

LETICIA VALMONTE ORTEGA, PETITIONER, VS. JOSEFINA C. VALMONTE, RESPONDENT.

G.R. NO. 157451. December 16, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The law favors the probate of a will. Upon those who oppose it rests the burden of showing why it should not be allowed. In the present case, petitioner has failed to discharge this burden satisfactorily. For this reason, the Court cannot attribute any reversible error on the part of the appellate tribunal that allowed the probate of the will.

The Case

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the December 12, 2002 Decision[2] and the March 7, 2003 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 44296. The assailed Decision disposed as follows:

"WHEREFORE, the appeal is GRANTED, and the Decision appealed from is REVERSED and SET ASIDE. In its place judgment is rendered approving and allowing probate to the said last will and testament of Placido Valmonte and ordering the issuance of letters testamentary to the petitioner Josefina Valmonte. Let this case be remanded to the court a quo for further and concomitant proceedings."[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The facts were summarized in the assailed Decision of the CA, as follows:

"x x x: Like so many others before him, Placido toiled and lived for a long time in the United States until he finally reached retirement. In 1980, Placido finally came home to stay in the Philippines, and he lived in the house and lot located at #9200 Catmon St., San Antonio Village, Makati, which he owned in common with his sister Ciriaca Valmonte and titled in their names in TCT 123468. Two years after his arrival from the United States and at the age of 80 he wed Josefina who was then 28 years old, in a ceremony solemnized by Judge Perfecto Laguio, Jr. on February 5, 1982. But in a little more than two years of wedded bliss, Placido died on October 8, 1984 of a cause written down as COR PULMONALE.

"Placido executed a notarial last will and testament written in English and consisting of two (2) pages, and dated June 15, 1983 but acknowledged only on August 9, 1983. The first page contains the entire testamentary dispositions and a part of the attestation clause, and was signed at the end or bottom of that page by the testator and on the left hand margin by the three instrumental witnesses. The second page contains the continuation of the attestation clause and the acknowledgment, and was signed by the witnesses at the end of the attestation clause and again on the left hand margin. It provides in the body that:

"LAST WILL AND TESTAMENT OF PLACIDO VALMONTE IN THE NAME OF THE LORD AMEN:

"I, PLACIDO VALMONTE, of legal age, married to Josefina Cabansag Valmonte, and a resident of 9200

Catmon Street, Makati, Metro Manila, 83 years of age and being of sound and disposing mind and memory, do hereby declare this to be my last will and testament:

- It is my will that I be buried in the Catholic Cemetery, under the auspices of the Catholic Church in accordance with the rites and said Church and that a suitable monument to be erected and provided my by executrix (wife) to perpetuate my memory in the minds of my family and friends;
- I give, devise and bequeath unto my loving wife, JOSEFINA C. VALMONTE, one half (1/2) portion of the follow-described properties, which belongs to me as [co-owner]:
- Lot 4-A, Block 13 described on plan Psd-28575, LRC, (GLRO), situated in Makati, Metro Manila, described and covered by TCT No. 123468 of the Register of Deeds of Pasig, Metro-Manila registered jointly as co-owners with my deceased sister (Ciriaca Valmonte), having share and share alike;
- 2-storey building standing on the above-described property, made of strong and mixed materials used as my residence and my wife and located at No. 9200 Catmon Street, Makati, Metro Manila also covered by Tax Declaration No. A-025-00482, Makati, Metro-Manila, jointly in the name of my deceased sister, Ciriaca Valmonte and myself as co-owners, share and share alike or equal co-owners thereof;
- All the rest, residue and remainder of my real and personal properties, including my savings account bank book in USA which is in the possession of my nephew, and all others whatsoever and wherever found, I give, devise and bequeath to my said wife, Josefina C. Valmonte;
- I hereby appoint my wife, Josefina C. Valmonte as sole executrix of my last will and testament, and it is my will that said executrix be exempt from filing a bond;

IN WITNESS WHEREOF, I have hereunto set my hand this 15[th] day of June 1983 in Quezon City, Philippines."

