

C.N. HODGES, PETITIONER, VS. CONRADO BARRIOS, JUDGE OF COURT FIRST INSTANCE OF MANILA, AND JAMES REDFERN, EXECUTOR OF THE ESTATE OF THE DECEASED CLIFFORD J. COOKED, RESPONDENTS.

G.R. No. L-1904. April 16, 1948

Ponente: TUASON, J.

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TUASON, J.:

On December 4, 1946, C.N. Hodges, through Attorneys Gellada and Mirasol of Iloilo, filed with the Court of First Instance of Manila a written claim for P500 against the estate of Clifford J. Cooke, deceased. In an order of August 25, 1947, the claim was set for hearing for September 12, 1947, by Judge Conrado Barrios. On August 30, 1947, Atty. Leon P. Gellada notified Atty. Bernardino Guerrero, counsel for the executor, that the deposition of C. N. Hodges would be taken in Iloilo City on September 8 before a notary public named in the notice. In a motion dated September 2, 1947, Atty. Guerrero moved the court to order the proposed deposition taken on written interrogatories and to postpone the hearing to another convenient date. That motion was set by the movant for Saturday, September 6, with copy thereof sent by airmail to and received by Atty. Gellada before September 12. However, the pleadings do not show whether Atty. Guerrero's motion was taken up on the date set or any other date. At least Hodges' attorneys never received notice of any action thereon.

Hodges' attorneys did not appear in court on September 12, when, it seems, the claim was called. Because of Hodges' attorneys' non-appearance, Judge Conrado Barrios dismissed the claim "without prejudice" in an order bearing date September 23.

It is the validity of this order which Hodges impugns. Did the respondent judge commit a grave abuse of discretion in dismissing the claim?

The attorneys for Hodges were not without reason to believe that the hearing of their client's claim would not be held on September 12 because of the other party's motion for postponement and because, as has been seen, they were not prepared on that date to submit their evidence, which was to consist exclusively of Hodges' deposition, the manner of taking which was still to be decided by the court. And it was not the fault of Hodges' attorneys that the case was not in shape to be heard. It was the executor's motion which prevented the taking of the deposition in time to be ready for presentation on the 12th, and the court's omission to act on Atty. Guerrero's motion on time, if it did ever act on it, contributed much to the misapprehension of Hodges' attorneys regarding the date of hearing of the claim. While Hodges' counsel had no right to assume that Atty. Guerrero's motion for postponement would be granted, and good practice perhaps demanded that they should have made an inquiry about the matter, yet the court was not entirely justified in expecting the claimant's attorneys to come over from a distant province for a trial which through no fault of theirs could not be carried out, as the court knew or ought to have known. At the least, the court might have promptly denied the motion for continuance and informed the parties that the hearing would take place on the date originally set.

Upon all these considerations, and in view of the further fact that the absence of Hodges' attorneys did not in any way retard the due disposal of the case, since even with their attendance the court could not justly have gone ahead with the hearing, we are of the opinion that the dismissal of the claim was utterly unreasonable and unjust.

One argument advanced against the petition is that the dismissal of the claim allows the petitioner to renew the same. We see no advantage to be gained by requiring the petitioner to file his claim anew. On the other hand, the suggested step would make it necessary for the parties to start all over again, filing the same motions and papers that are already in the record. Moreover, the new claim might, with or without reason, be opposed on the ground that it was presented beyond the period prescribed by law, thus causing further delay. The objection to the indicated procedure is aggravated by the fact that the claimant and his attorneys reside in a province far from Manila, and the amount of the claim is too small to warrant trips to the capital not needed by the interests of justice.

The order complained of should be and it is hereby set aside with costs against the respondent executor.

Pablo, Perfecto, and Bengzon, JJ., concur.

