

NILDA GABRIEL, EVA GABRIEL, EDGAR GABRIEL, GEORGE GABRIEL, ROSEMARIE GABRIEL, MARIBEL GABRIEL, CYNTHIA GABRIEL, RENATO GABRIEL, GERARDO GABRIEL, JOJI ZORAYDA GABRIEL, DANIEL GAB...

G.R. No. 101512. August 07, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

In its decision in CA-G.R. SP. No. 19797 promulgated on August 23, 1991,[1] respondent Court of Appeals dismissed the petition for certiorari filed by herein petitioners assailing the orders of the lower court in Special Proceeding No. 88-44589 thereof which effectively sustained the appointment of private respondent Roberto Dindo Gabriel as administrator of the estate of the late Domingo Gabriel.

Petitioners' present appeal by certiorari would have this Court set aside that decision of respondent court, hence the need to examine the chronology of antecedent facts, as found by respondent court and detailed hereunder, pertinent to and which culminated in their recourse now before us.

On May 12, 1988, or nine (9) months after Domingo Gabriel died on August 6, 1987, private respondent filed with the Regional Trial Court of Manila, Branch XI, a petition for letters of administration alleging, among others, that he is the son of the decedent, a college graduate, engaged in business, and is fully capable of administering the estate of the late Domingo Gabriel. Private respondent mentioned eight (8) of herein petitioners as the other next of kin and heirs of the decedent.[2]

On May 17, 1988, the court below issued an order[3] setting the hearing of the petition on June 29, 1988, on which date all persons interested may show cause, if any, why the petition should not be granted. The court further directed the publication of the order in "Mabuhay," a newspaper of general circulation, once a week for three (3) consecutive weeks. No opposition having been filed despite such publication of the notice of hearing, private respondent was allowed to present his evidence ex parte. Thereafter, the probate court issued an order, dated July 8, 1988, appointing private respondent as administrator of the intestate estate of the late Domingo Gabriel on a bond of P30,000.00.[4]

Subsequently, a notice to creditors for the filing of claims against the estate of the decedent was published in the "Metropolitan News." As a consequence, Aida Valencia, mother of private respondent, filed a "Motion to File Claim of (sic) the Intestate Estate of Domingo P. Gabriel" alleging that the decision in a civil case between her and the deceased remained unsatisfied and that she thereby had an interest in said estate.[5]

On December 12, 1988, private respondent filed for approval by the probate court an "Inventory and Appraisal" placing the value of the properties left by the decedent at P18,960,000.00, which incident was set for hearing on January 16, 1989.[6]

On February 2, 1989, petitioners Nilda, Eva, Boy, George, Rosemarie, and Maribel, all surnamed Gabriel, filed

their "Opposition and Motion" praying for the recall of the letters of administration issued to private respondent and the issuance of such letters instead to petitioner Nilda Gabriel, as the legitimate daughter of the deceased, or any of the other oppositors who are the herein petitioners.[7] After some exchanges and on order of the court, petitioners filed an "Opposition to the Petition and Motion," dated May 20, 1989, alleging that (1) they were not duly informed by personal notice of the petition for administration; (2) petitioner Nilda Gabriel, as the legitimate daughter,- should be preferred over private respondent; (3) private respondent has a conflicting and/or adverse interest against the estate because he might prefer the claims of his mother; and (4) most of the properties of the decedent have already been relinquished by way of transfer of ownership to petitioners and should not be included in the value of the estate sought to be administered by private respondent.[8]

On September 21, 1989, the probate court issued an order denying the opposition of petitioners on the ground that they had not shown any circumstance sufficient to overturn the order of July 8, 1988, in that (1) no evidence was submitted by oppositor Nilda Gabriel to prove that she is a legitimate daughter of the deceased; and (2) there is no proof to show that the person who was appointed administrator is unworthy, incapacitated or unsuitable to perform the trust as to make his appointment inadvisable under these circumstances.[9] The motion for reconsideration filed by petitioners was likewise denied in an order dated December 22, 1989.[10]

From said orders, herein petitioners filed a special civil action for certiorari with the Court of Appeals, on the following grounds:

1. The orders of September 21, 1989 and December 22, 1989 are null and void, being contrary to the facts, law and jurisprudence on the matter;
2. Respondent judge in rendering the aforesaid orders gravely acted with abuse of discretion amounting to lack and/or excess of jurisdiction, hence said orders are null and void ab initio; and
3. Private respondent is morally incompetent and unsuitable to perform the duties of an administrator as he would give prior preference to the claims of his mother against the estate itself.[11]

As stated at the outset, the Court of Appeals rendered judgment dismissing that petition for certiorari on the ground that the appointment of an administrator is left entirely to the sound discretion of the trial court which may not be interfered with unless abused; that the fact that there was no personal notice served on petitioners is not a denial of due process as such service is not a jurisdictional requisite and petitioners were heard on their opposition; and that the alleged violation of the order of preference, if any, is an error of fact or law which is a mistake of judgment, correctible by appeal and not by the special civil action of certiorari.[12]