"The allowance to probate of this will was opposed by Leticia on the grounds that:

- Petitioner failed to allege all assets of the testator, especially those found in the USA;
- Petitioner failed to state the names, ages, and residences of the heirs of the testator; or to give them proper notice pursuant to law;
- Will was not executed and attested as required by law and legal solemnities and formalities were not complied with;
- Testator was mentally incapable to make a will at the time of the alleged execution he being in an advance state of senility;
- Will was executed under duress, or the influence of fear or threats;
- Will was procured by undue and improper influence and pressure on the part of the petitioner and/or her agents and/or assistants; and/or
- Signature of testator was procured by fraud, or trick, and he did not intend that the instrument should be his will at the time of affixing his signature thereto;"

and she also opposed the appointment as Executrix of Josefina alleging her want of understanding and integrity.

"At the hearing, the petitioner Josefina testified and called as witnesses the notary public Atty. Floro Sarmiento who prepared and notarized the will, and the instrumental witnesses spouses Eugenio Gomez, Jr. and Feliza Gomez and Josie Collado. For the opposition, the oppositor Leticia and her daughter Mary Jane Ortega

testified.

"According to Josefina after her marriage with the testator they lived in her parents house at Salingcob, Bacnotan, La Union but they came to Manila every month to get his \$366.00 monthly pension and stayed at the said Makati residence. There were times though when to shave off on expenses, the testator would travel alone. And it was in one of his travels by his lonesome self when the notarial will was made. The will was witnessed by the spouses Eugenio and Feliza Gomez, who were their wedding sponsors, and by Josie Collado. Josefina said she had no knowledge of the existence of the last will and testament of her husband, but just serendipitously found it in his attache case after his death. It was only then that she learned that the testator bequeathed to her his properties and she was named the executrix in the said will. To her estimate, the value of property both real and personal left by the testator is worth more or less P100,000.00. Josefina declared too that the testator never suffered mental infirmity because despite his old age he went alone to the market which is two to three kilometers from their home cooked and cleaned the kitchen and sometimes if she could not accompany him, even traveled to Manila alone to claim his monthly pension. Josefina also asserts that her husband was in good health and that he was hospitalized only because of a cold but which eventually resulted in his death.

"Notary Public Floro Sarmiento, the notary public who notarized the testator's will, testified that it was in the first week of June 1983 when the testator together with the three witnesses of the will went to his house cum law office and requested him to prepare his last will and testament. After the testator instructed him on the terms and dispositions he wanted on the will, the notary public told them to come back on June 15, 1983 to give him time to prepare it. After he had prepared the will the notary public kept it safely hidden and locked in his drawer. The testator and his witnesses returned on the appointed date but the notary public was out of town so they were instructed by his wife to come back on August 9, 1983, and which they did. Before the testator and his witnesses signed the prepared will, the notary public explained to them each and every term thereof in Ilocano, a dialect which the testator spoke and understood. He likewise explained that though it appears that the will was signed by the testator and his witnesses on June 15, 1983, the day when it should have been executed had he not gone out of town, the formal execution was actually on August 9, 1983. He reasoned that he no longer changed the typewritten date of June 15, 1983 because he did not like the document to appear dirty. The notary public also testified that to his observation the testator was physically and mentally capable at the time he affixed his signature on the will.

"The attesting witnesses to the will corroborated the testimony of the notary public, and testified that the testator went alone to the house of spouses Eugenio and Feliza Gomez at GSIS Village, Quezon City and requested them to accompany him to the house of Atty. Floro Sarmiento purposely for his intended will; that after giving his instructions to Atty. Floro Sarmiento, they were told to return on June 15, 1983; that they returned on June 15, 1983 for the execution of the will but were asked to come back instead on August 9, 1983 because of the absence of the notary public; that the testator executed the will in question in their presence while he was of sound and disposing mind and that he was strong and in good health; that the contents of the will was explained by the notary public in the Ilocano and Tagalog dialect and that all of them as witnesses attested and signed the will in the presence of the testator and of each other. And that during the execution, the testator's wife, Josefina was not with them.

"The oppositor Leticia declared that Josefina should not inherit alone because aside from her there are other children from the siblings of Placido who are just as entitled to inherit from him. She attacked the mental capacity of the testator, declaring that at the time of the execution of the notarial will the testator was already 83 years old and was no longer of sound mind. She knew whereof she spoke because in 1983 Placido lived in the Makati residence and asked Leticia's family to live with him and they took care of him. During that time, the testator's physical and mental condition showed deterioration, aberrations and senility. This was corroborated by her daughter Mary Jane Ortega for whom Placido took a fancy and wanted to marry.

