

## IN THE MATTER OF THE ESTATE OF EMIL H. JOHNSON, EBBA INGEBORG JOHNSON, APPLICANT AND APPELLANT.

*G.R. No. 12767. November 16, 1918*

Ponente: STREET, J.

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### STREET, J.:

On February 4, 1916, Emil H. Johnson, a native of Sweden and a naturalized citizen of the United States, died in the city of Manila, leaving a will, dated September 9, 1915, by which he disposed of an estate, the value of which, as estimated by him, was P231,800. This document is an holographic instrument, being written in the testator's own handwriting, and is signed by himself and two witnesses only, instead of three witnesses required by section 618 of the Code of Civil Procedure. This will, therefore, was not executed in conformity with the provisions of law generally applicable to wills executed by inhabitants of these Islands, and hence could not have been proved under section 618.

On February 9, 1916, however, a petition was presented in the Court of First Instance of the city of Manila for the probate of this will, on the ground that Johnson was at the time of his death a citizen of the State of Illinois, United States of America; that the will was duly executed in accordance with the laws of that State; and hence could properly be probated here pursuant to section 636 of the Code of Civil Procedure. This section reads as follows:

"Will made here by alien.—A will made within the Philippine Islands by a citizen or subject of another state or country, which is executed in accordance with the law of the state or country of which he is a citizen or subject, and which might be proved and allowed by the law of his own state or country, may be proved, allowed, and recorded in the Philippine Islands, and shall have the same effect as if executed according to the laws of these Islands."

The hearing on said application was set for March 6, 1916, and three weeks publication of notice was ordered in the "Manila Daily Bulletin." Due publication was made pursuant to this order of the court. On March 6, 1916, witnesses were examined relative to the execution of the will; and upon March 16th thereafter the document was declared to be legal and was admitted to probate. At the same time an order was made nominating Victor Johnson and John T. Pickett as administrators of the estate, with the will annexed. Shortly thereafter Pickett signified his desire not to serve, and Victor Johnson was appointed sole administrator.

By the will in question the testator gives to his brother Victor one hundred shares of the corporate stock in the Johnson-Pickett Rope Company; to his father and mother in Sweden, the sum of P20,000; to his daughter Ebba Ingeborg, the sum of P5,000; to his wife, Alexandra Ibañez, the sum of P75 per month, if she remains single; to Simeona Ibañez, spinster, P65 per month, if she remains single. The rest of the property is left to the testator's five children—Mercedes, Encarnacion, Victor, Eleonor and Alberto.

The biographical facts relative to the deceased necessary to an understanding of the case are these: Emil H. Johnson was born in Sweden, May 25, 1877, from which country he emigrated to the United States and lived in

Chicago, Illinois, from 1893 to 1898. On May 9, 1898, at Chicago, he was married to Rosalie Ackeson, and immediately thereafter embarked for the Philippine Islands as a soldier in the Army of the United States. As a result of relations between Johnson and Rosalie Ackeson a daughter, named Ebba Ingeborg, was born a few months after their marriage. This child was christened in Chicago by a pastor of the Swedish Lutheran Church upon October 16, 1898.

After Johnson was discharged as a soldier from the service of the United States he continued to live in the Philippine Islands, and on November 20, 1902, the wife, Rosalie Johnson, was granted a decree of divorce from him in the Circuit Court of Cook County, Illinois, on the ground of desertion. A little later Johnson appeared in the United States on a visit and on January 10, 1903, procured a certificate of naturalization at Chicago. From Chicago he appears to have gone to Sweden, where a photograph, exhibited in evidence in this case, was taken in which he appeared in a group with his father, mother, and the little daughter, Ebba Ingeborg, who was then living with her grandparents in Sweden. When this visit was concluded, the deceased returned to Manila, where he prospered in business and continued to live until his death.

In this city he appears to have entered into marital relations with Alejandra Ibañez, by whom he had three children, to wit, Mercedes, baptized May 31, 1903; Encarnacion, baptized April 29, 1906; and Victor, baptized December 9, 1907. The other two children mentioned in the will were borne to the deceased by Simeona Ibañez.