In the petition for review on certiorari at bar, petitioners primarily aver that under Section 6, Rule 78 of the Rules of Court, it is the surviving spouse who is first in the order of preference for the appointment of an administrator. Petitioner Felicitas Jose-Gabriel is the widow and legal surviving spouse of the deceased Domingo Gabriel and should, therefore, be preferred over private respondent who is one of the illegitimate children of the decedent by claimant Aida Valencia. Secondly, they claim that assuming that the widow is incompetent, the next of kin must be appointed. As between a legitimate and an illegitimate child, the former is preferred, hence petitioner Nilda Gabriel, as the legitimate daughter, must be preferred over private respondent who is an illegitimate son. Thirdly, it is contended that the non-observance or violation per se of the order of preference already constitutes a grave abuse of discretion amounting to lack of jurisdiction.

On the other hand, private respondent contends that the court did not commit a grave abuse of discretion in not following the order of preference because the same is not absolute and the choice of who to appoint rests in the sound discretion of the court. He calls attention to the fact that petitioners Nilda Gabriel and Felicitas Jose-Gabriel never applied for appointment despite the lapse of more than nine (9) months from the death of Domingo Gabriel,

hence it was not possible for the probate court to have considered them for appointment. Besides, it is not denied that several properties of the deceased have already been relinquished to herein petitioners, hence they would have no interest in applying for letters of administration. Lastly, private respondent submits that it has not been shown that he is incompetent nor is he disqualified from being appointed or serving as administrator.

Section 6, Rule 78 of the Rules of Court provides:

"SEC. 6. When and to whom letters of administration granted. -- If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be; or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such husband or wife, as the case may be, or the next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select." (Emphases ours.)

Evidently, the foregoing provision of the Rules prescribes the order of preference in the issuance of letters of administration, categorically seeks out the surviving spouse, the next of kin and the creditors, and requires that sequence to be observed in appointing an administrator. It would be a grave abuse of discretion for the probate court to imperiously set aside and insouciantly ignore that directive without any valid and sufficient reason therefor.

In the appointment of the administrator of the estate of a deceased person, the principal consideration reckoned with is the interest in said estate of the one to be appointed as administrator. This is the same consideration which Section 6 of Rule 78 takes into account in establishing the order of preference in the appointment of administrators for the estate. The underlying assumption behind this rule is that those who will reap the benefit of a wise, speedy and economical administration of the estate, or, on the other hand, suffer the consequences of waste, improvidence or mismanagement, have the highest interest, and most influential motive to administer the estate correctly.[13]

This is likewise the same consideration which the law takes into account in establishing the preference of the widow to administer the estate of her husband upon the latter's death, because she is supposed to have an interest therein as a partner in the conjugal partnership.[14] Under the law, the widow would have the right of succession over a portion of the exclusive property of the decedent, aside from her share in the conjugal partnership. For such reason, she would have as much, if not more interest in administering the entire estate correctly than any other next of kin.[15] On this ground alone, petitioner Felicitas Jose-Gabriel, the widow of the deceased Domingo Gabriel, has every right and is very much entitled to the administration of the estate of her husband since one who has greater interest in the estate is preferred to another who has less.[16]

Private respondent, however, argues that Felicitas Jose-Gabriel may no longer be appointed administratrix by reason of her failure to apply for letters of administration within thirty (30) days from the death of her husband, as required under the rules.

It is true that Section 6(b) of Rule 78 provides that the preference given to the surviving spouse or next of kin may

be disregarded by the court where said persons neglect to apply for letters of administration for thirty (30) days after the decedent's death. However, it is our considered opinion that such failure is not sufficient to exclude the widow from the administration of the estate of her husband. There must be a very strong case to justify the exclusion of the widow from the administration.[17]

In the case at bar, there is no compelling reason sufficient to disqualify Felicitas Jose-Gabriel from appointment as administratrix of the decedent's estate. Moreover, just as the order of preference is not absolute and may be disregarded for valid cause[18] despite the mandatory tenor in the opening sentence of Rule 78 for its observance, so may the 30-day period be likewise waived under the permissive tone in paragraph (b) of said rule which merely provides that said letters, as an alternative, "may be granted to one or more of the principal creditors."

On the other hand, we feel that we should not nullify the appointment of private respondent as administrator. The determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and said judgment is not to be interfered with on appeal, unless the said court is clearly in error.[19] Administrators have such a right and corresponding interest in the execution of their trust as would entitle them to protection from removal without just cause. Thus, Section 2 of Rule 82 provides the legal and specific causes authorizing the probate court to remove an administrator.

