

IN RE WILL OF HENRY W. ELSE, DECEASED. C. W. ROSENSTOCK, EXECUTOR AND APPELLEE, VS. ELAINE CHILDS ELSE, APPELLANT.

G.R. No. 24659. February 15, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

Upon the death of Henry W. Elser, and on June 21, 1923, C. W. Rosenstock filed a petition in the Court of First Instance of Manila for the probate of Elser's will, and that he, Rosenstock, be appointed as executor of the estate.

August 18, 1923, Judge Diaz admitted the will to probate, and appointed Rosenstock as executor, who later qualified and entered upon the discharge of his duties.

August 30, 1923, the executor filed the following petition:

"Comes now the executor in the above-entitled case and shows the court:

"1. That the work of administering the above-entitled estate is such as to require an unusual amount of time of the executor, owing to the size and involved condition of the estate.

"2. That as manager of the business of the deceased and for administering the said as guardian of the deceased immediately prior to his death and for administering the said estate as special administrator, after the death of the deceased and before the probate of the will of the deceased, the administrator was allowed one thousand pesos (P1,000) per month.

"3. That all parties in the Philippines of interest in the above-entitled case have agreed that the said sum of P1,000 per month, as compensation for the executor, is just and reasonable.

"Wherefore, the executor prays the court that the executor be allowed P1,000 per month as compensation as administrator of the estate in the above-entitled case." October 3, 1923, the court made the following order:

"It appearing from the inventory of the estate filed by the executor and appraised by the committee appointed for the purpose, that the estate in the above-entitled case is unusually large and involved; it further appearing that notice of the said petition was duly served upon all interested parties in the Philippine Islands, who not only did not oppose the petition but joined in the prayer of the same; and it appearing that the compensation asked, in view of the circumstances of the case, is reasonable, and it appearing further that the guardian ad litem of the minor interested in this case, Frederick Johnson Elser, has expressed his concurrence in the petition referred to of the executor herein; no reason appearing why the said petition should not be granted, let the same be granted."

April 15, 1925, the widow of Mr. Elser filed a petition asking that the order of October 3, 1923, be revoked, and that the compensation of the executor should be based upon the provisions of section 680 of the Code of Civil Procedure.

June 13, 1925, Judge Imperial revoked the order of October 3, 1923, and fixed the compensation of the executor at P400 per month, commencing with the 1st of June, 1925. From this order, the widow appeals, contending that the trial court erred in failing to reduce the compensation of the executor to the statutory amount allowed under section 680.

The executor appeals, and assigns the following errors:

"I. The trial court erred in finding that the grounds upon which movent's motion is based were established by the various writings which appear in the record, and particularly by the accounts filed by the executor.

"II. The trial court erred in finding 'that the work which is being done by the executor at the present time has been reduced to much less than half of that which he did when he was appointed and for several months thereafter.'

"III. The trial court erred in reducing the executor's compensation from P1,000 to P400 a month, and in not denying movent's motion."

JOHNS, J.:

The record speaks for itself. At the time of his appointment, all parties agreed that the executor should have and receive P1,000 per month for his services.

The order of October 3, 1923, among other things, recites the agreed facts, and is largely founded upon that stipulation. The present order, reducing the executor's fee to P400 per month, from which both parties have appealed, was made on June 13, 1925, more than nineteen months after the original order was made. That is to say, that at the time the last order was made, Rosenstock had been acting as executor of the estate for more than nineteen months, and, as such, had been administering the affairs of the estate, with the ultimate view of winding up and closing it. It is very apparent that whatever reasons may have existed for allowing him a compensation of P1,000 per month at the time of his appointment have ceased to exist. During that period, all of the assets and liabilities of the estate should have been legally ascertained and determined. In other words, the character and class of the work which now devolves upon the executor is of a very different type and nature now than at the time of his appointment. Although by mutual consent his compensation was fixed at P1,000 per month at the time of his appointment, that was not a valid or binding contract continuous throughout the whole administration of the estate. It was always subject to change and the approval of the court, and to either an increase or decrease as conditions might warrant. At all times the compensation of the executor was a matter largely in the discretion of the probate court.

The original order of October 3, 1923, and the last order of June 13, 1925, were both made in the court in which the probate proceedings were pending, and all matters pertaining to the estate were peculiarly within the knowledge and province of that court, by which all orders were made; and in which all accounts were filed. That is to say, from the date of the appointment of the executor until the order of June 13, 1925, the lower court had before it all of the records, orders, and proceedings growing out of the administration of the estate. Based upon such records, it found as a fact that under all of the existing circumstances the fee of the executor from June 1, 1925, should be P400 per month.

In matters of this nature, the findings and conclusions of the probate court are entitled to much weight, particularly on questions of fact. It appears from the record that the widow-filed a motion for the removal of the executor, and that an exhaustive hearing was had and the motion denied.

It may be that the feeling now shown to exist by the widow against the executor was the primary cause of her motion to have his allowance reduced. Be that as it may, the court of origin, in which the probate proceedings

were pending, made the reduction, and there is ample evidence to sustain its finding.

For the reasons above stated, there is no merit in the appeal of the widow. The judgment of the lower court is in all respects affirmed. Neither party to recover costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.
Johnson, J., did not take part.

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