

**TRUSTEESHIP OF THE MINORS BENIGNO, ANGELA AND ANTONIO,
ALL SURNAMED PEREZ Y TUASON, PHILIPPINE NATIONAL BANK,
JUDICIAL GUARDIAN. J. ANTONIO ARANETA TRUSTEE AND
APPELLEE, VS. ANT...**

G.R. No. L-16187. February 27, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case comes by appeal from an order of the Court of First Instance of Rizal (Quezon City Branch) denying a petition for the modification of its order of 5 December 1955 on the ground that it had already been affirmed by the Supreme Court on 16 May 1958 (G. R. No. L-11788).

The said order of the Court of First Instance, resolving certain incidents in Special Proceedings No. Q-73, according to a compromise made by the parties, had adjudged inter alia—

"3. That the trustee shall file his bill for services rendered by him as such trustee up to December 31, 1955, and the measure of his fees as agreed upon between him and Attys. Lichauco and Brady shall be that which this Court adopted and approved in the other case entitled "Trusteeship of Minors Barretto y Tuason, et al., Sp. Proc. No. Q-74"; and

4. That Atty. Araneta is allowed to collect by way of attorney's fees in the certiorari incident which reached the Supreme Court docketed as G. R. No. L-6182 the sum of Fifteen Thousand (P15,000.00) Pesos."

The guardian of the minors Perez y Tuason petitioned for the relief from the effects of the order on 1 June 1956 under Rule 38. He also sought a ruling (1) reducing the fees of the trustee so as to place them on a par with the rates allegedly collected by trust companies, at about 5 per cent of the gross income, and (2) that in view of the fees collected by the trustee as executor in the Estate of Angela Tuason, the trustee should be declared as having been overpaid, and that the excess be ordered credited to the trust estate in the amount of P51,000.00.

The guardian's petition for relief was denied by the court below on 19 October 1956, and as noted at the start, the denial was upheld by this Court on appeal (G. R. No. L-11788, 16 May 1950). Thirty-five days after the denial of the petition for relief by the court of first instance, the appellant-guardian filed in that court, on 4 November 1956, a motion seeking that paragraphs 3 and 4 (jam quot.) of the original order of 5 December 1955, be modified—

"in the sense that it shall state that from now on the trustee shall not be entitled to attorney's fees, and that he may charge only such fees as are now being charged by regular trust Companies."

The apparently inconsistent remedy thus sought was justified by the guardian by arguing that the settlor had expressly authorized the trustee to collect only "honorarios razonables", which should be on a par with what is usually charged by trust companies; that being an attorney himself, the trustee should not collect attorney's fees in addition to his fees as trustee; and that having been allegedly overpaid as executor of the estate of the settlor, the averred overpayment should be charged against his fees as trustee.

This motion of the guardian was left unacted upon by the court, apparently because the same was but a reiteration of the views expressed by the appellant-guardian in his petition for relief, denied on 19 October 1956, and then in process of appeal to the Supreme Court. After the Supreme Court had affirmed the denial of the petition for relief, and after the records had been returned to the Court of First Instance, the guardian petitioned, on 11 September 1958, that his unacted motion of 23 November 1956 be finally resolved. After a reply from the trustee, the Court a quo, on 28 October 1958, issued the following order:

"ORDER

Atty. Alfonso Felix, Jr., counsel for the judicial guardian, has called the attention of the Court that notwithstanding the lapse of considerable time his motion dated November 23, 1956 has not been resolved. In this connection, the matters contained in said motion of November 23, 1958 are covered by the order of this Court dated December 5, 1955 against which a petition for relief was presented by the said attorney for the judicial guardian, in view of which the Court considered it unnecessary to resolve said motion pending decision of the petition for relief.

The petition for relief was denied and it follows, therefore, as a consequence that the order of this Court of December 5, 1955 stands in full force and effect.

In view of the foregoing, and under the circumstances above-stated, the said motion is hereby DENIED."

Whereupon, the guardian of the minors duly appealed to this Court on points of law. We find the appeal untenable.

With regard to the fees of the trustee set in the compromise between him and the appellant-guardian, the same were approved by the court below in its order of 5 December 1955, and virtually confirmed by this Court in its decision in G. R. No. L-11788. The court of first instance, therefore, correctly held that said fees may no longer be disturbed.

If the guardian's petition for modification of the lower court's order of 5 December 1955 referred to future fees of the trustee, then the petition was correctly denied, it being premature. The time to determine the reasonableness of the future fees of the trustee is when he files a claim for the same. No argument is required to demonstrate that reasonableness of the fees can not be decided in advance, since reasonableness depends upon variable circumstances, such as "(1) the character and powers of the trusteeship; (2) the risk and responsibility; (3) time; and (4) labor and skill required in the administration of the trust", as well as the care and management of the estate (54 Am. Jur., 410). For this very reason, the court may not set in advance that the trustee's fees should not exceed that charged by trust companies, unless equality of circumstances is proved. Moreover, it is difficult to see how trust companies, which are fully dedicated to the professional management of trust estates, can be equated with individuals who are only occasionally charged with trusteeships.

The second claim of the appellant, that the trustee should not be permitted to collect attorneys' fees from the trust estate, has also been foreclosed by the terms of the compromise set forth in the order of 5 December 1955, repeatedly mentioned, which this Court already affirmed.

The argument that the trustee has been overpaid and should credit the excess in favor of the trust estate is merely a subtle attempt to undermine the conclusiveness and binding effect of the final order of the court below allowing said fees. For obvious reasons, any attempt to disturb such order, affirmed as it has been, by this Court, must be firmly rejected, the parties being bound thereby, not only as to the points actually adjudicated, but also as to any claim or issue that could have been raised prior to the adjudication.

The order appealed from is affirmed, with costs against the guardian-appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur;

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