

GREGORIO FIGUERAS, PLAINTIFF AND APPELLEE, VS. SIMEON SERRANO, AS ADMINISTRATOR OF THE ESTATE OF LEANDRO SERRANO, DEFENDANT AND APPELLANT.

G.R. No. 28208. September 03, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an action to collect the balance of professional fees, for medical services amounting to P52,229, with P7,310 interest, plus P5,000 damages, and the costs of the action.

Besides filing a general denial and a special defense, the defendant sets up two counterclaims: One for P10,000 damages on account of the plaintiff's having prevented the partition of the estate of the deceased Leandro Serrano among his heirs, by means of a groundless, unreasonable claim of fees; and another for P200,000 damages also, on the ground that Primitiva Serrano lost her eyesight completely, due to lack of diligence and precaution on the plaintiff's part in not having given her proper treatment, in consequence of which the patient suffered hardships and moral depression.

The judgment of the Court of First Instance of Ilocos Sur which tried the case, reads as follows:

"In consideration of the foregoing, the court orders the defendant administrator Simeon Serrano to pay plaintiff out of the funds of the estate of the deceased Leandro Serrano the sum of nineteen thousand one hundred and fortyfour pesos (P19,144) with legal interest from the date of the filing of the complaint, and the costs of the action.

"The plaintiff is absolved from defendant's counterclaim. So ordered."

The plaintiff acquiesced in this decision, but not so the defendant, who appeals assigning the following errors as committed by the trial court:

"1. In not dismissing the complaint for lack of jurisdiction, there being no evidence that the appellee's appeal from the decision of the committee of claims of the testate proceeding for the settlement of the estate of the deceased Leandro Serrano, was taken within the legal period.

"2. In admitting as evidence for the appellee, Exhibits C, H, I, J, E, and N, and in not finding that these exhibits are false and apocryphal.

"3. In holding that the appellee and the deceased Leandro Serrano agreed that said appellee would be entitled to charge P4 for each of the 27 kilometers between Vigan and Cabugao, for the services he would render Primitiva Serrano.

"4. In admitting as evidence Exhibits Q and R, A, B, E, F, G, L, M, O, P, S, T, U, W, W-1, W-2, X, Y, Z, Z-1, Z-2, CC, DD, and BE, presented by the appellee.

"5. In finding that the appellee made 134 medical visits to Primitiva Serrano in Cabugao, and 195 in Vigan,

and that during these 195 visits the appellee gave Primitiva Serrano 161 electrical treatments, 120 intramuscular injections, 132 eye treatments and 192 treatments of both eyes.

"6. In not finding that the appellee made no more than 26 medical visits in Cabugao and 90 visits in Vigan, and that on commencing the treatment of Primitiva Serrano, said appellee agreed to charge P20 for each visit in Cabugao and P2 for each visit in Vigan when the patient was brought to the latter municipality.

"7. In holding that, besides the medical services rendered to Primitiva Serrano by the appellee, he treated Leandro Serrano also, having made 126 visits in Cabugao.

"8. In holding that the reasonable price of the electrical treatments, injections and eye treatments is P15 for each treatment, P5 for each injection, and 92 for each eye treatment.

"9. In ordering appellant to pay the appellee P19,144 with interest and the costs of the action when it should have held that the appellee's fees are already fully paid.

"10. In not upholding appellant's counterclaim and in not ordering the appellee to pay the sum claimed therein."

According to the complaint, the services for which compensation is here claimed consist in medical attendance during the years 1919, 1920, and 1921, on Primitiva Serrano as well as on her father Leandro Serrano, for which purpose the plaintiff, who at that time lived in Vigan, had to make many trips to the town of Cabugao, 27 kilometers distant from where said patients lived. Leandro Serrano is now dead, and the complaint here is directed against his estate, represented by the defendant administrator. It is also alleged therein that Leandro Serrano promised to pay for plaintiff's trips to the town of Cabugao at the rate of P4 per kilometer.

