

**IN THE MATTER OF THE TESTATE ESTATE OF MARIE GANIER
GARREAU, LIRIO PFANNENSCHMIDT RAMIREZ,
PETITIONER-APPELLANT, VS. JOSE MA. RAMIREZ,
OPPOSITOR-APPELLEE.**

G.R. No. L-19910. May 31, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

At issue in this appeal is the due execution of the last will and testament of Maria Garnier Garreau, which was denied probate by the Court of First Instance of Manila in its order of August 15, 1961 (Special Proceeding No. 39365) on the ground of the testatrix' lack of testamentary capacity.

Maria Garnier Garreau, widow of Ramon Ramirez, was a native of Asnier, Paris, France, but a Filipino citizen residing in Madrid, Spain, where she died child-less at the age of 84 on January 11, 1959. The will in question was an "open" one, executed before a notary public in Madrid on May 24, 1958, and instituting her niece, Lirio (Lily) Pfannenschmidt, now appellant, as sole and universal heir. Lirio is one of the four children of Jose Ramirez, brother of the testatrix' husband Ramon, the other three being Elsa, Esperanza and Horacio. Ramon had a half-brother, Jorge P. Ramirez, whose son, Jose Maria Ramirez, now appellee, opposed the petition for probate filed by Lirio on February 20, 1959, alleging in his opposition, inter alia, that there was a prior will executed by the testatrix in Manila in 1949. The photostat copy of that will, marked in the record as Exhibit D and Exhibit 2-J, shows that the testatrix instituted her husband as her universal heir, and in the event that he should predecease her (which he did), named her niece Lily Ramirez and her nephews Horacio Ramirez and Jose Ma. Ramirez as substitute heirs to all her pro-perties in equal shares. This previous will, however, is not involved in this case, and has been referred to by the parties only in relation to the background circumstances concerning the execution of the "open" will in 1958.

Ironically enough - and certainly not without some overtones of poetic justice - the order of the trial court denying probate is based in no small part on a number of letters written by the petitioner herself, in which she used quite strong terms to describe the mental infirmity of the testatrix. Those letters were written by her in 1956 and 1957 to her uncle, Jose Eugenio Ramirez de la Cavada, another brother of the testatrix' husband, Ramon Ramirez. Even before then, however, the testatrix' mental condition was already the object of serious concern among her close relatives. The testimony of Jose Eugenio Ramirez, given in the form of deposition and submitted as Exhibit 3, discloses the following facts:

He arrived in Madrid in 1954. His niece Lily, who was then residing there, came to him and said that she could not accept the fact that Jose Maria Ramirez (herein oppositor-appellee) had been named as heir in the will of her aunt, not being a member of the same family group. Lily, obviously referring to the 1949 will, then suggested to her uncle that he do something to correct the same, which suggestion he turned down, pointing out that the testatrix had the right to name her nephew Jose as one of her heirs. When he arrived in Madrid he found his

sister-in-law "ya una mujer muy incapacitada." In 1955 he consulted a physician, Dr. Romero de Arcos, and asked him to examine her. Dr. de Arcos had been treating the patient for various ailments, and it was he who suggested, after conducting his examination, that Dr. Jose Germain, a competent specialist, be called to make his own diagnosis. The medical opinions of these two doctors will be discussed later. But from his own observations, Jose Eugenio Ramirez declared that his sister-in-law was even then mentally incapacitated, citing by way of example her attitude and personal reaction when her husband died in 1956. She was present at his death and saw his body just before he was buried; but when she went to her room after the funeral and saw that his bed was no longer there, she came out crying, asking where her husband was and saying that she was going to look for him. She had totally forgotten that he had passed away. Apart from that, she was easily susceptible to any suggestion from others, particularly those close to her, and after doing what she was told would promptly forget all about it.

Another deponent, Julio Escribano Langa, a resident of Madrid who had known the spouses Ramon Ramirez and Maria Garnier Garreau for about nine years testified to the same mental condition of the testatrix: her susceptibility to another person's influence; her lack of memory for recent events, her lack of understanding of, or volition for deciding, certain matters such as the making of a last will.

