

**IN THE MATTER OF INTESTATE ESTATE OF MARCELINO BELMONTE. APOLONIA JIMOGA-ON, PETITIONER AND APPELLEE, VS. JULITA AND ULPIANO, BOTH SURNAMED BELMONTE, MOVANTS AND APPELLANTS.**

*G.R. No. L-1605. September 13, 1949*

Ponente: PARAS, J.

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**PARAS, J.:**

This is an appeal from an order of the Court of First Instance of Negros Occidental dated June 23, 1947, in relation to the order of July 12, 1947, appointing the herein petitioner-appellee, Apolonia Jimoga-on, as judicial administratrix of the estate of Marcelino Belmonte, who died intestate, and failing (a) to adjudge the herein movants-appellants, Julita and Ulpiano Belmonte, to be acknowledged natural children of Marcelino Belmonte and (b) to appoint Julita Belmonte as administratrix of the properties acquired by the deceased Marcelino Belmonte before his marriage to Apolonia Jimoga-on.

Under section 6 of Rule of Court No. 79, the surviving spouse is the first in the order of preference for appointment as administrator; and the appealed order, it goes without saying, is in consonance with this reglementary provision. It is not pretended that Apolonia Jimoga-on is unsuitable or otherwise disqualified.

Even having in view the rule that the order of preference is based on the interest which the appointee has in the estate left by the deceased, we are inclined to hold that the herein appellee is still to be preferred because, according to the appealed order—and the appellants do not contend otherwise,—the greater part of the estate left by the deceased Marcelino Belmonte was acquired during his marriage to the appellee. This is not a case where the whole of the estate to be under administration has been acquired before marriage, nor a case where those opposing the appointment (as appellants herein) have a greater Interest.

Even assuming that the properties acquired before the marriage are more than those amassed during the period of the conjugal partnership, the appealed judgment is still tenable, because the six legitimate children are agreeable to the appointment of the appellee, as against only the two appellants who claim to be acknowledged natural children. The interest of the legitimate children is undoubtedly far greater than the participation that may accrue to the alleged natural children.

The appellants also argue that the lower court erred in not making an adjudication to the effect that they are acknowledged natural children of the deceased Marcelino Belmonte. This argument is without merit. In the first place, as pointed out in the appealed order of July 12, 1947, the matter so far taken up by the lower court was limited to the appointment of the judicial administratrix of the estate of Marcelino Belmonte. In other words, while no adjudication was made on the status of the appellants, this fact does not preclude future action on the point. In the second place, while the jurisdiction of the probate court includes the power to entertain the question of whether or not a person is a natural child acknowledged by the decedent (*Conde vs. Abaya*, 13 Phil., 249; *Severino vs. Severino*, 44 Phil., 343; *Lopez vs. Lopez*, 37 Off. Gaz., 3091), it is only after, and not before, the

payment of all debts, funeral charges, expenses of administration, allowance to the widow, and inheritance tax shall have been effected that the court should make a declaration of heirs or of such persons as are entitled by law to the residue. (Moran, Comments on the Rules of Court, 2nd ed., Vol. II, p. 397, citing *Capistrano vs. Nadurata*, 49 Phil., 726; *Lopez vs. Lopez*, 37 Off. Gaz., 3091.[1]) The adjudication sought to be obtained by the appellants is therefore premature.

Wherefore, the appealed orders are affirmed, and it is so ordered with costs against the appellants.

Moran, C.J., Ozaeta, Feria, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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[1] 68 Phil., p.227.

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