On June 12, 1916, or about three months after the will had been probated, the attorneys for Ebba Ingeborg Johnson entered an appearance in her behalf and noted an exception to the order admitting the will to probate. On October 31, 1916, the same attorneys moved the court to vacate the order of March 16 and also various other orders in the case. On February 20, 1917, this motion was denied, and from this action of the trial court the present appeal has been perfected.

As will be discerned, the purpose of the proceeding on behalf of the petitioner is to annul the decree of probate and put the estate into intestate administration, thus preparing the way for the establishment of the claim of the petitioner as the sole legitimate heir of her father.

The grounds upon which the petitioner seeks to avoid the probate are four in number and may be stated, in the same sequence in which they are set forth in the petition, as follows:

- (1) Emil H. Johnson was a resident of the city of Manila and not a resident of the State of Illinois at the time the will in question was executed;
- (2) The will is invalid and inadequate to pass real and personal property in the State of Illinois;
- (3) The order admitting the will to probate was made without notice to the petitioner; and
- (4) The order in question was beyond the jurisdiction of the court.

It cannot of course be maintained that a court of first instance lacks essential jurisdiction over the probate of wills. The fourth proposition above stated must, accordingly, be interpreted in relation with the third and must be considered as a corollary deduced from the latter. Moreover, both the third and fourth grounds stated take precedence, by reason of their more fundamental implications, over the first two; and a logical exposition of the contentions of the petitioner is expressed in the two following propositions:

"(I) The order admitting the will to probate was beyond the jurisdiction of the court and Void because made without notice to the petitioner;

"(II) The judgment from which the petitioner seeks relief should be set aside because the testator was not a resident of the State of Illinois and the will was not in conformity with the laws of that State."

In the discussion which is to follow we shall consider the problems arising in this case in the order last above indicated. Upon the question, then, of the jurisdiction of the court, it is apparent from an inspection of the record of the proceedings in the court below that all the steps prescribed by law as prerequisites to the probate of a will were complied with in every respect and that the probate was effected in external conformity with all legal requirements. This much is unquestioned. It is, however, pointed out in the argument submitted in behalf of the petitioner, that, at the time the court made the order of publication, it was apprised of the fact that the petitioner lived in the United States and that as daughter and heir she was necessarily interested in the probate of the will. It is, therefore, insisted that the court should have appointed a date for the probate of the will sufficiently far in the future to permit the petitioner to be present either in person or by representation; and it is said that the failure of the court thus to postpone the probate of the will constitutes an infringement of that provision of the Philippine Bill which declares that property shall not be taken without due process of law.

On this point we are of the opinion that the proceedings for the probate of the will were regular and that the publication was sufficient to give the court jurisdiction to entertain the proceeding and to allow the will to be probated.

As was said in the case of *In re Davis* (136 Cal., 590, 596), "the proceeding as to the probate of a will is essentially one in rem, and in the very nature of things the state is allowed a wide latitude in determining the character of the constructive notice to be given to the world in a proceeding where it has absolute possession of the res. It would be an exceptional case where a court would declare a statute void, as depriving a party of his property without due process of law, the proceeding being strictly in rem, and the res within the state, upon the ground that the constructive notice prescribed by the statute was unreasonably short."

In that case the petitioner had been domiciled in the Hawaiian Islands at the time of the testator's death; and it was impossible, in view of the distance and means of communication then existing, for the petitioner to appear and oppose the probate on the day set for the hearing in California. It was nevertheless held that publication in the manner prescribed by statute constituted due process of law. (See *Estate of Davis*, 151 Cal., 318; *Tracy vs. Muir*, 151 Cal., 363.)

In the *Davis* case (136 Cal., 590) the court commented upon the act that, under the laws of California, the petitioner had a full year within which she might have instituted a proceeding to contest the will; and this was stated as one of the reasons for holding that publication in the manner provided by statute was sufficient. The same circumstance was commented upon in *O'Callaghan vs. O'Brien* (199 U. S., 89), decided in the Supreme Court of the United States. This case arose under the laws of the State of Washington, and it was alleged that a will had been there probated without the notice of application for probate having been given as required by law. It was insisted that this was an infringement of the Fourteenth Amendment of the Constitution of the United States. This contention was, however, rejected and it was held that the statutory right to contest the will within a year was a complete refutation of the argument founded on the idea of a violation of the due process provision.