The principal evidence adduced to prove this promise is the letter Exhibit C which is alleged to be addressed to the plaintiff and signed by Leandro Serrano. The defendant assails the authenticity of this letter and the signature at the bottom thereof. Indeed, we notice as to the context that the typewritten characters therein are very similar to those of Exhibit 2 (p. 184 of the record) which is a letter written by the plaintiff's brother. The difference we observe in the typewriting of these documents consists in that in Exhibit C the type is more worn, thus suggesting the fact that it was written later. The prior date appearing in it does not preclude this conclusion, for any date, past or future, may at a given time be written on any document.

A careful examination of Exhibit C reveals some details which bear out the presumption that it was written on the same typewriter as document Exhibit 2.

And the changes and erasures which have not been satisfactorily explained, likewise argue against the admissibility of this exhibit.

The remarkable resemblance almost identical, in point of size and contour, between the signature in Exhibit G and the one in Exhibit J, as may be clearly seen by placing one upon the other, casts serious doubts on, its genuineness. It seems hardly probable that Leandro Serrano should have been able to write two signatures so exactly alike, not only in the curvature at the base of the letters, and in the form of the small as well as the capital letters, but also in the distance between them, the space they occupy, and the slant of the strokes of the whole signature as well as of each letter thereof, and even in the length, contour, and other details of the paraph.

As these details strongly indicate that Exhibit C is not genuine, we cannot consider it as reliable proof in this case. The burden of proof was on plaintiff to show, at least by a preponderance of evidence, that this document was admissible evidence of record, and, in this case, the preponderance militates against the document.

It cannot be held proven, therefore, that Leandro Serrano promised to pay the plaintiff P4 for every kilometer of

his trips to Cabugao on his medical visits.

The preponderance of admissible evidence of record is to the effect that the cost of each of such visits to Cabugao is about P25. Considering plaintiff's social standing, he was entitled to use an automobile as the most adequate mode of transportation.

Exhibits Q and R are objected to by the defendant as not duly identified and as incompetent evidence. It is true that the witnesses Parto and Florendo testified that they recognize the writing in said notebooks as plaintiff's, but there is no proof that the notes in these exhibits were written with the knowledge and consent, or even in the presence, of Leandro Serrano. Neither does it appear that such notes were made at the time of the visits and professional services referred to therein, or that they were written about that time. And the appearance of the writing in these books (Exhibits Q and R) does not show that such notes were made therein on different occasions and at different periods of time, considering the noticeable uniformity of the handwriting and of the color of the ink used (in Exhibit Q), in almost all the entries, notwithstanding the fact that these entries cover a period of over one year.

It is absolutely necessary for the admission of such entries to prove that they were made at or about the time of the transaction to which they relate. Once this is proven they may be admitted to corroborate the testimony of the person who made them.

"Written memoranda made at or about the time of the transaction to which they relate are sometimes admitted in evidence to corroborate the testimony of the person by whom they were made." (22 C. J., 896.)

But the fact is that Exhibits Q and R not only do not meet the requirement as to being contemporaneous, but it appears that the plaintiff who made the memoranda noted therein did not even testify concerning them.

These exhibits cannot, therefore, be taken into consideration to determine the number of visits made by the plaintiff nor that of the times he rendered professional services.

The appellee alleges that said entries are corroborated by the witnesses Florendo, Formoso, Figueras and Arcebal, the first three of whom, chauffeurs who successively took the plaintiff to Cabugao, among themselves fixed the total number of trips to Cabugao at about one hundred, and Arcebal testified that at the time in question, he saw the plaintiff stop in front of the municipal building of Cabugao two or three times a week, going in the direction of Leandro Serrano's house. The number of times testified to by these witnesses, is, as it could not otherwise be as inferred from their own testimony, mere conjecture, without sufficient assurance of approximation, much less exactness. What these witnesses definitely established and wherein they corroborate the notebooks Exhibits Q and R, is that the plaintiff made trips to Cabugao, a fact admitted by the defendant. But as to the number of said trips, which is the point in question, the testimony of these witnesses, with all its uncertainty on this point, cannot be considered as either direct or corroborative evidence.

We therefore find that the plaintiff's evidence does not supply data legally competent to ascertain the number of times he was in Cabugao to render professional services to Primitiva Serrano.

