

IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF CONSTANCIA VERGARA VDA DE PARCUTELA.

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal from the decision of the Regional Trial Court (RTC) of Quezon City, Branch 105 dated January 29, 2010 which allowed the probate of the will of deceased Constancia S. Vergara Vda. De Parcutela in Sp. Proc. No. Q-99-39352.

The antecedent facts of the case are as follows:

On March 3, 1998, Constancia S. Vergara Vda. De Parcutela died at the Medical City Hospital, Mandaluyong, Metro Manila.[1]

On March 12, 1998, Rogelio V. Quevedo representing the siblings of the deceased, namely, Romeo, Pacifico, Aurea, Mercedes, Ricardo, Remedios and Leopoldo, all surnamed Vergara filed a petition with the RTC Quezon City docketed as Special Proceedings No. Q-98-33806, entitled “In the Matter of the Intestate Estate of Constancia S. Vergara Vda. De Parcutela”. Rogelio Quevedo was appointed special administrator of the estate which included several real and personal properties in Quezon City and Gapan Nueva Ecija based on the RTC order dated April 22, 1998[2] but he later resigned from the position while the case was still pending before the RTC[3].

On April 30, 1998, Lourdes Parcutela-Tecson filed a petition with the Regional Trial Court (RTC) of Gapan, Nueva Ecija for the probate of will of deceased, docketed as Sp. Proc. No. 512 entitled, “In the Matter of Petition To Approve the Will of Constancia Vergara Vda. De Parcutela”. Special Administrator Rogelio Quevedo filed an opposition with motion to dismiss the petition, alleging improper venue because the deceased was a resident of Quezon City at the time of her death; and that it was the RTC of Quezon City which had exclusive jurisdiction over the settlement of the estate of the deceased. On October 29, 1998, the RTC of Gapan, Nueva Ecija issued an order denying the motion to dismiss, however, the said order was annulled and set aside by this Court's former 8[th] Division in a decision dated April 5, 1999 in CA-G.R. SP No. 51099 which held that the petition for probate of the will of Constancia Vergara Vda. De Parcutela should be presented for determination of its authenticity and due execution before the RTC of Quezon City which first assumed jurisdiction over her estate, to the exclusion of all other courts.[4]

On October 10, 1999, Lourdes Parcutela-Tecson filed a petition for probate of the will of the deceased in Sp. Proc. No. Q-98-33806,[5] however, on November 5, 1999, the RTC issued an order pending with RTC Quezon City, holding that the petition for probate was deemed withdrawn without prejudice to the filing of the proper petition with the RTC of Quezon City.[6]

On November 26, 1999, Lourdes Parcutela-Tecson filed another petition for probate of will before the RTC of Quezon City docketed as Sp. Proc. No. Q-99-39352 entitled, “In the Matter of the Petition to Approve the Will of Constancia Vergara Vda. Parcutela.” Attached to the petition are the following documents:1) Death Certificate

showing that the testatrix died on March 3, 1998 at Medical City, Mandaluyong; 2) Last Will and Testament signed by testatrix on October 7, 1997 before witnesses Arnedo Abesamis, Vicente Legaspi, Jr. and Christopher Basilio and notarized by Notary Lino Soriano on October 17, 1997; 3) Proof of notice to all interested parties; 4) Certificate of posting at the Municipal Building of Gapan, Nueva Ecija; and 5) Proof of publication in a newspaper of general circulation on June 8, 15 and 22, 1998.[7] Petitioner also complied with the subsequent order of the RTC dated April 7, 2000 by again causing the publication of the notice of probate proceedings in the Philippine Star on April 27, May 4 and 11, 2000.[8] Meanwhile on December 10, 1999, the RTC directed the consolidation of Sp. Proc. No. Q-98-33806 and Sp. Proc. No. Q-99-39352.[9]

On May 23, 2000, oppositor Aurea Quevedo filed an opposition to the probate proceedings on grounds that the will does not contain the genuine signature of the testatrix; and that it was not executed and attested to in accordance with Art. 805 of the New Civil Code. Oppositor Aurea Quevedo reasoned that the will was signed by the testatrix on October 7, 1997 but it was notarized on October 17, 1997, thus, she prayed that probate of the will be denied due to discrepancies on the date of execution.[10]