The laws of these Islands, in contrast with the laws in force in perhaps all of the States of the American Union, contain no special provision, other than that allowing an appeal in the probate proceedings, under which relief of any sort can be obtained from an order of a court of first instance improperly allowing or disallowing a will. We do, however, have a provision of a general nature authorizing a court under certain circumstances to set aside any judgment, order, or other proceeding whatever. This provision is found in section 113 of the Code of Civil Procedure, which reads as follows:

"Upon such terms as may be just the court may relieve a party or his legal representative from a judgment, order or other proceeding taken against him through his mis take, inadvertence, surprise or excusable neglect; Provided, That application therefor be made within a reasonable time, but in no case exceeding six months

after such judgment, order, or proceeding was taken."

The use of the word "judgment, order or other proceeding" in this section indicates an intention on the part of the Legislature to give a wide latitude to the remedy here provided, and in our opinion its operation is not to be restricted to judgments or orders entered in ordinary contentious litigation where a plaintiff impleads a defendant and brings him into court by personal service of process. In other words the utility of the provision is not limited to actions proper but extends to all sorts of judicial proceedings.

In the second section of the Code of Civil Procedure it is declared that the provisions of this Code shall be liberally construed to promote its object and to assist the parties in obtaining speedy justice. We think that the intention thus exhibited should be applied in the interpretation of section 113; and we hold that the word "party," used in this section, means any person having an interest in the subject matter of the proceeding who is in a position to be concluded by the judgment, order, or other proceeding taken.

The petitioner, therefore, in this case could have applied, under the section cited, at any time within six months from March 16, 1916, and upon showing that she had been precluded from appearing in the probate proceedings by conditions over which she had no control and that the order admitting the will to probate had been erroneously entered upon insufficient proof or upon a supposed state of facts contrary to the truth, the court would have been authorized to set the probate aside and grant a rehearing. It is no doubt true that six months was, under the circumstances, a very short period of time within which to expect the petitioner to appear and be prepared to contest the probate with the proof which she might have desired to collect from remote countries. Nevertheless, although the time allowed for the making of such application was inconveniently short, the remedy existed; and the possibility of its use is proved in this case by the circumstance that on June 12, 1916, she in fact here appeared in court by her attorneys and excepted to the order admitting the will to probate.

It results that, in conformity with the doctrine announced in the Davis case, above cited, the proceedings in the court below were conducted in such manner as to constitute due process of law. The law supplied a remedy by which the petitioner might have gotten a hearing and have obtained relief from the order by which she is supposed to have been injured; and though the period within which the application should have been made was short, the remedy was both possible and practicable.

From what has been said it follows that the order of March 16, 1916, admitting the will of Emil H. Johnson to probate cannot be declared null and void merely because the petitioner was unavoidably prevented from appearing at the Original hearing upon the matter of the probate of the will in question. Whether the result would have been the same if our system of procedure had contained no such provision as that expressed in section 113 is a matter which we need not here consider.

Intimately connected with the question of the jurisdiction of the court, is another matter which may be properly discussed at this juncture. This relates to the interpretation to be placed upon section 636 of the Code of Civil Procedure. The position is taken by the appellant that this section is applicable only to wills of aliens; and in this connection attention is directed to the fact that the epigraph of this section speaks only of the will made here by an alien and to the further fact that the word "state" in the body of the section is not capitalized. From this it is argued that section 636 is not applicable to the will of a citizen of the United States residing in these Islands.

We consider these suggestions of little weight and are of the opinion that, by the most reasonable interpretation of the language used in the statute, the words "another state or country" include the United States and the States of the American Union, and that the operation of the statute is not limited to wills of aliens. It is a rule of hermeneutics that punctuation and capitalization are aids of low degree in interpreting the language of a statute and can never control against the intelligible meaning of the written words. Furthermore, the epigraph, or heading,

of a section, being nothing more than a convenient index to the contents of the provision, cannot have the effect of limiting the operative words contained in the body of the text. It results that if Emil H. Johnson was at the time of his death a citizen of the United States and of the State of Illinois, his will was provable under this section in the courts of the Philippine Islands, provided the instrument was so executed as to be admissible to probate under the laws of the State of Illinois.

We are thus brought to consider the second principal proposition stated at the outset of this discussion, which raises the question whether the order of probate can be set aside in this proceeding on the other ground stated in the petition, namely, that the testator was not a resident of the State of Illinois and that the will was not made in conformity with the laws of that State.