Dr. Manuel Ramon de Arcos was first called to the Ramirez household in 1953 to treat Ramon Ramirez, and after that his wife, on a number of occasions until 1958. The material statements in his deposition are as follows:

" ... Alla por 1953 debia tener 77 o 78 años de edad, y en esa señora se notaba cada vez mas falta de memoria, eso mucho, y a veces tenia cosas extrañas, como imaginarse que habia hecho un viaje que no habia hecho o de escribir cosas como sobre la case de un cuñado suyo en Palma donde nunca habia estado, y con el tiempo fue siguiendo la cosa así, pero motivos de alarma en cuanto a su vida no.

x x x

"Desde hacia tiempo ya que este señora no tenia lucidez mental, y antes se me pidio que yo certificara de su estado exacto y yo me encontré poco competente para ello, y efectivamente dije que yo queria llevar adelante una exploracion en el sentido neurologico y yo necesitaba que alguien que se dedique a esa especialidad venga conmigo, y entonces se llamo al Dr. Germain, y esto fue en marzo de 1955.

El diagnostico a que llegamos, que despues fue confirmado, era de una involucion cerebral senil que llamamos a una involucion regresiva debido a defectos cerebrales de arteriosclerosis, y cuando se tiene eso, cuando las cosas son así realmente, la enfermedad no retrocede y la involucion avanza; es posible que alguna vez yo la saludara y ella me contestara con mas afecto y pareciese que estaba mejor, pero en realidad la involucion avanzaba como es normal."

Dr. Jose Germain, who had been called in consultation by Dr. de Arcos in April 1955, presented an impressive curriculum vitae, attesting to his qualifications as a psychiatrist. The conclusions he arrived at after his examination of the patient are set forth in his deposition as follows:

x x x

P. Quiere usted explicar la naturaleza de los servicios prestados por usted?

R. Sencillamente, estudiar a la enferma bajo el punto de vista psiquiatrico y analizar sus reacciones ante las preguntas normales de orientacion del tiempo y del espacio y con-testaciones a una serie de pruebas o tests, y sobre esto forme un juicio que transmiti al Dr. Romero.

P. Que juicio formo usted?

R. Que esta señora padecia un proceso arterioesclerotico cerebral con alteracion del pensamiento y de la conducta que evidenciaba un estado de demencia pre-senil en evolucion.

P. Ese estado de demencia pre-senila la incapacitaba para rea-lizar actos como un testamento con lucidez?

R. Indudablemente.

P. La evolucion de la enfermedad hace suponer posible que sea curable?

R. No, señor, es un proceso irre-versible y progresivo.

P. Que experiencias hizo usted con la enferma?

R. No recuerdo, pero eran las usuales.

P. Tenia memoria?

R. Si, señor, pero perturbada.

P. Gravemente perturbada?

R. Perturbada para las circunstancias normales de la vida.

P. Un sujeto en esas condiciones, tiene voluntad libre o es facilmente presionable de ser llevado por personas extrañas a resoluciones no personales del enfermo?

R. Todos estos enfermos lo que tienen es una disminucion del criterio personal y, por tanto, son susceptibles de ser influenciados.

P. Normalmente por personas de su intimidad?

R. Por cualquier persona, el primero que venga.

P. Ha expedido usted un certificado?

R. Si, señor.

P. Podia esta persona tener intervalos lucidos para que fueran validos?

R. Repito que es un proceso irreversible y, por tanto, la sintomatologia tenia que seguir mas o menos en el primer plano de su personalidad.

SR. GALLARDON: Nada mas.

x x x x x x x x

P. Pero usted conoce los requisitos para una incapacitacion?

R. Si, señor.

P. Esta señora incurria en todos los elementos para ser incapacitada totalmente?

R. Si, señor.

P. Al reconocer a ella, tenia usted algun prejuicio?

R. No, señor.

P. Usted dijo que era una enfermedad irreversible, es decir que no tiene curacion?

R. Exacto.

P. Pero puede mejorarse?

R. No, señor, irreversible y progresiva, es un proceso degenerativo cerebral.

In the light of the foregoing expert medical opinions the letters written by herein appellant to her uncle, Jose Eugenio Ramirez, assume a vital significance on the issue of testamentary capacity, and of her own credibility as proponent of the probate of the will. In her letter of January 8, 1956 (Exh. 2-A) she wrote:

"I am trying to do all I can for poor Tia Marie who refuses to be helped. Poor dear she is getting worse and worse every day. Her mind does not, register anything y es terrible mente dura de cabeza."