The other Vergara siblings also opposed the probate of the will alleging that first, it was spurious because the testatrix could not have travelled all the way from Gapan, Nueva Ecija to Quezon City to execute/sign and have the will notarized on October 17, 1997 given her advanced age and medical condition, i.e., prior to said date, she was confined in a hospital for a major surgery to remove a portion of her intestines and thereafter, required a colostomy bag to be attached to her stomach for excretion, thus restricting her mobility until her death on March 12, 1997. Second, the testatrix had no intention to execute the questioned will as it was highly unlikely that she would bequeath all her properties to complete strangers or persons without any blood relations to herself. Third, oppositor Mercedes Vergara claimed that the testatrix showed her copy of the Last Will and Testament sometime in May in Gapan Nueva Ecija just before her death and also disclosed that she refused to all attempts by Lourdes Parcutela-Tecson to make her sign the will.[11] Fourth, they concurred with oppositor Aurea Vergara that there were doubts regarding the authenticity of the will given the discrepancies in the date of execution, which indicated that the will had long been prepared by Atty. Edmund Abesamis i.e., the attestation clause indicated the date "May 17, 1997," but there was a superimposition/stamp mark date of "October 17, 1997." Fifth, contrary to the testatrix' instructions to Atty. Edmund Abesamis, the latter failed to draft a faithful reproduction of the Joint Will executed previously on August 28, 1989 by Constancia and her late husband Feliciano Parcutela, as there was no mention in the said Joint Will regarding the acknowledgment of Lourdes Parcutela-Tecson as Feliciano's natural daughter or her being treated as the testatrix' own daughter.[12] Sixth, the signature of the testatrix as it appears in the questioned will varies from her customary signature appearing in other official documents.[13]

On January 29, 2010, the RTC of Quezon City rendered judgment allowing the probate of the questioned will and holding as follows:

xxx In this case, the questioned document is a Notarial Will. The notary public testified that the testatrix signed the Will in his presence and he notarized the same on October 17, 1997. This was confirmed by three instrumental witnesses who signed the Will in the presence of one another. Apparently, the signature of the testatrix appears at the end or bottom page of the body of the Will containing the testamentary dispositions and on the left hand margin appears the signatures of the three instrumental witnesses where the attestation clause was written.

Anent the issue on the testamentary capacity of Constancia Vergara Vda. De Parcutela, it is important to stress Article 800 of the Civil Code which provides: (citation omitted)

xxx xxx xxx

Although the testatrix Constancia Vergara Vda. De Parcutela may be admitted to be physically weak, it does

not necessarily follow that she was not of sound mind when she executed her Will. Even Dr. Ester Belo Ordonez who was presented by oppositors to shed light on the behavior of a patient who had undergone colostomy operation testified that the same might only affect her emotionally, but not mentally, thus:

ATTY. BAROT

Q:

Actually, when you say colostomy, it's the surgical condition of an artificial anus correct?

A:

Correct.

Q:

Of the lower portion of the body?

A:

In the abdomen.

Q:

Nothing with the brain, it doesn't affect the brain? Yes or No?

A:

No, organically. Yes, emotionally.

COURT (to witness)

Q:

What do you mean organically, yes emotionally?

WITNESS:

A: The brain may not become defective, The brain will not have any disease, no infection. However, the brain includes also the emotional. It's well-being of the patient.

(TSN dated 2006 October 19, 2006, pages 13 to 14)

Oppositors also claim that the signature of Constancia Vergara Vda. De Parcutela was secured through fraud because of her worsening health condition such that she was so vulnerable to devious schemes and machinations which led to the execution of the Will. In questioning the authenticity of her signature in the subject Will, they expressed their observation on what they perceived is the obvious difference between the signatures therein and the sample signatures in Exhibit 6 and some documents attached to the Motion for Order to Submit the Testatrix' Signature for Handwriting Examination, plus the fact that they find it absolutely unusual that the testatrix would bequeath all her properties to the petitioner, who is a virtual stranger and would disregard her siblings who allegedly took care of the testatrix at her sick bed till the time of her death.

The Court is not convinced.