The order of the Court of First Instance admitting the will to probate recites, among other things:

"That upon the date when the will in question was executed Emil H. Johnson was a citizen of the United States, naturalized in the State of Illinois, County of Cook, and that the will in question was executed in conformity with the dispositions of the law of the State of Illinois,"

We consider this equivalent to a finding that upon the date of the execution of the will the testator was a citizen of the State of Illinois and that the will was executed in conformity with the laws of that State. Upon the last point the finding is express; and in our opinion the statement that the testator was a citizen of the United States, naturalized in the State of Illinois, should be taken to imply that he was a citizen of the State of Illinois, as well as of the United States.

The naturalization laws of the United States require, as a condition precedent to the granting of the certificate of naturalization, that the applicant should have resided at least five years in the United States and for one year within the State or territory where the court granting the naturalization papers is held; and in the absence of clear proof to the contrary it should be presumed that a person naturalized in a court of a certain State thereby becomes a citizen of that State as well as of the United States.

In this connection it should be remembered that the Fourteenth Amendment to the Constitution of the United States declares, in its opening words, that all persons naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

It is noteworthy that the petition by which it is sought to annul the probate of this will does not assert that the testator was not a citizen of Illinois at the date when the will was executed. The most that is said on this point is he was "never a resident of the State of Illinois after the year 1898, but became and was a resident of the city of Manila," etc. But residence in the Philippine Islands is compatible with citizenship in Illinois; and it must be considered that the allegations of the petition on this point are, considered in their bearing as an attempt to refute citizenship in Illinois, wholly insufficient.

As the Court of First Instance found that the testator was a citizen of the State of Illinois and that the will was executed in conformity with the laws of that State, the will was necessarily and properly admitted to probate. And how is it possible to evade the effect of these findings ?

In section 625 of the Code of Civil Procedure it is declared that "the allowance by the court of a will of real or personal property shall be conclusive as to its due execution."

The due execution of a will involves conditions relating to a number of matters, such as the age and mental capacity of the testator, the signing of the document by the testator, or by someone in his behalf, and the acknowledgment of the instrument by him in the presence of the required number of witnesses who affix their signatures to the will to attest the act. The proof of all these requisites is involved in the probate; and as to each

and all of them the probate is conclusive. (*Castañeda vs. Alemany*, 3 Phil. Rep., 426; *Pimentel vs. Palanca*, 5 Phil. Rep., 436; *Chiong Joc-Soy vs. Vaño*, 8 Phil. Rep., 119; *Sanchez vs. Pascual*, 11 Phil. Rep., 395; *Montafiano vs. Suesa*, 14 Phil. Rep., 676.)

Our reported cases do not contain the slightest intimation that a will which has been probated according to law, and without fraud, can be annulled, in any other proceeding whatever, on account of any supposed irregularity or defect in the execution of the will or on account of any error in the action of the court upon the proof adduced before it. This court has never been called upon to decide whether, in case the probate of a will should be procured by fraud, relief could be granted in some other proceeding; and no such question is now presented. But it is readily seen that if fraud were alleged, this would introduce an entirely different factor in the case. In *Austria vs. Ventenilla* (21 Phil. Rep., 180, 184), it was suggested but not decided that relief might be granted in case the probate of a will were procured by fraud.

The circumstance that the judgment of the trial court recites that the will was executed in conformity with the law of Illinois and also, in effect, that the testator was a citizen of that State places the judgment upon an unassailable basis so far as any supposed error apparent upon the face of the judgment is concerned. It is, however, probable that even if the judgment had not contained these recitals, there would have been a presumption from the admission of the will to probate as the will of a citizen of Illinois that the facts were as recited in the order of probate.

As was said by this court in the case of *Banco Español-Filipino vs. Palanca* (37 Phil. Rep., 921), "There is no principle of law better settled than that after jurisdiction has once been acquired, every act of a court of general jurisdiction shall be presumed to have been rightly done. This rule is applied to every judgment or decree rendered in the various stages of the proceedings from their initiation to their completion (*Voorhees vs. United States Bank*, 10 Pet., 314; 35 U. S., 449); and if the record is silent with respect to any fact which must have been established before the court could have rightly acted, it will be presumed that such fact was properly brought to its knowledge."