"Sifting through the evidence, the court a quo held that [t]he evidence adduced, reduces the opposition to two

grounds, namely:

- Non-compliance with the legal solemnities and formalities in the execution and attestation of the will; and
- Mental incapacity of the testator at the time of the execution of the will as he was then in an advanced state of senility

"It then found these grounds extant and proven, and accordingly disallowed probate." [5]

Ruling of the Court of Appeals

Reversing the trial court, the appellate court admitted the will of Placido Valmonte to probate. The CA upheld the credibility of the notary public and the subscribing witnesses who had acknowledged the due execution of the will. Moreover, it held that the testator had testamentary capacity at the time of the execution of the will. It added that his "sexual exhibitionism and unhygienic, crude and impolite ways" [6] did not make him a person of unsound mind.

Hence, this Petition. [7]

Issues

Petitioner raises the following issues for our consideration:

"I.

Whether or not the findings of the probate court are entitled to great respect.

"II.

Whether or not the signature of Placido Valmonte in the subject will was procured by fraud or trickery, and that Placido Valmonte never intended that the instrument should be his last will and testament.

"III.

Whether or not Placido Valmonte has testamentary capacity at the time he allegedly executed the subject will." [8]

In short, petitioner assails the CA's allowance of the probate of the will of Placido Valmonte.

This Court's Ruling

The Petition has no merit.

Main Issue:

Probate of a Will

At the outset, we stress that only questions of law may be raised in a Petition for Review under Section 1 of Rule 45 of the Rules of Court. As an exception, however, the evidence presented during the trial may be examined and the factual matters resolved by this Court when, as in the instant case, the findings of fact of the appellate court differ from those of the trial court. [9]

The fact that public policy favors the probate of a will does not necessarily mean that every will presented for probate should be allowed. The law lays down the procedures and requisites that must be satisfied for the probate of a will. [10] Verily, Article 839 of the Civil Code states the instances when a will may be disallowed, as follows:

"Article 839. The will shall be disallowed in any of the following cases:

- (1) If the formalities required by law have not been complied with;
- (2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;
- (3) If it was executed through force or under duress, or the influence of fear, or threats;
- (4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
- (5) If the signature of the testator was procured by fraud;
- (6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto."

In the present case, petitioner assails the validity of Placido Valmonte's will by imputing fraud in its execution and challenging the testator's state of mind at the time.

Existence of Fraud in the Execution of a Will

Petitioner does not dispute the due observance of the formalities in the execution of the will, but maintains that the circumstances surrounding it are indicative of the existence of fraud. Particularly, she alleges that respondent, who is the testator's wife and sole beneficiary, conspired with the notary public and the three attesting witnesses in deceiving Placido to sign it. Deception is allegedly reflected in the varying dates of the execution and the attestation of the will.

Petitioner contends that it was "highly dubious for a woman at the prime of her young life [to] almost immediately plunge into marriage with a man who [was] thrice her age x x x and who happened to be [a] Fil-American pensionado,"[11] thus casting doubt on the intention of respondent in seeking the probate of the will. Moreover, it supposedly "defies human reason, logic and common experience"[12] for an old man with a severe psychological condition to have willingly signed a last will and testament.

We are not convinced. Fraud "is a trick, secret device, false statement, or pretense, by which the subject of it is cheated. It may be of such character that the testator is misled or deceived as to the nature or contents of the document which he executes, or it may relate to some extrinsic fact, in consequence of the deception regarding which the testator is led to make a certain will which, but for the fraud, he would not have made." [13]

We stress that the party challenging the will bears the burden of proving the existence of fraud at the time of its execution.[14] The burden to show otherwise shifts to the proponent of the will only upon a showing of credible evidence of fraud.[15] Unfortunately in this case, other than the self-serving allegations of petitioner, no evidence of fraud was ever presented.

It is a settled doctrine that the omission of some relatives does not affect the due execution of a will.[16] That the testator was tricked into signing it was not sufficiently established by the fact that he had instituted his wife, who was more than fifty years his junior, as the sole beneficiary; and disregarded petitioner and her family, who were the ones who had taken "the cudgels of taking care of [the testator] in his twilight years." [17]

Moreover, as correctly ruled by the appellate court, the conflict between the dates appearing on the will does not invalidate the document, "because the law does not even require that a [notarial] will x x x be executed and acknowledged on the same occasion." [18] More important, the will must be subscribed by the testator, as well as by three or more credible witnesses who must also attest to it in the presence of the testator and of one another.[19] Furthermore, the testator and the witnesses must acknowledge the will before a notary public.[20] In any event, we agree with the CA that "the variance in the dates of the will as to its supposed execution and

attestation was satisfactorily and persuasively explained by the notary public and the instrumental witnesses." [21]
The pertinent transcript of stenographic notes taken on June 11, 1985, November 25, 1985, October 13, 1986, and October 21, 1987 -- as quoted by the CA -- are reproduced respectively as follows:

"Atty. Floro Sarmiento:

Q

You typed this document exhibit C, specifying the date June 15 when the testator and his witnesses were supposed to be in your office?