A cursory examination of the disputed signatures of the testatrix on the Will sought to be probated and those found on the documents which the oppositors claimed to be her genuine signatures will readily show that they were written by only one person. The strokes, size and letters in all the documents are very similar, if not identical to one another. If there was any change at all in the signatures, the Court finds the same very insignificant for what was only noted was the testatrix' failure to affix her signature on the subject Will in a straight manner, which is not unlikely to happen especially so that she was sick and already of advanced age when she signed the Will. More importantly, the alleged differences in the signatures, as pointed out by petitioner, cannot possibly outweigh the positive testimony of the three instrumental witnesses to the Will and that of the notary public who confirmed under oath the signing of the Will by the testatrix in their presence.

Then too, it is a settled doctrine that the omission of some relatives does not affect the probate of a Will. An order of probate is conclusive only as to the due execution and capacity of the testator, and not the status and rights of persons to inherit. Thus, the fact that the testatrix bequeathed all her property to the children of petitioner and left nothing to her siblings is of no moment. The Will to be admitted to probate is presumed valid failing on the part of the oppositors to establish that fraud attended its execution. On the contrary, the Joint Will executed by Constancia Vergara Vda. De Parcutela with her husband, and offered in evidence by the oppositors, even bolsters the fact that it was really the intention of the deceased to name the children of the petitioner as her only heirs pursuant to the wishes of her deceased husband.

Wherefore, premises considered, judgment is rendered approving and allowing probate to the subject Last Will and Testament of Constancia Vergara Vda. De Parcutela.

SO ORDERED.[14]

On April 8, 2010, oppositors filed a Notice of Appeal with Record on Appeal.[15] On April 25, 2010, the RTC approved the same and directed the transmittal of the records of the case to this Court.[16] Hence, in this appeal, oppositors-appellants allege that the RTC committed reversible error in failing to consider the apparent and significant discrepancies and changes in the signature of the testatrix in the subject will vis-à-vis her specimen signatures in the legal documents prior to the execution of the subject will; that the RTC committed reversible error in failing to refer the matter of varying signatures to a handwriting expert; and that the RTC committed reversible error in ruling that the last will and testament is valid extrinsically and intrinsically.[17]

The pivotal issue is whether the authenticity and due execution of the notarial will was sufficiently established to warrant its allowance.

The Court finds that there was faithful compliance with the formalities laid down by law and such compliance is apparent from the face of the subject will. Courts are tasked to determine nothing more than the extrinsic validity of a will in probate proceedings. Sec. 1, Rule 75 of the Revised Rules of Court states:

Rule 75

Production of Will. Allowance of Will Necessary.

Section 1. Allowance necessary. Conclusive as to execution. – No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution.

Due execution of the will or its extrinsic validity pertains to whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law.[18] These formalities are stated in Arts. 805 and 806 of the New Civil Code, to wit:

Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

Art. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the Office of the Clerk of Court.

Here, a careful examination of the face of the will shows faithful compliance with the formalities laid down by law. The signatures of the testatrix, her instrumental witnesses and the notary public, are all present and evident thereon. Further, the attestation clause explicitly states the critical requirement that the testatrix and her instrumental witnesses signed the will in the presence of one another and that the witnesses attested and subscribed to the will in the presence of the testatrix and of one another. While oppositors-appellants contend that the testatrix was suffering from a serious medical condition, which prevented her from validly affixing her signature on the questioned document at the time of its execution, the Court finds that oppositors-appellants failed to offer evidence to support their contention that the testatrix was of unsound mind. Art. 799 of the Civil Code provides that “to be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause. It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act. The burden to prove that the testatrix was of unsound mind or that she was under duress at the time of the execution of the will, lies on the oppositors-appellants. The latter failed to satisfactorily discharge that burden.

