

CATALINA ASINAS, ASSISTED BY HER HUSBAND FRANCISCO MEDINA, PETITIONER, VS. THE COURT OF FIRST INSTANCE OF ROMBLON AND FELISA ASINAS, RESPONDENTS.

G.R. No. 29038, March 10, 1928

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an original petition for the writ of prohibition filed by Catalina Asinas, assisted by her husband Francisco Medina, against the Court of First Instance of Romblon and Felisa Asinas, praying, for the reasons therein given, that the respondent court be required to refrain from ordering the payment of P200 to the respondent Felisa Asinas and permitting the latter to intervene in the proceeding for the probate of Mauricio Asinas' will, and the administration of his estate; and the said respondent Felisa Asinas to refrain from performing any act with respect thereto.

The pertinent facts necessary to the solution of the legal question raised in the present instance, briefly stated, are as follows:

On August 9, 1926, an application for the probate of what purports to be the will of the deceased Mauricio Asinas, a resident of the municipality of Looc of the Province of Romblon was filed in the office of the clerk of the Court of First Instance of Romblon.

Opposition was entered to said application by the respondent Felisa Asinas, alleging that she is an acknowledged natural daughter of Mauricio Asinas, and by Justo Asinas, brother of said deceased.

In view of the fact that the petitioner Catalina Asinas denied Felisa Asinas' right to intervene in the proceeding for the probate of said alleged will, the court proceeded to determine whether said respondent is really an acknowledged natural daughter of the deceased Mauricio Asinas.

After hearing the parties, and upon consideration of the evidence adduced, the respondent court, in spite of petitioner's objection, authorized Felisa Asinas to intervene in said probate proceeding as well as in the administration of the said deceased's estate, and granted her, moreover, P200 travelling expenses for herself and her witnesses, chargeable to the funds under administration.

The petitioner took exception to said rulings issued by the respondent court and moved for a reconsideration, but said motion was denied by its order of November 19, 1927.

The question to be determined in the present instance is whether or not the respondent court exceeded its jurisdiction in authorizing the respondent Felisa Asinas to intervene in the proceeding for the probate of the alleged will of the deceased Mauricio Asinas and the administration of his estate, as well as in ordering that the expenses incurred by her appearance in court and that of her witnesses, amounting to P200, be charged to the funds under administration.

Section 630 of the Code of Civil Procedure, in requiring the publication in a newspaper of general circulation in the province, for three consecutive weeks, of the date fixed by the competent court for the probate of a will, in order to afford all those interested an opportunity to appear and oppose said probate, does not specify who are the interested parties who may appear, nor what proof they must submit to show such interest.

In the case of *Paras vs. Narciso* (35 Phil., 244), this court laid down the following doctrine:

"WILLS; PROBATE; PARTIES TO PROCEEDINGS.—Before any person may intervene in proceedings had in a Court of First Instance for the probate of a will, he should be required to show an interest in the will or the property affected thereby either as executor or otherwise, and strangers should not be permitted over the objection of the real parties in interest to embarrass the proceedings by meddling or intruding themselves in matters with which they have no concern.

"ID.; ID.; ID.; INTERVENTION BY STRANGER.—But the mere fact that a stranger has been permitted to oppose or contest the probate of a will is not reversible error and does not invalidate the proceedings where no objection is interposed by any of the parties in interest. The judgment of the court in probate proceedings is not based on the fact that there is or is not opposition to the probate of the will, but upon the production of evidence which discloses that there are or are not sufficient grounds for the admission of the will to probate."

A person alleging an interest in opposing the probate of a will as an acknowledged natural daughter need not conclusively prove the existence of such a civil status, or that such status has been judicially declared; it is sufficient that there be prima facie evidence to that effect. This is not only because the law does not require it, but because section 753 of the same Code provides for the determination of the persons entitled to receive the rest of the property in the said administration proceeding after the debts, funeral and administration expenses have been paid. (*Pimentel vs. Palanca*, 5 Phil., 436; *Torres vs. Javier*, 34 Phil., 382; *Severino vs. Severino*, 44 Phil., 343; *Briz vs. Briz and Remigio*, 43 Phil., 763.)