CONCURRING

FERIA, J., with whom concur PABLO and PERFECTO, JJ.:

This petition for certiorari was filed by the petitioner C. N. Hodges against the respondent Judge Conrado Barrios of the Court of First Instance of Manila, on the ground that the latter has acted with grave abuse of discretion in dismissing the claim of the petitioner against the estate of the deceased Clifford Cooke, because of the failure of the attorney for the petitioner to appear at the date set for the hearing of the claim.

The petitioner filed on Dec. 4, 1946, through his attorney, a claim for P500 against the estate of Clifford Cooke with the Court of First Instance of Manila presided by the respondent judge, and, as it was contested by the executor of said estate, the hearing of the claim was set for Sept. 12, 1947. The attorney for the petitioner on August 30, 1947, notified the counsel for the executor that the deposition of C. N. Hodges to be read as evidence at trial was to be taken on September 8, 1947, in Iloilo City. On September 2, 1947, the attorney for the respondent executor filed a motion with the court praying that, inasmuch as going to Iloilo City to attend the taking of the deposition would entail great expenses, the court order that the deposition be taken on written interrogatories, and the trial of the claim set for September 12, 1947, be transferred to another date, in order to enable the parties concerned to formulate written interrogatories and cross interrogatories. Notice of the hearing of the motion, set for September 6, was sent by airmail and received by the attorney for the petitioner in Iloilo, who did not object to the executor's petition. The respondent judge did not act on the said petition, and on September 12, 1947, dismissed the petitioner's claim without prejudice, on the ground that the claimant failed to appear at the hearing of the claim on said date.

Under the provisions of section 3, Rule 30, if the plaintiff or claimant against the estate of a deceased fails to appear at the time of trial, the court may or has discretion either to postpone the hearing to another date or dismiss the claim. When the law does not provide a rule or norm for the court to follow in deciding a question submitted to it, but leaves it to the court to decide in one way or another at his discretion, the judge is not absolutely free to act at his will or whim, but must decide the question, not in accordance with law, for there would be none, but in conformity with justice or reason and equity in view of the circumstances of the case. Otherwise the judge would abuse his discretion.,

It is clear that, taking into consideration the facts in this case above related, the respondent judge acted with grave abuse of discretion in dismissing the petitioner's claim, and not transferring the hearing thereof to another date. If it were the respondent judge's intention to proceed with the trial thereof at the date previously set forth, he should have denied the petition of the attorney for the executor, and notified in time the claimant of such denial. In such case, it was to be expected that the latter would have proceeded with the taking of the oral deposition and appeared at the date set for the trial of the claim; and if he had failed to appear, the respondent judge would have acted within his sound discretion in dismissing the petitioner's claim. But having not done so, it stands to reason that the attorney for Hodges did not proceed with the taking of the oral deposition set for September 8, and come to Manila to appear at the date set for the trial on September 12, 1947, taking into consideration that the petition of the attorney for the executor was well taken. And the latter did not act properly in moving for the dismissal of the claim at the date set for the hearing thereof.

The fact that the dismissal was ordered "without prejudice" does not in the least justify the action of the court, because such dismissal would always require the filing of another claim which would necessarily entail expenses and delay in the deposition of the case. No one should be obliged to bear extra expenses and labor without necessity. And in the present case, the dismissal "without prejudice" might be of no avail, because the period for filing claims against the estate of Clifford J. Cooke had already expired on May 3, 1947 according to Exhibit 2 of the respondent's answer to the present petition for certiorari. It is true that a dismissal "without prejudice" does not constitute an adjudication upon the merits, but the subsistence of a right of action is one thing, and the enforcement of that right in the course of justice within the statutory limitation or statute of non claims is another. Without in any way expressing our opinion on the matter, we may simply quote section 2 of Rule 8 which provides that "at any time before an order of distribution is entered on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and upon such terms as are equitable, allow such claim to be filed within a time not exceeding one month."

In view of all the foregoing, the order of dismissal complained of is hereby set aside with costs against the respondent executor.

Petition granted.

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