A

Yes sir.

Q

On June 15, 1983, did the testator and his witnesses come to your house?

A

They did as of agreement but unfortunately, I was out of town.

x x x x x x x x

Q

The document has been acknowledged on August 9, 1983 as per acknowledgement appearing therein. Was this the actual date when the document was acknowledged?

A

Yes sir.

Q

What about the date when the testator and the three witnesses affixed their respective signature on the first and second pages of exhibit C?

A

On that particular date when it was acknowledged, August 9, 1983.

Q

Why did you not make the necessary correction on the date appearing on the body of the document as well as the attestation clause?

A

Because I do not like anymore to make some alterations so I put it in my own handwriting August 9, 1983 on the acknowledgement. (tsn, June 11, 1985, pp. 8-10)

Eugenio Gomez:

Q

It appears on the first page Mr. Witness that it is dated June 15, 1983, whereas in the acknowledgement it is dated August 9, 1983, will you look at this document and tell us this discrepancy in the date?

A

We went to Atty. Sarmiento together with Placido Valmonte and the two witnesses; that was first week of June and Atty. Sarmiento told us to return on the 15[th] of June but when we returned, Atty. Sarmiento was not there.

Q

When you did not find Atty. Sarmiento on June 15, 1983, did you again go back?

A

We returned on the 9[th] of August and there we signed.

Q

This August 9, 1983 where you said it is there where you signed, who were your companions?

A

The two witnesses, me and Placido Valmonte. (tsn, November 25, 1985, pp. 7-8)

Felisa Gomez on cross-examination:

Q

Why did you have to go to the office of Atty. Floro Sarmiento, three times?

x x x x x x x x

A

The reason why we went there three times is that, the first week of June was out first time. We went there to

talk to Atty. Sarmiento and Placido Valmonte about the last will and testament. After that what they have talked what will be placed in the testament, what Atty. Sarmiento said was that he will go back on the 15[th] of June. When we returned on June 15, Atty. Sarmiento was not there so we were not able to sign it, the will. That is why, for the third time we went there on August 9 and that was the time we affixed our signature. (tsn, October 13, 1986, pp. 4-6)

Josie Collado:

Q

When you did not find Atty. Sarmiento in his house on June 15, 1983, what transpired?

A

The wife of Atty. Sarmiento told us that we will be back on August 9, 1983.

Q

And on August 9, 1983 did you go back to the house of Atty. Sarmiento?

A

Yes, Sir.

Q

For what purpose?

A

Our purpose is just to sign the will.

Q

Were you able to sign the will you mentioned?

A

Yes sir. (tsn, October 21, 1987, pp. 4-5)"[22]

Notably, petitioner failed to substantiate her claim of a "grand conspiracy" in the commission of a fraud. There was no showing that the witnesses of the proponent stood to receive any benefit from the allowance of the will. The testimonies of the three subscribing witnesses and the notary are credible evidence of its due execution.[23] Their testimony favoring it and the finding that it was executed in accordance with the formalities required by law should be affirmed, absent any showing of ill motives.[24]

Capacity to Make a Will

In determining the capacity of the testator to make a will, the Civil Code gives the following guidelines:

"Article 798. In order to make a will it is essential that the testator be of sound mind at the time of its execution.

"Article 799. To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or shattered by disease, injury or other cause.

"It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act.

"Article 800. The law presumes that every person is of sound mind, in the absence of proof to the contrary.

"The burden of proof that the testator was not of sound mind at the time of making his dispositions is on the person who opposes the probate of the will; but if the testator, one month, or less, before making his will was publicly known to be insane, the person who maintains the validity of the will must prove that the testator made it during a lucid interval."

According to Article 799, the three things that the testator must have the ability to know to be considered of sound mind are as follows: (1) the nature of the estate to be disposed of, (2) the proper objects of the testator's bounty, and (3) the character of the testamentary act. Applying this test to the present case, we find that the appellate court was correct in holding that Placido had testamentary capacity at the time of the execution of his will.

