

ESTATE OF THE DECEASED GREGORIO NATIVIDAD. CASIMIRO NATIVIDAD ET AL., PETITIONERS AND APPELLANTS, VS. ALFREDO NATIVIDAD, APPELLEE.

G.R. No. 28296. March 02, 1928

Ponente: MALCOLM, J.

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MALCOLM, J.:

The appellants rely on the sole assignment of error that the lower court erred in denying the petition to set aside the order admitting to probate the pretended will of Gregorio Natividad.

On May 30, 1926, Gregorio Natividad died at the advanced age of 38 years. Following his demise one of his heirs, Alfredo Natividad, offered for probate in the Court of First Instance of Camarines Sur the will of the deceased alleged to have been executed on August 27, 1928. The will was a document of sixteen pages and disclosed that Gregorio Natividad was possessed of a considerable fortune, probably amounting to hundreds of thousands of pesos. A strong predilection for a natural grandchild, Alfredo Natividad, was apparent. Opposition to the probate of the will was filed on July 81, 1926, by the attorney for Casimiro Natividad, a son of the deceased.

Turning directly to the record, it will be found that the case was called for trial at Naga, Camarines Sur, before the Honorable Pedro Tuason, Judge of First Instance, on July 31, 1926. The following appearances were made of record: "El Sr. Vicente Ribaya, por el solidtante; el Sr. Pablo C. Sibulo, por Gregorio Natividad y Casimiro Natividad; el Sr. Fernando Alvarez, por Casimiro Natividad, y el Sr. Jos6 Peñas, por Casimiro Natividad." The subscribing witnesses to the will and Alfredo Natividad were presented as witnesses by the proponent of the will. When the proponent closed his case, the record discloses that the following happened:

"COURT (To the attorneys for the oppositors, Messrs. Alvarez, Sibulo, and Peñas). Do you have any evidence?

"ALVAREZ. We waive the right to present evidence, and we only pray your Honor that instead of appointing the herein petitioner, Mr. Alfredo Natividad, as administrator, one of the children of the deceased be appointed; and for this purpose we propose Mr. Casimiro Natividad, or at least, so far as we are concerned, we may announce for the sake of harmony, that we petition that Mr. Casimiro Natividad be appointed as coadministrator.

"COURT (To Mr. Alvarez). And then you withdraw your opposition to the probate of the will, is that it?

"ALVAREZ and SIBULO. We withdraw.

"ALVAREZ. We withdraw, but we pray the Honorable Court that Mr. Casimiro Natividad be appointed as coadministrator.

"COURT. Is there any thing else, Mr. Alvarez?

"ALVAREZ. Nothing else.

"COURT. It is ordered that the will be admitted to probate, and Mr. Alfredo Natividad is appointed as executor. The amount of the bond to be given by him for the performance of his obligations is fixed at P20,000.

"RIBAYA. That's all.

"ALVAREZ. We submit the case.

"COURT. The court adjourns."

Casimiro Natividad was not present at the hearing. However, the trial judge observed that he was in the courthouse. There is nothing to indicate that Casimiro Natividad authorized his lawyers to compromise the litigation.

On the same date, that is, on July 31, 1926, that Casimiro Natividad filed an objection to the allowance of the will and that the trial was had, the presiding judge signed an order in which, after making mention of the oppositors, Messrs. Casimiro Natividad and Gregorio Natividad, by means of their lawyers, having withdrawn their opposition, it was directed that the document Exhibit A be admitted to probate as the last will and testament of the deceased Gregorio Natividad, and in conformity with its dispositions appointed as administrator the petitioner, Mr. Alfredo Natividad, under a bond of P20,000. Casimiro Natividad alleges that he first became aware of the status of the case on September 7, 1926. Accordingly, on December 14, 1926, a petition pursuant to the provisions of section 113 of the Code of Civil Procedure to set aside the order, was presented in the Court of First Instance on behalf of Casimiro Natividad, Gregorio Estela, Maria Estela, and Miguel Estela, the latter two minors and represented by their guardian. The petition was supported by an affidavit executed by Casimiro Natividad. The petition and a subsequent motion for reconsideration were denied by the court. Hence this appeal.

It will have to be frankly conceded right at the start that the appellee has in his favor a very strong case. In open court, the regularly appointed attorneys for the oppositors withdrew the opposition to the legalization of the will and acceded to what in effect constituted a confession of judgment. With such the state of the record the trial judge could not do anything else than approve of the probating of the will. When later an attempt was made to open and vacate the judgment, the court, acting in good faith and in the exercise of its best discretion, denied the petition.

