

IN THE MATTER OF THE ESTATE OF CHARLES C. REAR, DECEASED. J. J. WILSON, ADMINISTRATOR AND APPELLEE, VS. M. T. REAR ET AL., HEIRS AND APPELLANTS.

G.R. No. 31860. October 16, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

It appears from the first inventory of December 27, 1925, that the assets of the estate, including real property, coconut trees, and houses were P15,300, and that the personal property was valued at P5,250, which included 80 head of cattle, carabao and horses of the value of P4,000. Although he was appointed special administrator on November 17, 1925, he never made any report or filed any account of any kind until 1927. Neither did he apply to or obtain an order from the court of any nature during that period, and it appears that the attention of the court was for the first time called to the administration of the estate when the commissioners on claims asked to have their fees paid; otherwise, the court never made any order of any kind from December 27, 1925, to April, 1927. It also appears that at the time of his death, the only debts against the deceased were one in favor of Sewal Fleming which then amounted to P800, and one in favor of J. S. Alano for P500. It appears from the amended final report that in the course of administration, the administrator received the following amounts from the specified sources:

"1925

Nov. 30, Hogs sold (see plant, book)..... W08.50

Sales store (see plant, book)..... 38.02

Dec. 31, Sundry products sold (see plant, book)..... 217.50

Old debt collected.....:..... 6.00

1926

Jan. 31, Sundry farm products..... 76.15

Sales store 104.58

Feb. 28, Sundry products 130.00

Sales store 87.95

Mar. 31, Sundry products 3.00

Sales store 53.12

Apr. 30, Products 117.00

Store 25

May None (Store discontinued)

June 30, Products 2.20

July Do 29.75

Aug. Do 12.80

Sept. Do	18.40
Oct. None.	
Nov. Do.	
Dec. Do.	
1927	
Jan. Products	16.00
Feb. Do	166.60
Mar. Products	15.00
Cash received from Constabulary.....	20.91
Apr. Products	13.50
May Do.....	5.00
June Do	10.00
July Carabao sold	100.00
Two steers sold.....	160.00
Aug. Hogs sold	79.50
Few nuts sold	8.00
Sept. Two steers sold	180.00
Nuts sold	12.00
Oct. \$50 U. S. Liberty Bond & Interest.....	127.52
The total of which is.....	1,919.25"

From which it appears that on November 30, 1925, the administrator sold hogs for P108.50; in July, 1927, he sold one carabao for P100 and two steers for P160; in August he sold hogs for P79.50; and in September he sold two steers for P180.

Strange as it may seem, the above is the only account which was ever rendered of the livestock which was appraised at P4,000, and yet no specific objection was ever made or filed to the final account of the administrator for his failure to render any other or different account of the livestock. Even so, it appears that the sale to Mannion was made by and with the consent of the heirs, and that the deed was intended to convey all of the property to him described in the inventory, except that of a perishable nature and some personal effects. It further appears from the amended account that the total amount of cash received by the administrator, including the sale to Mannion was P9,519.25, and that the total amount of cash disbursed by the administrator was P11,328.94, leaving a deficit or balance due and owing from the estate of P1,809.69. It also appears that the amount of Fleming's note at the time it was paid was P1,003.40, and that the taxes for the years 1925, 1926, and 1927 amounted to P152.14, and the claim of J. S. Alano amounted to P500. That is to say, at the time they were paid, the actual claims against the deceased was P1,655.54. Here, it will be noted that the value of the personal property of the estate at the time of Wilson's appointment, appearing over his own signature was P5,800 which included 80 head of cattle, carabao and horses of the value of P4,000. That is to say, at the time Wilson was appointed, his estate had personal property of the value of P5,800, and when the amended final account was filed the actual debts of the deceased, including interest and accumulated taxes, was P1,655.54.

In this situation, it was the legal duty of the administrator to at once apply to the court for an order to sell the personal property to pay the debts of the deceased and the expenses of administration. It also appears from the amended final account that the expenses charged by the administrator was P750.94; that the court expenses, including attorney's fees was P693.20; and that the claims of the commissioners was P322.90, the total of which is P1,767.04. That is to say, that the total of all claims against the deceased, including interest and taxes was P1,655.54, and that the whole amount of the court costs and expenses of administration was P1,767.04, the total of which is P3,422.58. That is to say, at the time of his appointment, it appears over the administrator's own

signature that the value of the personal property of the deceased which came into his possession was P5,800, and the whole amount of claims against Rear at the time of his death and the court costs and expenses of administration was P3,422.58. That is to say, if the personal property of the estate had been promptly sold, when it should have been, and sold for its appraised value, all the debts of the deceased and the court costs and expenses of administration would have been paid, and the estate would have a balance left of P2,377.42. Instead of doing that, and without any order, process or authority of the court, the administrator, as appears from his amended final account, continued the operation of the plantation and the employment of Fleming as manager at a salary of P200 per month, and a large number of men, so that at the time of the filing of the amended final account, the total expense for labor was P2,863.62, and the amount of the manager's salary was P4,533.33, the net result of which was that all of the property of the estate was consumed, lost or destroyed, leaving a deficit against the estate of P1,809.69. Whereas, if the administrator had followed the law and promptly sold the personal property, jail of the debts of the estate would have been paid, and it would have a cash balance in its favor of P2,377.42, and all of its real property left, which was appraised at P15,000.