It must be noted that despite his advanced age, he was still able to identify accurately the kinds of property he owned, the extent of his shares in them and even their locations. As regards the proper objects of his bounty, it was sufficient that he identified his wife as sole beneficiary. As we have stated earlier, the omission of some relatives from the will did not affect its formal validity. There being no showing of fraud in its execution, intent in its disposition becomes irrelevant.

Worth reiterating in determining soundness of mind is *Alsua-Betts v. CA*,^[25] which held thus:

"Between the highest degree of soundness of mind and memory which unquestionably carries with it full testamentary capacity, and that degrees of mental aberration generally known as insanity or idiocy, there are numberless degrees of mental capacity or incapacity and while on one hand it has been held that mere weakness of mind, or partial imbecility from disease of body, or from age, will not render a person incapable of making a will; a weak or feeble-minded person may make a valid will, provided he has understanding and memory sufficient to enable him to know what he is about to do and how or to whom he is disposing of his property. To constitute a sound and disposing mind, it is not necessary that the mind be unbroken or unimpaired or unshattered by disease or otherwise. It has been held that testamentary incapacity does not necessarily require that a person shall actually be insane or of unsound mind."^[26]

WHEREFORE, the Petition is DENIED, and the assailed Decision and Resolution of the Court of Appeals are AFFIRMED. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo, pp. 9-25.

[2] Annex "A" of Petition; id., pp. 26-43. Penned by Justice Roberto A. Barrios (Fourteenth Division chair) and concurred in by Justices Perlita J. Tria-Tirona and Edgardo F. Sundiam (members).

[3] Annex "C" of Petition; id., pp. 54-56.

[4] CA Decision, p. 18; rollo, p. 43.

[5] Id., pp. 3-8 & 28-33.

[6] Id., pp. 15 & 40.

[7] The case was deemed submitted for decision on July 14, 2004, upon this Court's receipt of petitioner's Memorandum, signed by Atty. Manuel T. de Guia. Respondent's Memorandum, filed on April 19, 2004, was signed by Atty. Benigno P. Pulmano.

[8] Petitioner's Memorandum, p. 6; rollo, p. 331. Original in uppercase.

[9] Heirs of Saldares v. CA, 420 SCRA 51, January 16, 2004; Heirs of Celestial v. Celestial, 408 SCRA 291, August 5, 2003; Garrido v. CA, 421 Phil. 872, November 22, 2001; Meralco v. CA, 413 Phil. 338, July 11, 2001.

[10] Leviste v. CA, 169 SCRA 580, January 30, 1989.

[11] Petitioner's Memorandum, p. 19; rollo, p. 344.

[12] Id., pp. 14 & 339.

[13] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. III (1992), p. 166.

[14] Pecson v. Coronel, 45 Phil. 216, October 11, 1923.

[15] Cuyugan v. Baron, 62 Phil. 859, January 16, 1936.

[16] Heirs of the Late Matilde Montinola-Sanson v. CA, 158 SCRA 247, February 26, 1988; Pascual v. dela Cruz, 138 Phil. 446, May 30, 1966; Rodriguez v. CA, 137 Phil. 371, March 28, 1969; In the Matter of the Testate Estate of the Juana Juan Vda. De Molo, 100 Phil. 344, November 26, 1956; Barrera v. Tampoco, 94 Phil. 346, February 17, 1954; Pecson v. Coronel, 45 Phil. 216, October 11, 1923.

[17] Petitioner's Memorandum, p. 18; rollo, p. 343.

[18] CA Decision, p. 11; rollo, p. 36.

[19] Article 805, Civil Code.

[20] Article 806, id.

[21] CA Decision, p. 9; rollo, p. 34.

[22] Id., pp. 9-11 & 34-36.

[23] Gonzales v. CA, 90 SCRA 183, May 25, 1979; Vda.de Ramos v CA, 81 SCRA 393, January 31, 1978; Roxas v. Roxas, 87 Phil. 692, December 1, 1950.

[24] Gonzales v. CA, supra; Galvez v. Galvez, 26 Phil. 243, December 5, 1913.

[25] 92 SCRA 332, July 30, 1979 (citing Bugnao v. Ubag, 14 Phil. 163, September 18, 1909).

[26] Id., p. 363, per Guerrero, J.

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