

95 Phil. 703

[G.R. No. L-6428. August 31, 1954]

TESTATE ESTATE OF THE DECEASED TOMASA DAYO. PATRICIO DAYO AND HIPOLITO DAYO, PETITIONERS AND APPELLANTS, VS. FILEMON, AGAPITA, CANDIDO, AMADO, JULIO, LAURA, CRISPINA, FELIX, ADRIANO, HIPOLITO, CORNELIO, TOMAS, GREGORIA, CASTOR, RITA, TEOFILA, GREGORIO, SILVINO, FELICIDAD, QUITERIO, IRENE, AND EMILIO, ALL SUMAMED DAYO, CORNELIA VILLAVERDE, MARIA JARDIN, ASUNCION VILLAVERDE, RUFINO VILLAVERDE, SABINA TALABONG, LUCAS GAGAN, DIEGO SENO, AND SOFIA DE ASIS, OPPOSITORS AND APPELLEES.

D E C I S I O N

LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Quezon, the Honorable Vicente Santiago presiding, dismissing the petition for probate filed and pending continuation of trial in the above-entitled proceedings. The petition for probate was filed on May 28, 1947, and was set for hearing on June 24, 1947. Three oppositions were filed against the petition, one by relatives of the decedent represented by Attorney Felixberto M. Serrano, another by others represented by Attorney Vicente Constantino, and a third by Sofia de Asis represented by Attorneys De Mesa and De Mesa. The hearing of the petition took place as scheduled on June 24, 1947, and at said hearing the original will and a duplicate were presented, and the testimonies of two attesting witnesses taken. The third attesting witness is Attorney Nicodemus L. Dasig of Manila, and authority for the taking of his deposition was obtained by the applicant. The deposition was actually taken on January 3, 1948, and certified to the court in May, 1948. No action appears to have been taken on the case by the court or by the parties the rest of the year 1948, but in the year 1949 the following proceedings were taken:

Date	Nature of Proceeding	Action taken
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February 9	Motion by applicant to set case for continuation of hearing.	Court did not grant notion but ordered the transcription of the stenographic notes.
July 29	Motion of applicant to set case for continuation of hearing.	Court order, August 9, setting trial for September 1.
August 23	Motion for postponement by Atty. F. M. Serrano, on the ground that he is busy attending sessions of Congress.	Granted. Attorney for petitioners did not appear; postponed to September 23rd.
September 23	Telegraphic petition of Atty. F. M. Serrano to postpone trial.	Granted in order of September 29; postponed to November 8.
November 15	Order setting: hearing for December 6.	
December 6	Order postponing for December 21 trial of case because of absence of clerk of court and conformity of parties.	
December 12	Motion for postponement of Attys. De Mesa & De Mesa on the ground that the lawyer was going to act as sponsor in a wedding.	Denied by Court December 19th.
December 19	Attorney for petitioner telegraphs conformity to petition.	Denied by Court December 19th.
December 21	Hearing. Present were applicants without lawyer; oppositors with their attorneys.	
	Motion for postponement by attorney for applicants alleging: "que el infrascrito esta mejorandose de an reciente ataque de fiebre reumatica, y aunque este dia ha podido bajar un momenta a la calle, es el cape de Que no puede todavia hacer un viaje por tren o auto, como ae acredita por el adjunto Certincado Medico," which states that . Atty. Salazar 667 Legarda, "is suffering from rheumatoid arthritis with acute episodes of attacks. With his partial recovery, it is advised that he should keep and must avoid jerky movements or any muscular strenous activity."	Denied by Court on December 21 and dismissed petition for probate, with prejudice.
January 4, (1960)	Motion for reconsideration, by attorney for applicants, alleging partly that he himself was to testify, as he is the one who prepared the will, and the words "her mark" were placed by him thereon, etc.	Denied by Court on March 31, 1950.

- January 9 Opposition to motion for reconsideration. Attention called to fact that Atty. Salazar appeared in Manila at hearing of Electoral Tribunal on December 21, 1949.
- January 15, (1950) Oppositions of other oppositors to motion for reconsideration.

On this appeal it is contended that the dismissal of the petition for probate is not justified by the provisions of section 3 of Rule 30 of the Rules, and that inasmuch as the proceedings are special in nature and no specific provision exists in the Rules regarding their dismissal as in ordinary cases, the trial court should have given opportunity to the applicants, even in the absence of their lawyer, to continue presenting their evidence (as the case only needed the formal presentation of the deposition of the third attesting witness), instead of dismissing the application.

It is true that the Rules do not expressly provide for the application of Rule 30 in special proceedings, but the same general considerations should apply to their dismissal (of special proceedings), with the added circumstance that since they are not contentious suits depending upon the will of an actor, but upon a state or condition of things or persons not entirely within the control of the parties interested, dismissals should be ordered not as penalty for neglect of the petitioners, but only in the extreme cases where the termination of the proceeding by dismissal is the only remedy consistent with equity and justice. Here was a will of a decedent, in accordance with the provisions of which his properties are to be disposed of. The oppositors are not in court because they have been forced to do so by summons, as in ordinary cases; they are in court voluntarily, claiming right by intestate succession. Their right should not be considered paramount to those of the deceased owner, who had tried to dispose of his properties. Every opportunity should be afforded to the parties, who seek to have the decedent's will carried out, to have the will admitted to probate before the oppositor's claims can be given consideration. We hold that this opportunity was improperly refused the applicants in these proceedings.

Even under the provisions of section 3 of Rule 30, the dismissal may not be justified. Said rule provides:

SEC. 3. *Failure to prosecute.*—When plaintiff fails to appear at this time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon

motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

In the case at bar, the petitioners were present in court, only that their lawyer was absent. The rule does not provide a dismissal *on the ground of the absence of counsel*. In a case decided by this court (Lourdes del Prado de Alegre vs. Jose Nespral, G. R. No. L-3933, promulgated May 28, 1952), it was held that there is failure to prosecute when the plaintiff, being present, is unwilling to proceed with the scheduled trial, as when he or his attorney made no appearance at all. In the case at bar, only counsel for petitioners were absent, not the parties interested in the probate. Neither can it be said that they have failed "to prosecute their action for an unreasonable length of time, or to comply with the rules or any order of the court." Petitioner had also never asked for postponement; it was always the oppositors who had asked for it, and at all times it was always granted by the court. As appellants claim, the most that the judge below could have done, under the circumstances, was to grant the petitioners an hour or two to engage the services of a new lawyer to terminate with the formal presentation of the deposition of the last attesting witness and the documentary evidence.

An examination of the order denying the motion for reconsideration seems to indicate that the trial judge was peeved at what he thought to have been an act of bad faith of counsel for petitioners in claiming that he was unable to appear at the trial. There can be no justification for this conclusion, that petitioners' counsel tried to mislead the court, misrepresenting that he was ill and could not attend. What counsel actually stated is that he was prohibited by his condition to undertake the trip to Lucena, Quezon, from Manila. And this is proved by the medical certificate attached to the motion for postponement.

We, therefore, hold that the trial judge erred in dismissing the petition for probate. The order appealed from is hereby reversed and the case ordered reinstated for further proceedings. Without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.