While it is conceded that the court is invested with ample discretion in the removal of an administrator, it must, however, have some fact legally before it in order to justify such removal. There must be evidence of an act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court which it deems sufficient or substantial to warrant the removal of the administrator.[20] In the instant case, a mere importunity by some of the heirs of the deceased, there being no factual and substantial bases therefor, is not adequate ratiocination for the removal of private respondent. Suffice it to state that the removal of an administrator does not lie on the whims, caprices and dictates of the heirs or beneficiaries of the estate. In addition, the court may also exercise its discretion in appointing an administrator where those who are entitled to letters fail to apply therefor within a given time.[21]

On the equiponderance of the foregoing legal positions, we see no reason why, for the benefit of the estate and those interested therein, more than one administrator may not be appointed since that is both legally permissible and sanctioned in practice.[22] Section 6(a) of Rule 78 specifically states that letters of administration may be issued to both the surviving spouse and the next of kin.[23] In fact, Section 2 of Rule 82 contemplates a contingency which may arise when there is only one administrator but which may easily be remediable where there is co-administration, to wit: "When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, x x x." Also, co-administration, herein will constitute a recognition of both the extent of the interest of the widow in the estate and the creditable services rendered to and which may further be expected from private respondent for the same estate.

Under both Philippine and American jurisprudence, the appointment of co-administrators has been upheld for various reasons, viz: (1) to have the benefit of their judgment and perhaps at all times to have different interests represented;[24] (2) where justice and equity demand that opposing parties or factions be represented in the management of the estate of the deceased;[25] (3) where the estate is large or, from any cause, an intricate and perplexing one to settle;[26] (4) to have all interested persons satisfied and the representatives to work in harmony for the best interests of the estate;[27] and (5) when a person entitled to the administration of an estate desires to have another competent person associated with him in the office.[28]

Under the circumstances obtaining herein, we deem it just, equitable and advisable that there be a co-administration of the estate of the deceased by petitioner Felicitas Jose-Gabriel and private respondent Roberto

Dindo Gabriel. As earlier stated, the purpose of having co-administrators is to have the benefit of their judgment and perhaps at all times to have different interests represented, especially considering that in this proceeding they will respectively represent the legitimate and illegitimate groups of heirs to the estate. Thereby, it may reasonably be expected that all interested persons will be satisfied, with the representatives working in harmony under the direction and supervision of the probate court.

WHEREFORE, the judgment of respondent Court of Appeals is MODIFIED by AFFIRMING the validity of the appointment of respondent Roberto Dindo Gabriel as judicial administrator and ORDERING the appointment of petitioner Felicitas Jose?Gabriel as co-administratrix in Special Proceeding No. 88?4458 of Branch XI, Regional Trial Court of Manila.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Nocon, JJ., concur.

[1] Penned by Associate Justice Eduardo R. Bengzon, with Associate Justices Fidel P. Purisima and Salome A. Montoya, concurring; Annex A, Petition; Rollo, 16.

[2] Rollo, CA-G.R. SP No. 19797, 12-13.

[3] Ibid., id., 14-15.

[4] Ibid., id., 16-17.

[5] Ibid., id., 18-19.

[6] Ibid., id., 20-23.

[7] Ibid., id., 25-26.

[8] Ibid., id., 32-33.

[9] Ibid., id., 35-36.

[10] Ibid., id., 56.

[11] Ibid., id., 6.

[12] Rollo, 16-21.

[13] Gonzales vs. Aguinaldo, et al., 190 SCRA 112 (1990).

[14] De Guzman vs. Limcolioc, 67 Phil. 404 (1939).

[15] Fule, et al. vs. Court of Appeals, et al., 74 SCRA 189 (1976).

[16] Philippine Commercial & Industrial Bank, etc. vs. Escolin, et al., jointly decided with Testate Estate of the Late Linnie Jane Hodges, et al. vs. Carles, et al., 56 SCRA 266 (1974).

[17] 1 ALR 1247.

[18] Capistrano, et al. vs. Nadurata, et al., 46 Phil. 726 (1922); Arevalo, etc. vs. Bustamante, et al. 69 Phil. 656 (1940).

[19] Mendiola vs. Court of Appeals, et al., 190 SCRA 421 (1990).

[20] Gonzales vs. Aguinaldo, et al., supra.

[21] Alabama vs. Hill, 76 S.E. 1001; Re Weaver, 119 N.W. 69.

[22] Matute vs. Court of Appeals, et al., 26 SCRA 768 (1969).

[23] The "next of kin" has been defined as those persons who entitled under the statute of distribution to the decedent's property (Cooper vs. Cooper, 43 Ind. A 620, 88 NE 341).

[24] Gonzales vs. Aguinaldo, et al., supra

[25] Matias vs. Gonzales, et al., 101 Phil. 852 (1957); Corona vs. Court of Appeals, et al., 116 SCRA 316 (1982); Vda. de Dayrit vs. Ramolete, et al., 117 SCRA 608 (1982).

[26] Copeland vs. Shapley, 100 NE. 1080, cited in 34 C.J.S., Executors & Administrators, 1316.

[27] In re Drew's Estate, 236 N.W. 701.

[28] In re Fichter's Estate, 279 N.Y.S. 597.

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