

PEDRO C. MONTERO, PROTESTANT AND APPELLANT, VS. PEDRO V. GUERRERO, PROTESTEE AND APPELLEE.

G.R. No. 12579. June 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

In the elections held in 1955, herein protestant-appellant, Pedro C. Montero, and protestee-appellee, Pedro V. Guerrero, were among the candidates for Lieutenant Governor of the subprovince of Aurora, province of Quezon. Upon a canvass of the returns, Pedro V. Guerrero was found to have obtained 2,467 votes and was accordingly proclaimed elected.

Alleging fraud and irregularities in the appreciation of ballots and counting of votes, Pedro C. Montero, who placed second with a total of 2,232 votes, filed a protest in the Court of First Instance of Quezon, asking that the election returns from certain precincts be revised. Upon order of the Court, he presented a bond and a cash deposit to guarantee the payment of all the costs which might be incurred by reason of his protest.

In due time, the protestee Pedro V. Guerrero filed his answer with a counterclaim for damages. The answer also contained a counter-protest, and for the payment of all the expenses and costs incident thereto he filed a bond and made a cash deposit.

Thereafter, the returns were recanvassed. In the course of the proceedings, when only the ballot boxes from a few precincts were to be examined, the protestee, on July 12, 1956, filed a petition to withdraw his counter-protest, alleging that the same was no longer necessary, since whatever be the result of the examination of the remaining precincts he would still win with a safe majority of 54 votes. Acting upon the petition, the court granted the same, and after all the expenses incurred in the counter-protest had been deducted from his cash deposit, counsel for protestee was allowed to withdraw the balance.

Five days later, or on July 17, 1956, the protestant, stating that he had lost interest in the prosecution of his protest, filed a petition asking that the case be dismissed. Granting the petition, the court in its order of the same date, ordered the dismissal of the case "with costs to the protestant."

On September 3, 1956, counsel for protestee filed a "bill of expenses and costs" in the total amount of P931.45 which is quoted hereunder as follows:

"EXPENSES

1.

For actual expenses of Protestee in going to Lucena via Cabanatuan City and returning to Baler and for subsistence in Manila and Lucena from December 28 to December 31, 1955 to confer with and hire the services of Atty. Felipe T. Lopez

P250.00

2.

For refund of actual expenses incurred as payment for transportation expenses incurred in bringing the Ballot Boxes of Precinct Nos. 5 and 7, and for fees of Commissioners during revision of said precincts, subject of the Counter-Protest

163.45

3.

For Attorney's Fees

500.00

COSTS

1.

For filing Answer and Counterclaim

8.00

2.

For appearance of Protestee and his counsel

10.00

Total

P931.45"

In an order dated September 7, 1956, the trial court approved the bill and ordered the protestant to pay to protesters counsel the amount of P931.45. Reconsideration of this order having been denied, the protestant filed the present appeal, contending that the lower court erred in approving the protestee's "bill of expenses and costs" for the various amounts corresponding to the different items mentioned therein.

We agree with protestant-appellant that attorney's fees and expenses incurred by protestee-appellee for transportation and subsistence in employing counsel are not taxable as costs or expenses under section 180 [1] of the Revised Election Code. Election contests are tried and decided by the courts, and for that reason it has been held that with respect to costs such contests shall be governed by the Rules of Court. (*Belarmino, et al. vs. Alihan, et al.*, 105 Phil., 358; 56 Off. Gaz. [45] 6935.) Under section 10 of Rule 131, in an action filed in a Court of First Instance, the prevailing party may recover the costs provided for in said section "and no other." Attorney's fees[2] and travelling expenses and subsistence for employing counsel not being among those taxable as costs in said section 10, Rule 131 of the Rules of Court, the same cannot be allowed. Neither can they be justified as expenses. In the oft-cited case of *Belarmino, et al., vs. Alihan, et al.*, supra, this Court said that the word "expenses" in election contests "should mean actual expenses connected with the trial and not expenses that attorneys and their clients may have incurred in preparing for trial and in defending their side of the case." Attorney's fees and travelling expenses and subsistence for hiring counsel not being included in either the word "costs" or the word "expenses" as used in the statute, the same must, therefore, be disallowed.

The items for bringing the ballot boxes and commissioner's fees for the revision of ballots should, likewise, be disallowed. Although they are proper expenses incidental to an election contest, they were, however, incurred, as stated in the "bill of expenses and costs", in connection with the counter-protest which was withdrawn even before appellant withdrew his protest. It would have been different had they been incurred by reason of the protest.

Regarding the items for filing the answer and for attendance of appellee and that of his attorney, there can be no question that protestee-appellee is entitled to recover the same, since they are specifically included in section 10 of Rule 131 as taxable costs. The argument that the parties should bear their own costs since there was no "successful party" or "prevailing party", the protest and counter-protest having been withdrawn, cannot be sustained. The election protest was, in the first place, dismissed "with costs to the protestant", and protestant did not appeal from this order of dismissal. In the second place, when the protest was withdrawn and the case dismissed, only a few more precincts were to be examined, the result of which would not affect the election. Apparently, it was for this reason that herein appellant lost interest in the prosecution of his protest. In effect, therefore, the appellee still won by a majority of votes.

In view of the foregoing, the order appealed from is modified in the sense that the items for the transportation and subsistence in employing counsel, attorney's fees, and the bringing of ballot boxes and commissioner's fees for the revision of ballots "subject of the counter-protest" in the amounts of P250.00, P500.00 and P163.45, respectively, are disallowed. So ordered without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Barrera JJ., concur.

Padilla, J., took no part.

[1] Section 180 of the Revised Election Code provides: "Before the courts shall take cognizance of a protest or a counter-protest or admit an appeal, the party who has filed the pleading or interposed the appeal shall file a bond with two sureties satisfactory to the court and for such amount as it may fix, to answer for the payment of all expenses and costs incidental to said motion or appeal, or shall deposit with the court cash in lieu of the bond or

both as the court may order. * * * In case the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party."

[2] Attorney's fees are never considered as costs. (Belarmino, et al., vs. Alihan, et al., supra; see also Mendiola vs. Villa, 15 Phil., 131; Vargas vs. Ross, 16 Phil., 665; Osorio vs. Trias, 16 Phil., 511; Tan Ti vs. Alvear, 26 Phil., 566.)

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