The Court of First Instance is a court of original and general jurisdiction; and there is no difference in its faculties in this respect whether exercised in matters of probate or exerted in ordinary contentious litigation. The trial court therefore necessarily had the power to determine the facts upon which the propriety of admitting the will to probate depended; and the recital of those facts in the judgment was probably not essential to its validity. No express ruling is, however, necessary on this point.

What has been said effectually disposes of the petition considered in its aspect as an attack upon the order of probate for error apparent on the face of the record. But the petitioner seeks to have the judgment reviewed, it being asserted that the findings of the trial court—especially on the question of the citizenship of the testator—are not supported by the evidence. It needs but a moment's reflection, however, to show that in such a proceeding as this it is not possible to reverse the original order on the ground that the findings of the trial court are unsupported by the proof adduced before that court. The only proceeding in which a review of the evidence can be secured is by appeal, and the case is not before us upon appeal from the original order admitting the will to probate. The present proceedings by petition to set aside the order of probate, and the appeal herein is from the order denying this relief. It is obvious that on appeal from an order refusing to vacate a judgment it is not possible to review the evidence upon which the original judgment was based. To permit this would operate unduly to protract the right of appeal.

However, for the purpose of arriving at a just conception of the case from the point of view of the petitioner, we propose to examine the evidence submitted upon the original hearing, in connection with the allegations of the

petition, in order to see, first, whether the evidence submitted to the trial court was sufficient to justify its findings, and, secondly, whether the petition contains any matter which would justify the court in setting the judgment, aside. In this connection we shall for a moment ignore the circumstance that the petition was filed after the expiration of the six months allowed by section 113 of the Code of Civil Procedure.

The principal controversy is over the citizenship of the testator. The evidence adduced upon this point in the trial court consists of the certificate of naturalization granted upon January 10, 1903, in the Circuit Court of Cook County, Illinois, in connection with certain biographical facts contained in the oral evidence. The certificate of naturalization supplies incontrovertible proof that upon the date stated the testator became a citizen of the United States, and inferentially also a citizen of said State. In the testimony submitted to the trial court it appears that, when Johnson first came to the United States as a boy, he took up his abode in the State of Illinois and there remained until he came as a soldier in the United States Army to the Philippine Islands. Although he remained in these Islands for sometime after receiving his discharge, no evidence was adduced showing that at the time he returned to the United States, in the autumn of 1902, he had then abandoned Illinois as the State of his permanent domicile; and on the contrary the certificate of naturalization itself recites that at that time he 'claimed to be a resident of Illinois.

Now, if upon January 10, 1903, the testator became a citizen of the United States and of the State of Illinois, how has he lost the character of citizen with respect to either of these jurisdictions? There is no law in force by virtue of which any person of foreign nativity can become a naturalized citizen of the Philippine Islands; and it was, therefore, impossible for the testator, even if he had so desired, to expatriate himself from the United States and change his political status from a citizen of the United States to a citizen of these Islands. This being true, it is to be presumed that he retained his citizenship in the State of Illinois along with his status as a citizen of the United States. It would be novel doctrine to Americans living in the Philippine Islands to be told that by living here they lose their citizenship in the State of their naturalization or nativity.

We are not unmindful of the fact that when a citizen of one State leaves it and takes up his abode in another State with no intention of returning, he immediately acquires citizenship in the State of his new domicile. This is in accordance with that provision of the Fourteenth Amendment to the Constitution of the United States which says that every citizen of the United States is a citizen of the State wherein he resides. The effect of this provision necessarily is that a person transferring his domicile from one State to another loses his citizenship in the State of his original abode upon acquiring citizenship in the State of his new abode. The acquisition of the new State citizenship extinguishes the old. That situation, in our opinion, has no analogy to that which arises when a citizen of an American State comes to reside in the Philippine Islands. Here he cannot acquire a new citizenship; nor by the mere change of domicile does he lose that which he brought with him.

The proof adduced before the trial court must therefore be taken as showing that, at the time the will was executed, the testator was, as stated in the order of probate, a citizen of the State of Illinois. This, in connection with the circumstance that the petition does not even so much as deny such citizenship but only asserts that the testator was a resident of the Philippine Islands, demonstrates the impossibility of setting the probate aside for lack of the necessary citizenship on the part of the testator. As already observed, the allegation of the petition on this point is wholly insufficient to justify any relief whatever.