There are, however, equitable aspects to the case. It must not be forgotten that it was the relief guaranteed by section 113 of the Code of Civil Procedure which was invoked. The application therefor was made within the six months' period after the order was taken but came dangerously near to being outside of what may be considered a reasonable time. The determining factor causes us to consider another section of the Code of Civil Procedure in relation with the question of the respective rights and powers of an attorney and his client.

Section 27 of the Code of Civil Procedure reads as follows:

"Authority to bind their clients.—Lawyers have authority to bind their clients in any action or proceeding, by any agreement in relation to the cause, made in writing and in entering appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash."

The section just quoted was derived from the Code of the State of Georgia (secs. 4417, 4418). Ordinarily, therefore, we would look to the decisions of the Supreme Court of Georgia for guidance.

The Supreme Court of Georgia has taken an advanced position with reference to the power of an attorney to consent in open court to the entry of judgment against his client in a pending cause. It has there been held that the counsel representing a party litigant is competent to represent his client in agreeing to a consent verdict, and that

the judgment so rendered is binding upon the client in the absence of fraud or collusion upon the part of the counsel with whose consent such verdict and judgment is rendered (*Webster vs. Dundee Mortgage & Trust Co.* [1893], 93 Ga., 278; *Adkins vs. Bryant* [1909], 133 Ga., 465). It is to be noted, however, that in one of its more recent decisions the Supreme Court of Georgia has receded considerably from its previous stand in favor of the power of the lawyer (*Davis vs. First Nat. Bank of Blakely* [1913], 139 Ga., 702; 46 L. R. A. [N. S.], 750). It was there said that the Civil Code "does not mean that when a client employs an attorney to bring or defend a suit, it ceases to be the client's litigation, that he has no power to say whether he will litigate or compromise his suit, and that the attorney becomes the owner or absolute master of the litigation, so as to be able to sell or give away his client's property rights by contract, in spite of his client. This is a very different thing from the management of the litigation and agreements connected therewith * * *."

A comparison of the Georgia statute with the Philippine statute discloses certain differences. For example, the Georgia statute is silent as to the limitation on lawyers, without special authority, having no right to compromise their clients' litigation. As has been pointed out by a number of authorities, the compromise of causes and the confession of judgments appear to stand upon the same footing. Inasmuch as the compromise may not be effected by counsel without special authority, so may not an agreement to permit judgment to be entered against his client be authorized except with the knowledge and at the instance of the client. The proceedings in Court to enforce the remedy, to bring the claim, demand, cause of action, or subject matter of the suit to hearing, trial, determination, judgment, and execution, are, within the exclusive control of the attorney. The cause of action, the claim or demand sued upon, and the subject matter of the litigation are all within the exclusive control of the client; and the attorney may not impair, compromise, settle, surrender, or destroy them without his client's consent. So when a judgment has been entered by consent of an attorney without special authority, it will sometimes be set aside or reopened. (6 C. J. pp. 643, 646-648; 76 Am. Dec., p. 259, note *Holker vs. Parker* [1813], 7 Cranch, 436, where it was held by the United States Supreme Court, speaking through Mr. Chief Justice Marshall, that even though an unauthorized compromise by an attorney has assumed the form of a judgment at law, the injured party, if his own conduct has been blameless, ought to be relieved against it; and *Jordan vs. Russell* [8 Ohio Dec. Reprint, 467], where a verdict and judgment entered upon compromise of a will contest, by an attorney for a contestant of the will, without authority, was set aside).

In connection with a correct disposition of the case the point should not be neglected that the rights of minors are involved. In the affidavit subscribed by Casimiro Natividad he solemnly avers that his nephews and niece have relied upon him to object to the probate of the pretended will and that he had agreed to attend to the matter for them. If this be true, it is too plain for argument that no lawyer would have the right to bind minors not otherwise represented at the hearing.

We reach the conclusion that while Casimiro Natividad was negligent, his negligence under the circumstances of the case was excusable, and that the other petitioners have not been negligent. A new trial to bring forth all the pertinent evidence would thus be in order. It may be that such a proceeding will merely result in prolonging the litigation and that it will serve no good purpose. As to that we cannot say. At least a judgment on the merits of the case is preferable. In the interests of justice the judgment appealed from should be set aside.

As responsive to the foregoing, the orders of the trial court are vacated and the record remanded for trial to determine if the will of Gregorio Natividad should be admitted to probate, and without special finding as to costs in this instance, it is so ordered.

Johnson, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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