled to receive from their father.

The Supreme Court held that support does include what is necessary for the education and clothing of the person entitled thereto, but support must be demanded and the right to it established before it becomes payable. In the

[23] G.R. No L-9979, March 28, 1958.
[24] G.R. No. L-10792, April 30, 1958; for a more detailed discussion of this case, see 33 PHIL. L. J. 758 (1958).

present case it does not appear that support for the minors was ever demanded and the need for it duly established. Hence the disbursements made by the guardian cannot be said to be illegal, so that the lower court did not err in holding the guardian's bond not liable for the same. Furthermore, said the Supreme Court, the claim for support should be enforced in a separate action and not in a guardianship proceeding.