Upon the other point—as to whether the will was executed in conformity with the statutes of the State of Illinois—we note that it does not affirmatively appear from the transcription of the testimony adduced in the trial court that any witness was examined with reference to the law of Illinois on the subject of the execution of will. The trial judge no doubt was satisfied that the will was properly executed by examining section 1874 of the Revised Statutes of Illinois, as exhibited in volume 3 of Starr & Curtis's Annotated Illinois Statutes, 2nd ed., p.

426; and he may have assumed that he could take judicial notice of the laws of Illinois under section 275 of the Code of Civil Procedure. If so, he was in our opinion mistaken. That section authorizes the courts here to take judicial notice, among other things, of the acts of the legislative department of the United States. These words clearly have reference to Acts of the Congress of the United States; and we would hesitate to hold that our courts can, under this provision, take judicial notice of the multifarious laws of the various American States. Nor do we think that any such authority can be derived from the broader language, used in the same section, where it is said that our courts may take judicial notice of matters of public knowledge "similar" to those therein enumerated. The proper rule we think is to require proof of the statutes of the States of the American Union whenever their provisions are determinative of the issues in any action litigated in the Philippine courts.

Nevertheless, even supposing that the trial court may have erred in taking judicial notice of the law of Illinois on the point in question, such error is not now available to the petitioner, first, because the petition does not state any fact from which it would appear that the law of Illinois is different from what the court found, and, secondly, because the assignment of error and argument for the appellant in this court raises no question based on such supposed error. Though the trial court may have acted upon pure conjecture as to the law prevailing in the State of Illinois, its judgment could not be set aside, even upon application made within six months under section 113 of the Code of Civil Procedure, unless it should be made to appear affirmatively that the conjecture was wrong. The petitioner, it is true, states in general terms that the will in question is invalid and inadequate to pass real and personal property in the State of Illinois, but this is merely a conclusion of law. The affidavits by which the petition is accompanied contain no reference to the subject, and we are cited to no authority in the appellant's brief which might tend to raise a doubt as to the correctness of the conclusion of the trial court. It is very clear, therefore, that this point cannot be urged as of serious moment.

But it is insisted in the brief for the appellant that the will in question was not properly admissible to probate because it contains provisions which cannot be given effect consistently with the laws of the Philippine Islands; and it is suggested that as the petitioner is a legitimate heir of the testator she cannot be deprived of the legitime to which she is entitled under the law governing testamentary successions in these Islands. Upon this point it is sufficient to say that the probate of the will does not affect the intrinsic validity of its provisions, the decree of probate being conclusive only as regards the due execution of the will. (Code of Civil Procedure, secs. 625, 614; *Sahagun vs. De Gorostiza*, 7 Phil. Rep., 347, 349; *Chiong Joc-Soy vs. Vaño*, 8 Phil. Rep., 119, 121; *Limjoco vs. Ganara*, 11 Phil. Rep., 393, 395.)

If, therefore, upon the distribution of this estate, it should appear that any legacy given by the will or other disposition made therein is contrary to the law applicable in such case, the will must necessarily yield upon that point and the law must prevail. Nevertheless, it should not be forgotten that the intrinsic validity of the provisions of this will must be determined by the law of Illinois and not, as the appellant apparently assumes, by the general provisions here applicable in such matters; for in the second paragraph of article 10 of the Civil Code it is declared that "legal and testamentary successions, with regard to the order of succession, as well as to the amount of the successional rights and to the intrinsic validity of their provisions, shall be regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situated."

From what has been said, it is, we think, manifest that the petition submitted to the court below on October 31, 1916, was entirely insufficient to warrant the setting aside of the order probating the will in question, whether said petition be considered as an attack on the validity of the decree for error apparent, or whether it be considered as an application for a rehearing based upon the new evidence submitted in the affidavits which accompany the petition. And in this latter aspect the petition is subject to the further fatal defect that it was not presented within

the time allowed by law.

It follows that the trial court committed no error in denying the relief sought. The order appealed from is accordingly affirmed with costs. So ordered.

Torres, Johnson, Malcolm, Avanceña, and Fisher, JJ., concur.

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