

FRANCISCO C. HERNANDEZ, AS HEIR AND IN HIS CAPACITY AS JUDICIAL ADMINISTRATOR OF THE ESTATE OF THE LATE MAXIMO C. HERNANDEZ, SR., PETITIONER, VS. THE HON. COURT OF APPEALS, ANDR...

G.R. No. L-43813. May 24, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

These two cases, consolidated by resolution of this Court dated January 31, 1977, involve two separate petitions for review of the decision dated February 16, 1976 of the Court of Appeals in CA-G.R. No. SP-04403 dismissing petitioners' petition for certiorari and mandamus with writ of preliminary injunction for lack of merit, as well as, of the resolution dated May 11, 1976 of the same court denying the two separate motions for reconsideration of the said decision. (See pp. 180-189 and pp. 206-208, rollo of L-43813)

The petition in L-43813 dated June 24, 1976 was filed by petitioner Francisco C. Hernandez, as heir and in his capacity as judicial administrator of the estate of the late Maximo C. Hernandez Sr., through counsel, Atty. Manuel T. De Guia, while the petition in L-43952 dated June 15, 1976 was filed by Celestino C. Hernandez, Ruben C. Hernandez, Maximo C. Hernandez Jr., Porfiria H. Valencia and Laura H. Cornejo, heirs of the late Maximo C. Hernandez Sr., through counsel, Atty. Antonio R. Atienza.

The main thrust of these petitions is to seek a review of the April 24, 1967 order of the Court of First Instance of Rizal, Branch II, in Special Proceeding No. 5309 admitting to probate the last will and testament of the late Maximo C. Hernandez Sr., and of the August 10, 1968 order of the same court in the same special proceeding ordering the executrix and/or the estate of the testator to pay Atty. Rosendo J. Tansinsin the sum of Two Hundred Fifty Thousand (P250,000.00) Pesos as attorney's fees with legal interests from August 23, 1967.

On July 19, 1976 and during the pendency of these cases, the petitioner in L-43813, Francisco C. Hernandez died, and by resolution dated August 25, 1976 this Court allowed the substitution of the deceased, as petitioner in this case, by his heirs, namely: Zenaida Gabriel Leuterio, wife, and children: Georgina, Geraldine, Wilhelmina, Francisco Jr., Alven, Marian Zenaida and Glenn Maximo, all surnamed Hernandez, enumerated in the notice of death and motion for substitution filed by petitioner's counsel. (p. 450, *ibid.*)

By motion dated February 10, 1977, Atty. Ernesto O. Rodas manifested to this Court that he was appointed the new administrator of the estate of the late Maximo C. Hernandez Sr. by order of the Court of First Instance of Rizal, Branch II, dated January 11, 1977 issued in Special Proceeding No. 5309 without objection from any of the heirs of the late Maximo C. Hernandez Sr. and, likewise, without objection on the part of Zenaida Leuterio Vda. de Hernandez who had been appointed in Special Proceeding No. 8324 of the Court of First Instance of Rizal, Branch I, as administratrix of the estate of the late Francisco C. Hernandez, her deceased husband and the original petitioner in L-43813, and prayed, among other things, for his substitution as petitioner in L-43813 in lieu of the heirs of the late Francisco C. Hernandez. (pp. 614-618, *ibid.*)

On March 15, 1977 a Motion to Dismiss the petitions dated March 7, 1977 was filed jointly, by Ernesto O. Rodas, present administrator of the estate of the late Maximo C. Hernandez Sr., Zenaida Leuterio Vda. de Hernandez, administratrix of the intestate estate of the late heir and former administrator Francisco C. Hernandez, all the petitioners in L-43952, namely: Celestino C. Hernandez, Ruben C. Hernandez, Maximo C. Hernandez, Jr., Porfiria H. Valencia and Laura H. Cornejo, as well as, all the other heirs of the late Maximo C. Hernandez Sr., namely: Lolita Mojica Hernandez, Eleanor M. Hernandez, Elenita M. Hernandez, Max Mojica Hernandez, Lourdes D. Hernandez, Jacinto D. Hernandez, Priscilla D. Hernandez and Enriqueta Bautista, with the assistance of their respective counsel, on the ground that all the parties having interests in the estate of the late Maximo C. Hernandez Sr. have amicably settled their differences and have agreed on a "Partial Project of Partition and Settlement of Claims" dated March 1, 1977 and approved by Order dated March 3, 1977 of the Court of First Instance of Rizal, Branch II; with attached xerox copy of the original order of approval. (pp. 705-724, *ibid.*)

Only counsel Manuel T. de Guia filed comment dated March 22, 1977 on the said motion to dismiss stating that the record shows that he is the lawyer who had actively and personally handled the case for the administrator Francisco C. Hernandez (now deceased) but he had not been honored with a simple notice of termination of his services; that he came to know of the Partial Project of Partition and Settlement of Claims dated March 1, 1977 only on March 18, 1977; and that the filing of the present motion to dismiss was attended by a flagrant violation of the principles of professional ethics. (p. 726, *ibid.*) This comment states, however, no particular objection or opposition to the Motion to Dismiss.

WHEREFORE, there being no objection to the Motion to Dismiss dated March 7, 1977, the Court resolves to grant the same and the petitions in L-43813 and L-43952 are accordingly DISMISSED. All incidents involved and pending in these two cases are rendered moot and academic requiring no further action from this Court. Any claim for attorney's fees of Atty. Manuel T. de Guia is reserved in his favor for action in the court below.

Let copies hereof be furnished all parties concerned including individually the children of deceased Francisco C. Hernandez who are enumerated in page 2 of this Resolution as having substituted the original petitioner as heir of Maximo C. Hernandez, Sr.

So Ordered.

Teehankee, (Chairman), Makasiar, Antonio, and Martin, JJ., concur.

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