In another letter (Exh. 2-B) dated July 15, 1956, she said to her uncle:

"I think it is my duty to look after her (Doña Marie) now that she is alone especially since the poor dear is completely in Irene's hands."*

"You will remember that Irene was with them when the thousands of pesos the Tios had for a rainy day were spent in two shakes of a lamb's tail."

Appellant's letter of January 17, 1957 (Exh. 3-C) contained the following postscript:

"P.S. Everyday several times a day she (Doña Marie) tells me she is going back to Paris. This morning she asked me where Tio Ramon (who had died the previous year) was."

On January 29, 1957 appellant again wrote a letter to her uncle, in which she said:

"Tia Marie has completely forgotten Irene from the second day she left.

Irene must have told Tia Marie to ask Mr. Collard for the 40,000 telling her that with that money they would go to Paris and if Mr. Collard would have had the money to send, she would have kept it for herself, as Tia Marie would have forgotten about the money no sooner having collected it. Tia Marie signed for the money I went to collect and when I came back from the bank she did not ask me for it. She must have done that with Irene."

Appellant, having suspected the maid Irene of taking advantage of Doña Marie's susceptibility to extraneous influence, succeeded in having her dismissed from the service; and Doña Maria had "completely forgotten (her) from the second day after she left."

Such was the testatrix' mental condition that as early as 1956 appellant, in her letter of January 8, told her uncle that she was thinking of having her aunt judicially pronounced incapacitated and asked him to send her "the papers of the doctors who declared Tios Ramon and Marie 'incapaces'... "

Jose M. Cavanna, the Philippine administrator of the family of the testatrix, had the same idea, and so expressed it in his letter to appellant (Exh. 3-F) dated May 4, 1957, making reference to the fact that the testatrix had very little memory or almost none at all. He had deposited for her account in a bank in Madrid the sum of 100,000 pesetas, so that she could draw regularly therefrom, which she did. However, when after a year he again went to Madrid Doña Marie, in the presence of her brother-in-law, Jose Eugenio Ramirez, denied ever having received any money from Cavanna. Referring to that incident, Cavanna continued in his letter to appellant:

"Recordandoles la suma que les habia dejado en mi visita el año anterior, me lo negaron y aseguraron no haber recibido de mi ninguna cantidad de dinero. Estaba entonces presente D. Pepe Eugenio que habiendo oido sus insistentes protestas de no haber recibido el año anterior cantidad alguna mia a exepcion de los giros mensuales, note que llego a dudar de mis afirmaciones y entonces le invite ir al Banco en donde habia hecho el deposito para cerciorarse de aquellos hechos, en que trataban de negar mis afirmaciones. Al dia siguiente nos constituimos en el Banco D. Pepe Eugenio y yo y alli se corrobore todas mis afirmaciones y quedo probada la poca o casi ninguna memoria que existia en Da. Marie, en vista del hecho de que elle misma habia firmado

todos los cheques y no pudo seguir negando el hecho, confeso que se habia olvidado y no se volvio a hablar de ese asunto. Pero este hecho dio lugar que desde entonces los familiares comprendiendo el exceso de gastos que hacia y la suma tan gruesa que se habia gastado en aquel año, acordaron designar como en efecto se designo a Dn. Pepe Eugenio para que actuara en sus intereses en España y les enviara los fondos que se recibian de Manila en forma tal que no les hiciera falta nada, para que no se les perdiera tantos fondos, pues llego a sospecharse de una sirvienta que entonces tenian, que resultaba mas que sirvienta una ama de compañía. Tambien entonces habia hecho constar que se les enviaba trimestralmente las cuentas de sus fondos por duplicado con objeto de que despues de estudiada, dieran su conformidad y devolviesen uno de los ejemplares. No solo no devolvian el duplicado sino que no acusaban recibo de ella y en muchisimas ocasiones no sabian en donde lo habia dejado. En otra ocasion anterior a estos acontecimientos tambien me aseguraron no haber recibido uno de los giros de \$300.00 enviados y hechas las correspondientes averiguaciones resulto haber sido cobrado por Da. Marie.

