

**M. E. GREY, DECEASED SUBSTITUTED BY RUTH GREY, AS
ADMINISTRATRIX OF THE ESTATE OF THE LATE M. E. GREY,
PLAINTIFF AND APPELLEE, VS. INSULAR LUMBER COMPANY,
DEFENDANT AND APPELLANT.**

G.R. No. L-7777. October 31, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This case (Case No. 8185 of the Court of First Instance of Negros Occidental) was originally filed by M. E. Grey against the Insular Lumber Company, referred to later as the Company, to collect a sum of money. Upon Grey's death, Special Proceedings No. 387 of the Court of First Instance of Negros Occidental were instituted for the administration of his estate. Ruth Grey was appointed administratrix and in that capacity she substituted M. E. Grey as plaintiff. Eventually the trial court rendered judgment in favor of the plaintiff which judgment on appeal was modified by the Supreme Court in G. R. No. L-535. In compliance with the final judgment the Company issued National City Bank of New York, Manila branch check No. 220481 for a total sum of P88,453.56 in the name of Ruth Grey, "in her capacity as administratrix of the Estate of M. E. Grey, deceased," and delivered the same to Atty. Carlos Hilado, counsel for plaintiff.

On February 23, 1954, Atty. Hilado filed a motion with the trial court alleging that he had a contract with 3VL E. Grey for a contingent fee of 25 per cent of the amount of the judgment which 25 per cent is equivalent to P22,113.89, and desiring to collect this amount, he asked the court to order the payment to him of this contingent fee and order the defendant Company to cancel its check No. F-220481 and in lieu thereof, issue two checks, one for P66,340.17 in the name of the administratrix and another check for P22,113.39 in his name. Movant further alleged in his motion that Atty. Jose A. Strachan, attorney of the estate of Grey, who was fully aware of the contract for the contingent fee was being notified by registered mail in his residence in Escalante, Negros Occidental. Atty. Hilado also said that administratrix Ruth Grey was living in the United States, and that he did not know "what disposition she would like to make regarding the aforesaid amount as well as the persons entitled to receive said amount in the settlement and distribution of the estate of the deceased."

The Company through its attorneys filed opposition to the motion on the ground that it had already complied with its obligation to pay the amount of the judgment debt to the administratrix and that if Atty. Hilado had any claim for attorney's fees, he could, if he so desired, file a proper petition in the probate proceedings. On March 8, 1954, Atty. Hilado replied to the opposition and on the same date filed an amended motion reproducing the contract with M. E. Grey for professional services, claiming that his attorney's fees were unpaid, reasonable and just, and asking that his attorney's lien be made of record, reiterating his prayer that the Company be directed to cancel its check and issue in lieu thereof two checks.

On March 16, 1954, the trial court granted the amended motion; ordered Atty. Hilado's lien recorded for all legal purposes, and ordered the Company to cancel "Check No. F-220481 and in its stead to issue two checks, viz., one

check for the sum of ₱66,340.17 in the name of 'Ruth Grey, in her capacity as administratrix of the estate of M. E. Grey, deceased'; and another check for the sum of ₱22,113.39 in the name of Atty. Carlos Hilado." Failing to secure a reconsideration of this, order the defendant Company appealed the said order direct to this Court.

It is rather strange that the defendant Company which apparently has no legal interest in the disposition or distribution of the amount of the judgment should oppose the motion of Atty. Hilado, going to the extent of appealing the order granting the same, while the attorney for the estate would appear to have said or done nothing, agreeing to the motion or opposing the same, assuming of course, that he received on time the notice said to have been mailed to him. However, it may well be that the defendant Company merely wanted to stand by its legal rights as a judgment debtor. We agree with it that after paying the total amount of the debt, in the form of a check received and apparently accepted by Atty. Hilado as counsel for the plaintiff, it had fully complied with its legal obligation. Had Atty. Hilado claimed and made of record his charging lien for his contingent fee before defendant Company had made the payment in a lump sum, it might yet be possible that the trial court could have legally ordered it to make the payment in two separate sums, one for the administratrix and another for the counsel, this, of course, assuming that the estate of Grey was agreeable to the collection of said contingent fee. However, as already stated, Atty. Hilado claimed and made of record his charging lien after the judgment debtor had duly complied with the judgment.

There is no question that the law protects a charging lien of Atty. Hilado and if and when duly established, would authorize its payment by the estate. But to do so, Atty. Hilado would first have to prove the contract for the contingent fee; and that it was, in his own words "unpaid, reasonable and just." It is at the same time obvious that the other party, the legal representative of the estate should be heard so that she may agree to the claim for the payment of the fee or oppose it on some legal ground. As said by this Court in the case of *Ulanday vs. Manila Railroad Company*, 45 Phil., 540:

"* * *. Contingent fees are not prohibited in the Philippines, and since impliedly sanctioned by law 'should be under supervision of the court in order that clients may be protected from unjust charges.' (Canons of Professional Ethics, No. 13.) Where it is shown that the contract for a contingent fee was obtained by any undue influence of the attorney over the client, or by any fraud or imposition, or that the compensation is so clearly excessive as to amount to extortion, the court will in a proper case protect the aggrieved party." (*Taylor vs. Bemiss* [1883], 110 U. S., 42.)

If M. E. Grey were alive today there is no question that he would be given an opportunity to appear and say whether he agrees to the payment or whether he opposes the same on the ground that the contract for contingent fee was irregularly and improperly obtained from him, or that the amount stated therein was clearly excessive or that it had already been paid partly or fully. Otherwise, as said in the case of *Dahlke vs. Viña*, 51 Phil., 707, should he fail to contest the claim for contingent fee he would be bound by the amount specified in the lien even though it was not just or it may have been paid. Grey being now dead, it is but just that the legal representative of his estate which would be paying said contingent fee if duly established should be heard. In the present case, administratrix Ruth Grey is residing in the United States. True, the attorney for the estate, Atty. Strachan, may have been duly notified of the filing of the claim and the recording of the attorney's lien but according to the very pleadings, the amended motion of Atty. Hilado was filed on March 8, 1954 and the order granting the same was issued on March 16, 1954, about eight days later. We do not know when the notice sent by Atty. Hilado from Bacolod City by registered mail was received by Atty. Strachan in Escalante, Negros Occidental; but even if he had received the same shortly after March 8, 1954, he could have had no material time to communicate with administratrix Ruth Grey in the United States and received her answer, much less for said administratrix Ruth Grey to come to the Philippines if she so desired, appear before the trial court, study the petition for the payment of the contingent fee and declare her stand, whether she was agreeable to it or she opposed the same.

There is another aspect of this case. Upon the payment of the judgment debt in the sum of P88,453.56 though in the form of a check in the name of the administratrix, the said amount may be considered to have formed part of the funds of the estate and so to be in custodia legis notwithstanding the fact that the check was being held by Atty. Hilado, because the probate court has jurisdiction over the properties belonging to the estate though temporarily held by third parties. Any payment of attorney's fees by the estate will have to be approved by the probate court. In other words, in the payment of the contingent fees claimed in this case, the probate court has something to say, although should the propriety and validity of the proposed payment of said fees be duly established before the trial court, there would be no difficulty in securing the approval of the probate court.

In view of the foregoing, the order of the trial court of March 16, 1954, granting the motion of Atty. Carlos Hilado is hereby set aside. Let this case be remanded to the trial court for further proceedings, especially to set the said motion for hearing, giving sufficient time for the notification of the administratrix Ruth Grey and for an opportunity on her part should she desire to do so to come to the Philippines to attend the hearing, after which, the trial court will rule on and decide the motion. No costs.

Pards, C. J., Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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