

PRIMITIVA PARAS, PETITIONER AND APPELLANT, VS. LUDOVICO NARCISO, OBJECTOR AND APPELLEE.

G.R. No. 10959. November 02, 1916

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment denying probate to a document purporting to be the last will and testament of Mariano Magsino, deceased, on the ground that it had not been executed by the deceased; that the signature thereto was forged; and that the instrument had been prepared and signed by the witnesses after the death of the alleged testator.

Except as to alleged error in the admission of certain testimony as to the handwriting of the deceased, the appellant's assignment of errors deals exclusively with alleged errors of the trial court in accepting as true or declining to believe the testimony of certain witnesses. The trial judge saw and heard these witnesses testify, and there is nothing in the record which would justify us in disturbing his findings as to the respective credibility or lack of credibility of the various witnesses. Accepting these findings as we do there can be no doubt as to the correctness of the conclusions of the court below touching the time, form, and manner in which the instrument in question was executed.

It is not necessary to make an express ruling at this time as to whether or not certain witnesses who testified as to the genuineness of certain signatures of the deceased were properly qualified as handwriting experts. The genuineness of the signatures in question was duly established in the manner and form prescribed in section 327 of the Code of Civil Procedure; and, indeed, these signatures appear to have been admitted in evidence as genuine signatures of the deceased without objection by the appellant. In like manner the other matters testified to by the alleged handwriting experts appear to have been established by other evidence in the record, and it is quite clear from the opinion filed by the trial judge that he relied rather on his own opinion, after comparison of the undoubtedly genuine signature of the deceased with the signature attached to the alleged will as authorized in the section of the Code of Civil Procedure just mentioned, rather than upon the statements of the alleged experts. We agree with his conclusions in this regard and even if it were held that these handwriting experts had failed to qualify as such, the admission of their evidence in the record would at most be error without prejudice.

At the conclusion of appellant's brief some question is raised as to whether the appellee had sufficient interest in the estate of the deceased to maintain his opposition to the admission of the alleged will to probate. This question does not appear to have been raised in the court below, and no error is assigned as to the action of the trial judge with regard thereto. It is very clear that counsel for appellant cannot be heard to raise this question for the first time in a passing comment in his brief filed on appeal.

We do not doubt that before any person may intervene in proceedings had in the Courts of First Instance for the probate of a will, he should be required to show an interest in the will or in the property affected thereby either as executor or otherwise; and that strangers should not be permitted, over the objection of the real parties in interest,

to embarrass the proceedings by meddling or intruding themselves in matters with which they have no concern.

"The admission to probate of a will may be opposed or contested by, and only by, persons having some interest in the estate which will be affected and concluded by the probate of the proposed will." (40 Cyc, 1230, and cases cited.)

But the mere fact that a stranger has been permitted to oppose or contest the probate of a will is not reversible error and does not invalidate the proceedings where no objection is interposed by any of the parties in interest. The judgment of the court in probate proceedings is not based on the fact that there is or is not opposition to the probate of the will but upon the production of evidence which discloses that there are or are not sufficient grounds for the probate of the will as propounded; and the reason for the rule excluding strangers from contesting the will, is not that thereby the court may be prevented from learning facts which would justify or necessitate a denial of probate, but rather that the courts and the litigants should not be molested by the intervention in the proceedings of persons with no interest in the estate which would entitle them to be heard with relation thereto.

In the case at bar no objection was made in the court below to the intervention of the contestant, and no motion was made either in that court or in this to exclude the contestant. We conclude therefore that, assuming that this contestant had no interest in the estate, a fact which is substantially conceded in the brief submitted by his counsel, nevertheless, his intervention in the proceedings, in the absence of objection by any interested party, did not constitute reversible error.

It is to be observed further that the judgment of the court below, denying probate to the instrument propounded as the last will and testament of Mariano Magsino, deceased, was based on the evidence introduced at the hearing on the probate proceedings. That evidence, as we have said, fully sustains the findings of the probate judge that this instrument is not the last will and testament of the deceased. No objection was made to the introduction of this evidence on the ground that it was submitted by a stranger who should not have been permitted to intervene in the proceedings. Having been admitted to record without objection, and being competent, relevant and material, and conclusive in support of the judgment of the trial court, it would be absurd for us to hold that the judge below erred in basing his judgment thereon, merely on the ground that on appeal it is made to appear or is admitted that the contestant had no interest in the estate. Whether the contestant had or had not any right to intervene, the evidence submitted at the trial without objection, conclusively sustains the findings of the trial judge on which he properly based his denial of probate.

The judgment entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Johnson, Trent, and Araullo, JJ., concur.

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