"Llego a pensarse la conveniencia de promover un expediente de tutelar, pero no se llevo a cabo para que no sufrieran en vida la vajacion de ser judicialmente declarados incapacitados por su avanza da edad."

Lamenting the fact that her aunt was "completely in Irene's hands," and that "Irene has taken complete possession of every penny and gives Tia Marie no account of anything,"* appellant expressed herself quite strongly in this wise:

"After all if the worst comes to the worst it is better that I who am a member of the family should cheat Tia Marie rather than an ab-solute stranger."

The same fear was reiterated in her letter of February 2, 1957 (Exh. 3-E);

"x x x Que chasco y disgusto tendriamos si resultase Irene la heredera de los Tios. Cosa muy posible conociendo las cocas que ha hecho y lo engañados que tenia a los pobres Tios."

A subsequent letter of appellant, dated April 9, 1957 (Exh. 2-K), this time addressed to her brother Horacio, reveals a significant development. Apparently the 1949 will, wherein Jose Maria Ramirez, appellee herein, was mentioned as one of the heirs, had been changed with a new one eliminating him. Appellant wrote to her brother:

"Enclosed am sending Tia Marie's letter to you. As you will note the date is Feb. 2nd. I am doing this so that the letter appears to have been written before her new will. Keep her letter where it will be clear to see that the reason why Bobby (appellee) does not appear in her new will is because he intended to take Tio Ramon to the 'Tribunales,' so if Bobby by any chance tries to contend it you will have her letter as a farther proof that is what she had every intention to do. So Cillo (Horacio) for goodness sake keep it in a safe or in the bank until you will have use of it. Tear this letter no sooner read in case it falls into wrong hands. The less people know of the new will the better in case action should be taken against it."

The foregoing letter appears quite conspiratorial, as though the will referred to in it had been obtained, by appellant in order to cut off Bobby (appellee) from any share in the inheritance, and the enclosed letter of the testatrix had been antedated to February 2 so that it would appear "to have been written before her new will." For some reason not disclosed in the record, that will never came to light. Evidently Horacio was also an heir therein, but then was subsequently eliminated in the 1958 will which was actually presented for probate by appellant.

The evidence hereinabove discussed, cumulatively considered, leads to the definite conclusion that Marie Garnier Garreau was indeed mentally incapacitated to make a will, that is, "to know the nature of the estate to be disposed of, the proper objects of (her) bounty, and the character of the testamentary act" (Art. 799, Civil Code). As early as 1955, when she was examined by the family physician, Dr. Romero de Arcos, and by a quali-fied psychiatrist, Dr. Jose Germain, she was already suffering from pre-senile dementia, a degenerative mental infirmity that was described by them as "a progressive and irreversible process." The manifestations of this condition are amply

illustrated in the letters written by appellant herself as well as in the testimony of her uncle, Jose Eugenio Ramirez. In fact these two were convinced that the testatrix should be placed under judicial guardianship, and actually took the initial steps towards that end. Appellant's subsequent turn-about in her opinion of the testatrix' mental condition is of course understandable, considering that in the will she is named as sole and universal heir. But precisely for this reason not much reliance can be placed upon her testimony to the effect that the testatrix was possessed of the necessary testamentary capacity.

The most pertinent evidence in behalf of appellant is the testimony of the notary public before whom the will in question was executed and the testimony of two of the three instrumental witnesses. The notary public, Braulio Nolasco Carrasquedo, gave the following statements on the subject of the testatrix' mental condition:

"17. Sabe usted cual, era el estado mental de dicha señora cuando otorgo el testamento anexo 1?

R. A mi juicio estaba bien.

18. Haga usted el favor de explicar su contestacion a la pregunta anterior.

R. No se lo que quieren decir con esa pregunta. Yo juzgo que ella estaba capacitada y hay una clausula alli de que esta capacitada legalmente.

