

TIBURCIO LUTERO ET AL., PLAINTIFFS AND APPELLEES, VS. ROSARIO ESLER, DEFENDANT AND APPELLANT.

G.R. No. 29268. October 20, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an appeal taken from the judgment of the Court of First Instance of Iloilo ordering the defendant to pay to plaintiffs P20,000 as professional fees, plus the costs.

The defendant is dissatisfied, and as grounds for the appeal taken assigns several errors as committed by the trial court.

The plaintiffs rendered services as attorneys for the defendant in a case wherein she claimed one-half of some property which she and the now deceased Vicente Tad-y (with whom she had lived maritally for many years, and whom she married a few moments before said Tad-y died) possessed, and which amounted to some P240,000. The plaintiffs studied the case, conferred with the client and her witnesses, undertaking the search of the latter in several municipalities of Iloilo, consulted with the firm of Araneta & Zaragoza, prepared and filed the complaint which they amended several times because the demurrers filed had been sustained, appeared to support the complaint and the amendments presented, appeared and acted as counsel in the several sessions had on the case, prepared and submitted their memorandum to the court, and their answer to the memorandum of the adverse party. And, an adverse judgment having been rendered, they took exception and moved for a new trial, and duly filed the proper bill of exceptions, which was approved.

The plaintiffs incurred expenses in maintaining that litigation, among which those sufficiently established by the evidence are the expenses of attorney Maza, the fees paid for the consultation with attorneys Araneta & Zaragoza, fees paid for a similar reason to attorney Francisco, and those paid for the translation of certain French jurisprudence, amounting in all to P1,525. The other expenses alleged by the plaintiffs are not deemed sufficiently proved.

However, that appeal did not reach its termination because the client entered into negotiations with the adverse party whereby she was to receive one-third instead of onehalf, of said property, which third part amounts to approximately, P75,000. In view of this the appeal was withdrawn and the relations of attorney and client, between plaintiffs and defendant terminated.

The defendant alleges that she delivered to attorney Lutero (T.) the sum of P12,000 as fees, and loaned him P10,000 on a mortgage. The fees referred to by the defendant are not those corresponding to the services detailed above as rendered by the plaintiffs, but to those rendered by said attorney Lutero (T.) in the guardianship of the minor Jose Tad-y, whose guardian was the defendant, and they do not amount to the round sum of P12,000 but to the P11,783.83 approved by the court as a just and reasonable quota litis compensation to said attorney. The loan of P10,000 made in favor of the latter and his wife is not, and cannot be considered attorney's fees.

Therefore, our conclusion is that the plaintiffs have not yet received the fees corresponding to the services which they rendered to the defendant in the aforementioned claim instituted by her.

And, what is the amount of such fees? There was no written contract between the parties. While the plaintiffs allege that the defendant at the beginning agreed upon a quota litis of one-third if they won the case and nothing if they lost it, the defendant asserts that the sum was left to her discretion to fix if the case was won, and nothing would be paid if they lost it. Although attorney Lutero's (T.) statement in this particular seems to us the more credible, we understand that that agreement cannot govern here, inasmuch as the case was not won. But the preponderance of evidence shows that after the adverse judgment had been rendered, and when the negotiations had been entered into and the appeal withdrawn, the parties agreed that the plaintiffs would be compensated for the services rendered following the rule of quantum meruit.

Under the circumstances of the case, this is the just and equitable rule. It is the rule followed in the case of *Montinola vs. Hofileña* (13 Phil., 339), similar to the instant case in that there, the case in which the lawyer rendered services was amicably settled after the trial in the first instance.

Taking into account all the circumstances of the case, we consider the sum of five thousand pesos for fees, and reimbursement of the expenses incurred by the plaintiffs, as just and reasonable.

Wherefore, the appealed judgment is modified and the defendant is ordered to pay the plaintiffs the sum of P5,000, plus the costs of both instances. So ordered.

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

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