

INTESTATE ESTATE OF SAMUEL WILLIAM ALLEN. MOORE & SONS MERCANTILE CO., APPELLANT, VS. CARMEN WAGNER, APPELLEE.

G.R. No. 25842. March 18, 1927

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

In the present proceeding for the settlement of the intestate estate of the deceased Samuel William Allen, the court, upon petition of the widow of said deceased, entered, an order, dated March 5, 1925, requiring the administrator to give said widow and her daughter Avelina Allen an allowance of P80. The special administrator appointed in the case objected to the allowance of the widow upon the ground that the estate is insolvent, in view of the claims presented and approved by the committee on appraisal and claims. Attorney P. J. Moore, in behalf of several creditors of the estate, also entered his opposition to said order of the court upon the same ground.

There is no question that the estate is insolvent, inasmuch as it appears from the report of the administrator, which is not contradicted by the widow, that the value of the property of the estate sold by the said special administrator, excluding the expenses amounts to only P899.79 from which must be deducted the sum of P28.82 for expenses incurred, leaving a balance of P870.97, and it must be noted that there still remains to be paid the sum of P50 as commissioner's fee plus the sum of P50 for charges of administration.

It also appears from the record on appeal that the claims against the estate allowed by the said committee amount to P2,457.99.

Notwithstanding this insolvent condition of the estate, the lower court entered the order referred to of March 5, 1925, citing in its support article 1430 of the Civil Code and section 684 of the Code of Civil Procedure.

The only question submitted to this court for decision in the present case is the legality of the order appealed from, in view of the insolvency of the estate of Samuel William Allen. According to section 684 of the Code of Civil Procedure, "The widow and minor children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowances as are provided by the law in force in the Philippine Islands, on and immediately prior to the thirteenth day of August, eighteen hundred and ninety-eight, and the descent of all property and estates to heirs shall be regulated by that law as to all property belonging to intestate estates, and as to all property belonging to the testate estates, but not disposed of by the will of the testator. A husband or wife of the deceased person shall receive such portion of his or her estate not disposed of by will as the said law in force on the thirteenth day of August, eighteen hundred and ninety-eight, gives to him or to her." And the law in force in the Philippine Islands prior to August 13, 1898, is article 1430 of the Civil Code which says:

"The surviving spouse and his or her children shall be given an allowance for their support out of the general estate, pending the liquidation of the inventoried estate, and until their share has been delivered to them, but it shall be deducted from their portion in so far as it exceeds what they may have been entitled to as fruits or

income."

May support be demanded when the liabilities exceed the assets of the estate of the deceased spouse? The judgment of the Supreme Court of Spain of May 28, 1896, resolves this question affirmatively.

"Sometime after the death of her husband, the widow applied for support from the general inventoried estate of the property from the date of the death of the husband until the delivery of her share. The court granted the application and the Audiencia affirmed its decision. The heirs sued a writ of error upon several grounds among which are the violations of the following articles:

"1. Article 1430 of the Civil Code, inasmuch as its wording, letter and spirit show that the allowance granted the surviving spouse is an advance payment to be deducted from such share as may be allotted to him when the same is delivered, and the inventoried credits being greater than the estate left, to give allowance to the widow would be prejudicial to the creditors who are entitled to recover them in their entirety.

"2. Article 148 of the same Code, inasmuch as the order grants support to the widow from the beginning of the liquidation of the inventoried estate, in spite of the fact that the same had not, been applied for until two years thereafter, which is contrary to the provision of said article which requires that support shall be paid only from the date of the filing of the complaint.

"The Supreme Court denied the writ on the ground that it was not proven that the liabilities exceed the assets of the estate, and because the provision of article 1430 of the Civil Code is entirely independent and has no connection with those contained in title 6, book 1, of the same Code, among which is article 148, because they each refer to different kind of rights, and the former cannot be understood as subordinate to the rules and provisions contained in said title and book, which regulate support between persons who, according to law, have the obligation to give it, and those who have the right to receive the same."

Mr. Manresa, commenting on said article 1430 relative to the said judgment of May 28, 1896, wisely observes "That the support does not encumber the property of the deceased spouse, but the general estate, and that by the general estate or the inventoried estate is meant the dowry or capital of the wife; wherefore, even if the indebtedness exceed the residue of the estate, the wife can always be allowed support as part payment of the income of her property. In any case, the support is given prior to the termination of the liquidation of the partnership, and it does not seem logical to deny the same before knowing exactly the result of the liquidation, just because of the fear that the liabilities will exceed the estate, or on the ground of estimates more or less uncertain, and without any sufficient proof of its reality. The judge or the administrator, as the case may be, must grant the support referred, to in article 1430, when the same is requested, and if the creditors believe that they are prejudiced by such an action, by separating from the estate a part of its income, they can appeal to the court therefrom, by satisfactorily proving that there is no property or asset that may, in any case, be allotted to the interested parties. It having proven that no property, either private or conjugal, pertains to the surviving spouse or the heirs of the deceased, the support cannot be granted, because this, in effect, according to article 1430, is only an advance payment on account of the respective share of each partner."

Such is the case now before us. It appears from the record that the liabilities exceed the assets of the estate of Samuel William Allen and that his widow, by her own admission, had not contributed any property to the marriage. Wherefore, it is unlawful, in the present case, to grant the support which is under consideration, because said support, having the character of an advance payment to be deducted from the respective share of each partner, when there is no property to be partitioned, lacks the legal basis provided by article 1430.

The order appealed from is reversed, and the record is remanded to the court of origin for further proceedings, without special finding as to costs.

Avanceña, C. J., Johnson, Street, Ostrand, Romualdez, and Villa-Real, JJ., concur.
Malcolm, J., dissents.

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