

**IN THE MATTER OF THE TESTATE ESTATE OF ILDEFONSO
TAMBUNTING Y COSIAM, DECEASED. FILOMENA CONCEPCION,
ADMINISTRATRIX AND APPELLANT, VS. ARSENIA TAMBUNTING AND
CLARA TAMBUNTING, C...**

G.R. No. 22112. November 03, 1924

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

After the appointment of the committee on claims in the proceeding for the settlement of the estate of the deceased Ildefonso Tambunting, Arsenia Tambunting and Clara Tambunting presented their claims for P7,663.48 and P6,999.94, respectively. On July 18, 1923, the committee rendered a partial report to the Court of First Instance of Manila of their proceedings with a list of the claims presented. It appears in this report that the claims of Arsenia Tambunting and Clara Tambunting were admitted. On the 25th of August next, the committee petitioned the court that their report filed with the clerk on July 19, 1923, be amended. At the bottom of this petition there appears the following: "I agree: Filomena Concepcion—Attorneys for the estate of Ildefonso Tambunting y Cosiam."

On the 27th of September next, Filomena Concepcion, administratrix of the estate, gave notice of her intention to appeal from the admission of the claims of Arsenia Tambunting and Clara Tambunting.

It must be noted that the report of the committee was set for hearing by the lower court on July 28, 1923; that on that date, the court, considering that none of the parties in interest had been notified of the report of the committee, and for the purpose of passing upon the said report, ordered the committee to send a copy thereof to the interested parties; that on September 22d next, the lower court, finding that its order of July 28th had not been complied with, ordered the committee to serve a copy of their report upon the parties in interest within twenty-four hours, setting the same again for hearing on Saturday next.

After these proceedings, the court, on November 2, 1923, holding that the appeal taken by the administratrix of the estate from the admission of the claims of Arsenia Tambunting and Clara Tambunting has been filed out of time and that the decision of the committee in favor of those claims was already final, ordered the payment thereof by the administratrix. The latter appealed from this ruling. The only question raised in this appeal is whether or not the appeal taken by the administratrix on September 27, 1923, from the ruling of the committee, admitting the claims of Arsenia Tambunting and Clara Tambunting, as shown in the report filed with the clerk of the court on July 19, 1923, was presented within the time fixed by the law.

Section 773 of the Code of Civil Procedure permits the administrator to appeal to the Court of First Instance from the admission of any claim by the committee on claims. The appeal, according to section 775, must be filed with the clerk of the court within twenty-five days from the filing of the report of the committee. The report of the committee having been filed on July 19, 1923, and the appeal therefrom on September 27th of the same year, said appeal was presented outside of the period of twenty-five days fixed by the law.

The appellant contends that the appeal must be filed after the court has approved or disapproved the report of the committee. This contention finds absolutely no support in law. The law does not require that after the filing of the report of the committee, the court must approve or disapprove it. Upon this point, it is declared that all the actions taken by the court in this proceeding, setting the report of the committee for hearing in order to approve or disapprove it, are not prescribed by the law. If the theory of the appellant were good, the result would be that the appeal would not be from the ruling of the committee but from the ruling of the court approving or disapproving that of the committee. And from this theory an anomaly would result, namely, that by virtue of the appeal interposed from this ruling of the court, the court itself would have to review its own ruling.

The appellant contends also that at any rate the time for filing her appeal must be computed not from the filing of the report of the committee with the clerk, but from the notice of the filing of said report. But even considering the question from this standpoint of view of the appellant, it appears that she had notice of the filing of this report with the clerk of the court on August 25, 1923, when she gave her assent to the petition of the committee that said report be amended. Appellant's assent to this petition implies knowledge on her part, at least from that date, that the report of the committee was on file in the clerk's office. So that even under the theory of the appellant, the time for the filing of her appeal must run from August 25, 1923, and it appearing that this appeal was filed on September 27th next, it was filed outside of the twenty-five days fixed by the law.

The judgment appealed from is affirmed with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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