It is but fair to say that Wilson's place of business, which¹ was in Zamboanga, is at least 300 kilometers from the plantation, and that he declined to serve as administrator and only accepted it under pressure. That in legal effect he operated and left the management of the plantation largely in the discretion of Fleming, and that he personally had but little, if anything, to do with the administration, and it does not appear that he was a party to any fraud. But even so, he was appointed and qualified as administrator, and the law imposed upon him legal duties and obligations, among which was to handle the estate in a business-like manner, marshal its assets, and close the estate without any unreasonable or unnecessary delay. He was not appointed to act for or on behalf of the creditors, or to represent the interests of the heirs only. He should have administered the affairs of the estate for the use and benefit alike of all interested persons, as any prudent business man would handle his own personal business. When appointed, it is the legal duty of the administrator to administer, settle, and close the administration in the ordinary course of business, without any unnecessary delay. Neither does an administrator, in particular, without a specific showing or an order of the court, have any legal right to continue the operation of the business in which the deceased was engaged, or to eat up and absorb the assets of the estate in the payment of operating expenses. Yet, in the instant case, the administrator on his own volition and without any authority or process of court continued the operation of the plantation, and in the end, as shown by his own report, the estate, which was appraised at P20,800, with actual debts of the deceased of only P1,655.54, was all wiped out and lost, and left with a deficit of P1,809.69.

The law does not impose upon an administrator a high degree of care in the administration of an estate, but it does impose upon him ordinary and usual care, for want of which he is personally liable. In the instant case there were no complications of any kind and in the usual and ordinary course of business, the administrator should have wound up and settled the estate within eight months from the date of his appointment.

Ruling Case Law, vol. 11, section 142, says:

"Winding up Business.—An executor or administrator ordinarily has no power to continue the business in which the decedent was engaged at the time of his death; and this is true although he acts in the utmost good faith and believes that he is proceeding for the best interests of the estate. The penalty for continuing a business of the decedent without authority is the imposition of a personal liability on the executor or administrator so doing for all debts of the business. The normal duty of the personal representative in reference to such business is limited to winding it up, and even where the beneficiaries are infants the court cannot authorize the administrator to carry on the trade of the decedent. However, an exception to the general rule is sometimes recognized; and so it has been held that in order to settle an estate the personal representative may, in some cases, be permitted to continue a business for a reasonable time. For example, such personal representative

when authorized to postpone the sale of the testator's effects may generally carry on the business for a reasonable time with a view to its sale as a going concern. Even in such cases the personal representatives are not, however, entitled to embark in the business more of the testator's property than was employed in it at his death." (Citing numerous authorities.)

The same principle is also laid down in Cyc, vol. 18, p. 241, where it is said:

"C. Engaging in Business—1. General Rule. The general rule is that neither an executor nor an administrator is justified in placing or leaving assets in trade, for this is a hazardous use to permit of trust moneys; and trading lies outside the scope of administrative functions. So great a breach of trust is it for the representative to engage in business with the funds of the estate that the law charges him with all the losses thereby incurred without on the other hand allowing him to receive the benefit of any profits that he may make, the rule being that the persons beneficially interested in the estate may either hold the representative liable for the amount so used with interest, or at their election take all the profits which the representative has made by such unauthorized use of the funds of the estate."

Even so, considering the fact that Wilson's home and place of business was 300 kilometers from the plantation, and that in the very nature of things, he could not give the business of the estate his personal attention, we are disposed to be more or less lenient, and to allow him the actual operating expenses of the plantation for the first eight months of his appointment amounting to P2,257.45. Although the expense account of the administrator and the claims of the commissioners are somewhat high, we are also disposed to allow those claims. That is to say, in his final account, the administrator should have credit for the following items:

His personal charges and expenses.....	P750.94
Court expenses, including attorney's fees.....	693.20
Claims of the commissioners.....	322.90
Expenses for and on account of operation for the first eight months	2,257.45
Debts against the deceased, including taxes.....	1,655.54
or a total of	5,680.03

As stated, it appears from his report that the administrator in the course of administration received P1,919.25 from the sale of personal property. This with the P7,600 which he received from the remaining assets sold to Mannion make a total of P9,519.25 from which should be deducted P5,680.03, for and on account of the items above stated, leaving a balance due and owing from the administrator to the heirs of the deceased of P3,839.22.

As stated, it is the duty of the administrator of an estate to represent and protect the interests of all interested persons, including the heirs of the deceased. It is very apparent upon their face that the entries in Exhibits D and E were not made in the ordinary course of business, and even if they were, they would not be evidence of the payments without the corresponding receipts or vouchers. That is to say, to entitle the administrator to credit for money paid out in the course of administration, he should submit and file with the court a corresponding receipt or voucher. Even so, it appears from the record that during his lifetime, the deceased employed a number of laborers on the plantation, and that after Wilson was appointed as administrator, Fleming personally took charge of and operated the plantation, and that the expense of which for the first eight months was P2,257.45.

The order of the lower court approving the final account of Wilson as administrator is reversed and set aside, and a judgment will be entered in favor of the heirs and against the administrator for P3,839.22, with interest thereon from November 7, 1927, at the rate of 6 per cent per annum, without prejudice to any remedy which the heirs may have against the bondsmen of the administrator. The appellants to recover costs. So ordered.

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

Ostrand, J., reserves his vote.

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