19. Diga usted si Doña Maria Garnier Garreau se daba cuenta de que estaba otorgando un testamento?

R. Se contesta con la respuesta anterior, pues si estaba capacitada sabia lo que hacia;

20. Diga usted si la testadora recordaba sus propiedades?

R. Supongo que si, aunque el en testamento no se permite a menos que se hagan legados, pero aqui es un testamento en terminos generales.

21. Diga usted si la testadora recordaba sus parientes?

R. No puedo decir eso, pero ella estaba con su sobrina, aunque supongo que recordara a sus parientes."

As may be noted, the foregoing statements of the notary public are far from satisfactory. They are vague and evasive, and tend to beg the very issue. Thus the witness could not say, but merely supposed, that the testatrix had a recollection of her properties, or of the relatives who would logically inherit from her; and when asked to explain his answer to the question concerning her mental state, he simply referred to the certification in the will on that point. It would seem that he was aware that he had no sufficient basis for a categorical opinion on the subject, and so declined to fully commit himself.

Manuel Gomez Tortajada was one of the instrumental witnesses. He affirmed that the testatrix was in "perfect" mental condition at the time of the execution of the will; that she knew "perfectly" that she was executing a will; that on another occasion she had even told him about certain properties of hers, and about her relatives who were a niece and a sister of that niece. The testimony of this witness on deposition gives the distinct impression of officiousness, of pretending to be more intimately familiar with the affairs of the testatrix than their casual acquaintance justified. In any case his affirmation of the testatrix' "perfect" mental condition was so obviously an exaggeration in the face of the clear and convincing evidence to the contrary that it only serves to weaken his credibility.

The other instrumental witness was Antonio Fernandez Caballero. He likewise affirmed the good condition of the testatrix' mental faculties, saying that she had a recollection of her properties as well as of her relatives. The affirmation is rather strange, not to say incredible, considering that he met the testatrix for the first and only time in the office of the notary public on the occasion of the execution of the will, and that all that took place then was

that the said will was read by the notary and then signed, by the testatrix, the witnesses and the notary himself. And according to the latter he did not ask her anything about her properties or her relatives. Indeed this instrumental witness admitted that he did not understand the language spoken by the testatrix on that occasion:

"R. Yo quiero decir que esta señora como hablaba algo diferente de nosotros todo lo que pudiera hablar no me entraba bien si ella hablaba con la sobrina, pero el lenguaje de ellas no lo entendia y no se si podian hablar de propiedades u otras cosas.

P. But did the testatrix talk about her relatives on that occasion?

R. Yo of que ella hablaba con la señorita que le acompañaba y creo que tenian parentesco pero hablaban en el idioma de ellas."

Three additional witnesses, by way of rebuttal, were presented by appellant. The first was Dr. Suils Perez, whose deposition is marked Exhibit Q. He said that as a neurologist and a psychiatrist he was called several times in 1957 to treat Marie Garnier Garreau. His diagnosis was that she had a "brain lesion" (lesion en el cerebro), but had a mentality corresponding to her age. "Era una mujer que en interes o atencion dejaba mucho que desear salvo en las cocas que le interesaban... En un test que se hubiera hecho con ella hubieramos visto resultados contradictorias segun el momento de atencion en que se lo hicieramos quo era muy variable."

The foregoing testimony leaves much to be desired insofar as the issue of testamentary capacity is concerned: no reference whatsoever was made therein to the very elements of that issue, such as capacity to comprehend, the nature of the testamentary act, the recollection of the properties to be disposed of and of the relatives who might have a claim upon the testatrix' generosity.

Salustiano Reyero, a priest, was the second rebuttal witness for appellant, whose testimony was given in the form of deposition. The testatrix, he said, was in possession of her mental faculties, reacted well to questions directed at her, and even told him that she had a house in Paris. His impression was that she was not susceptible to suggestion coming from or influence exerted by other persons. However, he qualified his assertions as follows: "algunos ratos parecia que estaba alelada;" "algunes veces note eso cuando fui, y estaba como si no tuviera interes." Asked whether the testatrix remembered things normally, this witness answered: "Algunas veces no, cuando estaba ya Lily con ella que fue cuando la vi, porque no iba a ver a la difunta precisamente sino a Lily, y despues cuando volvia yo ya no se acordaba de que habia estado yo alli."