According to the defendant's evidence consisting of Exhibits 6, 7, 9 and 10, identified by Pedro Suero and Simeon Serrano, the plaintiff made twenty-six medical visits to Primitiva Serrano in Cabugao, and ninety in Vigari. Not only are these Exhibits 6, 7, 9 and 10, identified, but it appears from the testimony of Pedro Suero, that he, as former clerk to Leandro Serrano, was enjoined to note down in Exhibits 6 and 7, which are Bristol Almanacs for the years 1919 and 1920, the name of Gregorio Figueras, whenever said physician paid a professional visit to Primitiva Serrano in Cabugao. And it appears from the testimony of Simeon Serrano that he used to record plaintiff's medical visits to witness' sister, Primitiva Serrano, in Vigan, in the almanacs Exhibits 9 and 10 with the

initial 6 and the letters "a. m." or "p.m." according as they were made in the morning or afternoon.

Unlike the entries in Exhibits Q and R, those of Exhibits 6, 7, 9 and 10, are competent evidence, because, in addition to being sufficiently identified by the persons who made them at the time of the visits, their appearance, details, and the fact that they were made at the time of the visits so recorded, render them competent corroborative evidence under the rule above quoted from Corpus Juris (22 C. J., 896) and in accordance with the provision of section 279 of our present Code of Civil Procedure.

Consequently we conclude that the number of visits proven in these proceedings is 26 in Cabugao and 90 in Vigan, and that the evidence shows that the plaintiff is entitled to receive P25 for each visit to Primitiva Serrano in Cabugao and P2 for each visit to her in Vigan, or a sum total of P830, as professional fees. It has not been sufficiently proven that these amounts do not include the fees for the treatment given on such visits, nor that the reasonable price of electrical treatments, injections and eye treatments (which in themselves are not sufficiently established) is P15 for each electrical treatment, P5 for each injection, and P2 for each eye treatment.

It does not appear sufficiently established that the plaintiff rendered medical service to Leandro Serrano.

With regard to the appellant's allegation of lack of jurisdiction, the lower court could take judicial notice of the administration proceedings in which the estate was represented by the defendant and when that court proceeded to hear this case on appeal from the committee on claims, it must be presumed that in doing so, taking judicial notice of the legality of the appeal, it acted in the performance of its duty, and within the scope of its jurisdiction. (Sec. 334, Nos. 14 and 15, Code of Civil Procedure.) And this presumption not having been rebutted by evidence to the contrary, it sufficiently proves the allegation in the first paragraph of the complaint relative to. the perfection of the present appeal from the committee on claims.

We agree with the court a quo that the defendant's counterclaims have not been sufficiently proven.

Having rendered our decision on the determining points of the case, we deem it unnecessary for the purposes of this decision to take up the other assignments of error in detail.

It appearing that the plaintiff admitted, and that the trial judge so held without any objection from said plaintiff, that the latter has already been paid the sum of P1,025 on account of the fees here in question, and as the sum of P830 as above stated to which he is thus entitled is less than that, said fees have already been amply satisfied.

Therefore, the judgment appealed from is modified, and defendant is absolved from the complaint, with costs against the plaintiff. So ordered.

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

DISSENTING

MALCOLM, J.:

The issue in this case is the reasonable value of the professional services performed by Dr. Gregorio Figueras for Leandro Serrano. The issue is not as to whether Dr. Gregorio Figueras is criminally guilty of fabricating the much discussed Exhibit C. With or without Exhibit C, there is sufficient evidence, including the physician's book of account, which establishes satisfactorily the approximate number of visits made by Doctor Figueras to Mr. Serrano and the proper amount for each visit. (30 Cyc., 1603.) The total demanded by Doctor Figueras of the estate of Mr. Serrano coming to over P60,000 is grossly exaggerated. Even the sum of P19,144 granted by the trial judge is too high. Yet there is no need to be so carried away by an enthusiastic desire to condemn unethical

and unprofessional practices in making evidence to establish claims when no such evidence is necessary, as to throw out the action entirely and concede nothing to Doctor Figueras. Figuring on a basis of approximately two hundred visits to Cabugao, the home of the deceased, at P20 a visit and nearly the same number of consultations at the office of the physician at P2 a consultation, and adding a reasonable sum for special services and treatments, and taking into consideration the professional standing of Doctor Figueras, it is my opinion that the physician should be allowed P5,000 for his services. That is my vote and to that extent I dissent.

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