

PASCUAL COSO, PETITIONER AND APPELLANT, VS. FERMINA FERNANDEZ DEZA ET AL., OBJECTORS AND APPELLEES.

G. R. No. 16763. December 22, 1921

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a decision of the Court of First Instance of Manila setting aside a will on the ground of undue influence alleged to have been exerted over the mind of a testator by one Rosario Lopez. The will gives the tercio de libre disposicion to an illegitimate son had by the testator with said. Rosario Lopez, and also provides for the payment to her of nineteen hundred Spanish duros by way of reimbursement for expenses incurred by her in taking care of the testator in Barcelona during the years 1909 to 1916, when he is alleged to have suffered from a severe illness.

The evidence shows that the testator, a married man and resident of the Philippine Islands, became acquainted with Rosario Lopez in Spain in 1898 and that he had illicit relations with her for many years thereafter. After his return to the Philippines she followed him, arriving in Manila in February, 1918, and remained in close communication with him until his death in February, 1919. There is no doubt that she exercised some influence over him and the only question for our determination is whether this influence was of such a character as to vitiate the will.

The English and American rule in regard to undue influence is thus stated in 40 Cyc, 1144-1149.

"Mere general or reasonable influence over a testator is not sufficient to invalidate a will; to have that effect the influence must be 'undue.' The rule as to what constitutes 'undue influence' has been variously stated, but the substance of the different statements is that, to be sufficient to avoid a will, the influence exerted must be of a kind that so overpowers and subjugates the mind of the testator as to destroy his free agency and make him express the will of another, rather than his own.

"* * * such influence must be actually exerted on the mind of the testator in regard to the execution of the will in question, either at the time of the execution of the will, or so near thereto as to be still operative, with the object of procuring a will in favor of particular parties, and it must result in the making of testamentary dispositions which the testator would not otherwise have made * * *"

"* * * and while the same amount of influence may become 'undue' when exercised by one occupying an improper and adulterous relation to testator, the mere fact that some influence is exercised by a person sustaining that relation does not invalidate a will, unless it is further shown that the influence destroys the testator's free agency."

The burden is upon the parties challenging the will to show that undue influence, in the sense above expressed, existed at the time of its execution and we do not think that this burden has been carried in the present case. While it is shown that the testator entertained strong affections for Rosario Lopez, it does not appear that her influence so overpowered and subjugated his mind as to "destroy his free agency and make him express the will of another

rather than his own." He was an intelligent man, a lawyer by profession, appears to have known his own mind, and may well have been actuated only by a legitimate sense of duty in making provisions for the welfare of his illegitimate son and by a proper feeling of gratitude in repaying Rosario Lopez for the sacrifices she had made for him. Mere affection, even if illegitimate, is not undue influence and does not invalidate a will. No imposition or fraud has been shown in the present case.

"Influence gained by kindness and affection will not be regarded as 'undue,' if no imposition or fraud be practiced, even though it induces the testator to make an unequal and unjust disposition of his property in favor of those who have contributed to his comfort and ministered to his wants, if such disposition is voluntarily made." (Mackall vs. Mackall, 135 U. S., 167.)

It may be further observed that under the Civil Law 596

Fourth. That upon payment of his lawful fees, the register of deeds note said right of retention on the back of the transfer certificate No. 526 issued in favor of Lizarraga Hermanos, or of any other certificate standing in lieu thereof, concerning the said building, which note will remain in force until the payment of the aforesaid improvements is made as above ordered. Without pronouncement as to costs in this instance, so ordered.

Araullo, C. J., Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.

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