Gonzalo Conejos Fernandez was the third rebuttal witness, also by deposition. A lawyer by profession, he said he was consulted by the testatrix, after he came to know her in 1956, about certain personal matters, among them the revocation of a power-of-attorney given to Jose M. Cavanna and the designation of another in his place as well as the proceedings for the adoption of appellant by the said testatrix. She consulted him also about what kinds of wills were permitted under the Spanish law, and told him that she had previously made a will in Manila where she was leaving her properties to her niece Lily, to a brother or a sister of the latter and to a "señor Ramirez," (evidently referring to appellee), but that because of certain actuations of appellee which did not please her she did not consider him deserving of being her heir. The witness was present at the execution of the will in question on May 24, 1958, and he noted, he said, that she was aware of the nature of the act in which she was engaged and that she had a recollection of her relatives and properties. From the tenor of his testimony the testatrix was a completely normal person during the period of their acquaintance; she was never absent-minded (alelada); and he did not know that she was suffering from cerebral arteriosclerosis or from pre-senile dementia.

The testimony of this witness was not given weight by the trial court. It does suffer from the viewpoint of credibility. He was presented as a rebuttal witness, who had been present during the taking of the depositions of the previous witnesses for appellant. He was therefore in a position to cure, as he apparently tried to do, the

weaknesses in their statements. Although he was present when the will was executed, he actually remained in another room, the "antesala", which was separated by a glass partition from the room where the testatrix, the notary public and the instrumental witnesses transacted the business at hand.

The witness was quite elaborate about the motive behind the execution of the new will making appellant the sole heir. He said:

"...esta Señora (testatrix) me dijo que tenia otorgado un testamento en Manila distribuyendo la herencia entre Lily, una hermana hermano, y un Señor Ramirez (appellee), y que el motivo de decidir que toda su herencia fuera de Lily, rectificando su anterior testamento, era debido, aparte de las consideraciones de tipo afectivo a que me he referido, al hecho de que ella estuvo casada con un Señor Ramirez, hijo natural de su padre, y que este Señor tenia un hijo legitimo, y a pesar de llevarse en buenas relaciones, cuando murio, el hijo (evidently referring to appellee) de este hijo legitimo quiso anular las disposiciones de su padre que no distinguio entre la condicion natural or legitimo, y por esta razon, a quien habia procedido de esa forma, que era sobrino de la difunta no le consideraba acreedora ser heredero de ella."

If the foregoing were true, and had indeed been confided to the witness by the testatrix, it is strange that she should cut off from her new will not only the appellee but also the other nephew, Horacio Ramirez, appellant's full brother who was one of the heirs mentioned in the previous will executed in Manila and against whom the testatrix entertained no grievance.

The issue here is essentially one of fact, and involves an appraisal of the conflicting evidence presented by the parties. That issue was addressed in the first instance to the trial Judge, and we cannot say that his conclusion as to the testamentary incapacity of the testatrix is erroneous. It is based mainly on expert medical testimony to the effect that her mental infirmity was observed by the family physician as far back as 1953 and confirmed in 1955 by a competent psychiatrist, who described the process of the mental degeneration as progressive and irreversible; on the written admissions and declarations of appellant herself, who could have no motive then to falsify the facts; and on the testimony of the testatrix' brother-in-law, Jose Eugenio Ramirez. On the question of credibility, we find no ground to disregard such evidence in favor of the vague, inconclusive statements of the notary public who authenticated the will and of the two instrumental witnesses, nor even of the testimony of the rebuttal witnesses, the more categorical character of whose affirmations only serve to weaken their credibility, conflicting as they do not only with the evidence for appellee but also with that given by the other witnesses for appellant.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the order appealed from is affirmed, with costs against appellant.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Ruiz Castro and Teehankee, JJ., concur.

* Irene was the maid of the testatrix.

* Exh. 2-B, letter of July 15, 1956, addressed to Jose Eugenio Ramirez.

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