As to the respondent's (Felisa Asinas') right to intervene in the appointment of an administrator and in the estate, that is nothing more than a logical consequence of her right to oppose the probate of the will.

For the foregoing, we are of the opinion, and so hold, that the respondent court did not exceed its jurisdiction in permitting the respondent Felisa Asinas, upon producing prima facie evidence of her condition as an acknowledged natural daughter of the deceased Mauricio Asinas, to oppose the probate of the said deceased's will, and to intervene in the appointment of an administrator of the property left by him.

With regard to the question as to whether or not the respondent court exceeded its jurisdiction in ordering that the expenses incurred by the respondent (Felisa Asinas) and her witnesses be paid from the funds under administration, this court laid down the following rule in the case of *Lizarraga Hermanos vs. Abada* (40 Phil., 124):

"The expenses of administration should be those necessary for the management of the property, for protecting it against destruction or deterioration, and possibly for the production of fruits; but the sum expended by an administrator of an extensive administration of the estates of the decedent cannot be considered 'expenses of administration.' "

There can be no doubt that the expenses incurred by the respondent Felisa Asinas for her appearance and that of her Witnesses, with a view to establishing her right to oppose the probate of Mauricio Asinas' will, cannot be considered as administration expenses, inasmuch as they are not necessary either for the management of the property or its protection from destruction or deterioration, or for the production of fruits. Although a Court of First Instance has jurisdiction to authorize a judicial administrator of a decedent's estate to make certain expenses for the benefit of said estate, or to approve those already made, such jurisdiction is confined to expenses strictly

necessary for the good management thereof.

In ordering, then, that the P200 expenses incurred for the appearance of the respondent and her witnesses be paid out of, and charged to, the funds under administration, the respondent court exceeded its jurisdiction.

The respondent court's resolution ordering the payment of said expenses to be charged to the funds under administration, is final in character, since by it a claim of the respondent (Felisa Asinas) is granted, without the administrator or the petitioner having had a day in court, and notwithstanding their subsequent opposition, thus giving an end to the controversy; and as such it is appealable, without the necessity of waiting for the termination of the administration.

As there is another plain, speedy and adequate remedy in the ordinary course of justice, namely, an appeal, prohibition cannot lie (*So Chu and Limpangco vs. Nepomuceno and Reis*, 29 Phil., 208; *Quimpo vs. Salas*, 41 Phil., 353).

Summarizing the foregoing, we hold:

- That a Court of First Instance does not exceed its probate jurisdiction in authorizing one claiming to be an acknowledged natural child of a decedent to intervene in the probate of the alleged will of said decedent, upon presentation of prima facie evidence of such civil status. And,
- That although a Court of First Instance does exceed its jurisdiction in ordering the payment from the funds under administration of the expenses incurred by a presumptive heir for his appearance and that of his witnesses with a view to opposing the probate of an alleged will of his predecessor, because such expenses are not necessary to the management of the estate, or for its productivity, yet said decree being of a final character and appealable, and there existing a plain, speedy and adequate remedy, such as an appeal, the writ of prohibition cannot be issued.

By virtue whereof, the remedy applied for is denied, and the application is dismissed, with the costs against the petitioner. So ordered.

Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

CONCURRING

OSTRAND, J.:

I concur in the result of the decision of the court, but I think it well to call attention to the fact that the record indicates that the respondent Felisa Asinas has not as yet established a prima facie case as to her claim to the status of a recognized natural child of the deceased Mauricio Asinas (see articles 131, 135 and 137 of the Civil Code in connection with the cases of *Concepcion vs. Untaran*, 38 Phil., 736 and *Samson vs. Corrales Tan*, 48 Phil., 401).

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