In this case, there was no substantial evidence, medical or otherwise, that would show that the testatrix was of unsound mind at the time of the execution of the will. No less than oppositors-appellants' witness Dr. Belo Ordonez testified that the testatrix' illness did not affect her mental capacity or discernment. Notably, the Court finds the testimony of the notary public and the three instrumental witnesses to the execution worthy of credence. As a rule, the testimony of subscribing witnesses to a will concerning the testator's mental condition is entitled to great weight when they are shown to be truthful and intelligent. More importantly, a testator is presumed to be of sound mind at the time of the execution of the will[19]. Under Art. 800 of the New Civil Code, the law presumes that every person is of sound mind, in the absence of proof to the contrary. Thus, it is incumbent upon those who oppose the probate of a will to clearly establish that the decedent was not of sound and disposing mind at the time of the execution of said will. Otherwise, the state is duty-bound to give full effect to the wishes of the testator to distribute her estate in the manner provided in her will so long as it is legally tenable.[20]

Furthermore, the Court is convinced that the testatrix was fully aware of the nature of her estate to be disposed of, the proper objects of her bounty and the character of the testamentary act. Record shows that she specifically instructed Atty. Edmund Abesamis to reproduce the contents of the Joint Will she previously executed with her husband Feliciano Parcutela in her own will. This clearly showed her intention to bequeath her properties to the

children of petitioner-appellee Lourdes Parcutela-Tecson. An essential element of the validity of a will is the willingness of the testatrix to execute the document that will distribute her estate upon her death. Oppositors-appellants suggest that the testatrix was merely forced to execute the will under duress or fear or threats; that there was fraud and improper pressure from some other persons to procure her signature for their own benefit and that there was a time where during a conversation between the testatrix and oppositor Mercedes Vergara, the former repudiated the will and left it unsigned. Bare allegations of duress or influence of fear or threats, undue and improper influence and pressure, fraud and trickery cannot be used as basis to deny the probate of a will. It must be emphasized that a purported will is not to be denied legalization on dubious grounds. Otherwise, the very institution of testamentary succession will be shaken to its foundation, for even if a will has been duly executed in fact, the issue of whether it will be probated would have to depend largely on the attitude of those interested in the estate of the deceased.[21] The fact of omission of oppositors-appellants in the will does not prove that the testatrix was tricked into signing the will. It is a settled doctrine that the omission of some relatives does not affect the due execution of a will.[22]

Anent oppositors-appellants' contention that the RTC erred in failing to consider forgery and denying their motion to present the testimony of a handwriting expert, it has been ruled that forgery is not presumed but must be proved by clear, positive and convincing evidence by the party alleging it. It is established by comparing the alleged forged signature with the genuine signatures. Considering the technical nature of the procedure in examining forged documents, handwriting experts are often offered as expert witnesses. Although their testimonies are useful, resort to these experts is not mandatory or indispensable because a finding of forgery does not depend entirely on their testimonies. Judges must also exercise independent judgment in determining the authenticity or genuineness of the signatures in question, and not rely merely on the testimonies of handwriting experts.[23]

WHEREFORE, the appeal is DISMISSED. The decision of the Regional Trial Court of Quezon City dated January 29, 2010 in Civil Case No. Q-99-39352 is AFFIRMED.

SO ORDERED.

Tijam , N. G., Chairperson, and Lopez, JJ., concur.

[1] Record, p. 5.

[2] Record, Vol. II, pp. 1-5; and p. 22.

[3] Id. at p. 426-427.

[4] Record. Vol. II, pp. 283-290.

[5] Record, Vol. II, pp. 373-377.

[6] Id. at p. 386.

[7] Record, Vol. I. pp. 1-12.

[8] Id. at p. 49 and pp. 98-99.

[9] Id. at p. 17.

[10] Id. at pp. 54-55.

[11] Id. at pp. 396-403; TSN, June 11, 2004, pp. 17-25 (Mercedes Vergara).

[12] Id. at pp. 301-304; TSN, April 16, 2004, pp. 11-12 (Atty. Edmund Abesamis).

[13] Record, Vol. I, p. 553.

[14] Id. at pp. 687-699.

[15] Id. at pp. 701-761.

[16] Id. at p. 762.

[17] Rollo, p. 46.

[18] Baltazar, et al., vs. Laxa, G.R. No. 174489, April 11, 2012.

[19] Note 18.

[20] Note 18.

[21] Note 18.

[22] Leticia Valmonte Ortega vs. Josefina C. Valmonte, G.R. No. 157451, December 16, 2005.

[23] Dabon Vda. De Mendez vs. Court of Appeals and Sps. Mineo and Trinidad Dabon, G.R. No. 174937, June 13, 2012.

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