

INTESTACY OF ANGEL GUSTILO, DECEASED. AGRIPINO S. GUSTILO, ADMINISTRATOR AND APPELLEE, VS. PERPETUA SIAN, CREDITOR AND APPELLANT.*G.R. No. 30431. March 30, 1929*

Ponente: STREET, J.

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This is an appeal from an order of the Court of First Instance of Iloilo, in the intestacy of Angel Gustilo, deceased, whereby Judge Santamaria denied relief to the appellant, Perpetua Sian, from a previous order made in the intestacy on April 7, 1928, by Judge Fernando Salas.

It appears that on July 7, 1923, Agripino S. Gustilo was appointed administrator of the estate of his deceased father, Angel Gustilo; and on July 30, 1925, the administrator filed his accounts for the years 1923 to 1925, inclusive. On October 15, 1926, the widow of the intestate, in conjunction with other heirs, presented a motion asking for the removal of the administrator, charging him with being negligent, inefficient and self-serving, and with having falsely made to appear in his accounts exorbitant and illegal expenses, ruinous to the estate under administration. On July 16, 1927, the administrator presented a motion asking that he be granted a salary of P3,000 annually. On the same day the administrator presented separate accounts for the years 1925-1926 and 1926-1927. In the first of these accounts there appeared a deficit of P462.25; while in the second there appeared a deficit of P3,222.91. To these accounts opposition was made by Leocadia Majito, one of the creditors, the opposition being especially directed to the annual salary of P3,000 which the administrator credited to himself and the sum of P1,000 paid by him to his attorney. This opposition on the part of Leocadia Majito was reiterated nine days later in a writing in which exception was taken to the distribution of surplus in the amount of P11,304.50. Still later, on August 5, 1927, Leocadia Majito, in a more detailed writing of opposition, pointed out that certain alleged debts had been charged twice to the estate and that no adequate vouchers were exhibited to justify the charges.

On August 23, 1927, Judge Santamaria, before whom, as Judge of the First Branch of the Court of Iloilo, the intestacy had hitherto been heard, disapproved the accounts of the administrator and ordered him to file amended accounts within thirty days. On September 30, 1927, the administrator asked for an extension of time within which to file the required amended accounts. This motion was granted, but no amended accounts were ever filed. On February 28, 1928, the administrator presented for a second time the old accounts without change. On March 26, 1928, Judge Fernando Salas (in the absence of Judge Santamaria) ordered the administrator to present amended accounts within ten days; but, in disregard of this order, Judge Salas, on April 7, 1928, reconsidered the order of Judge Santamaria of August 23, 1927, and at the same time approved the same two accounts. Of this order the opposing creditors do not appear to have received due notice. On June 26, 1928, the attorney for the appellant filed a motion asking for the reconsideration of the order of April 7, 1928, alleging fraud, mistake and surprise. In the same motion application was made for the removal of the administrator and for the forfeiture of his bond. This application we consider to have been made under section 113 of the Code of Civil Procedure; and

it is from an order of Judge Santamaria, expressed with some regret, denying the application to set aside the order of Judge Salas of April 7, 1928, that this appeal is being prosecuted.

There can be no doubt that an appeal lies from a refusal of a court to grant relief in a proper case under section 113 of the Code of Civil Procedure; and it is evident that Judge Santamaria, possibly out of an excessive deference for the prior order of an associate, has failed to give relief where relief was in fact called for. The order of Judge Salas, which is the subject of complaint in this appeal, was in our opinion improvident, to say the least, and made without a reasonable opportunity having been given to the adverse creditors to make effective opposition.

From what has been said it follows that the order from which this appeal was taken is erroneous, and, as prayed in the first assignment of error, we hereby set aside the order of Judge Fernando Salas of April 7, 1928, with the result that the proceedings will be restored to the position in which they stood before that order was entered, except as stated in the next paragraph.

A careful examination of the facts revealed in this record concerning the activities of Agripino S. Gustilo, as administrator of Angel Gustilo, convinces this court that he is not a fit person to be administrator of this estate and that he has not in fact administered it so far with due regard to the rights of other persons in interest. It is the opinion of the court, therefore, that he should be removed and required to render his accounts as administrator, in accordance with the second assignment of error.

The third assignment of error, taking exception to the refusal of the trial court to order the forfeiture of the bond of the administrator, in our opinion contemplates an order that would be premature.

The fourth assignment of error involves a criticism of the court a quo for not seeing that the debts of the estate had been more expeditiously paid; and it supplies no basis for resolution here.

In conclusion, the order of April 7, 1928, above referred to, is abrogated, the administrator, Agripino S. Gustilo, is removed from office, with liability to account, and the cause remanded for further proceedings. So ordered, without costs,

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

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