

IN RE WILL OF GREGORIO NATIVIDAD. JOSE ALVAREZ, CREDITOR AND APPELLEE, VS. CASIMIRO NATIVIDAD ET AL., OPPONENTS AND APPELLANTS.

G.R. No. 34648. February 18, 1932

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

According to the evidence of record and to the decision rendered by this court in *Natividad vs. Natividad* (51 Phil., 613), on March 2, 1928, from which the present case originated, Gregorio Natividad died on May 30, 1926. One of the heirs, a natural grandson by the name of Alfredo Natividad, propounded a will in the Court of First Instance of Camarines Sur, alleged to have been made by the deceased on August 27, 1923. Casimiro and Gregorio Natividad, together with the other heirs named Gregorio, Maria, and Miguel Estela, the last two minors being represented by their guardian, opposed the probate of the will.

At the hearing of the case, Attorney Vicente Ribaya appeared for the proponent, and attorneys Pablo Sibulo, Fernando Alvarez, and Jose Pefias for the opponents, the Estela heirs being represented in the case by their uncle, Casimiro Natividad. After the proponent's evidence was all in, the court, addressing counsel for the opponents, Alvarez, Sibulo, and Peñas, asked:

"Have you any evidence? To which attorney Alvarez answered:

"We waive the presentation of evidence, your Honor, and pray only that instead of appointing proponent Alfredo Natividad administrator, Your Honor, name one of the testator's children. We propose Mr. Casimiro Natividad. Or, we pray that at least in the interests of harmony, Mr. Casimiro Natividad be appointed coadministrator.

"COURT. (To Mr. Alvarez.) And you withdraw your opposition to the probate of the will?

"ALVAREZ and SIBULO. We do.

"ALVAREZ. We withdraw our opposition, but pray your Honor to appoint Mr. Casimiro Natividad coadministrator."

The court admitted the will to probate and appointed Alfredo Natividad executor, fixing the required bond at P2000.

Casimiro Natividad was not present at the hearing, but the trial judge was aware that he was in the courthouse. Casimiro Natividad, however, had not authorized his lawyers to compromise the litigation, and on the same day (July 31, 1926) the will was admitted to probate, he entered his objection to the will. And on September 14, 1926, a petition under section 113 of the Code of Civil Procedure to set aside the order admitting the will to probate was filed on behalf of Casimiro Natividad and Gregorio, Maria, and Miguel Estela, the last two being minors represented by their guardian. This petition and a subsequent motion for reconsideration were denied by the court, whence the appeal in said case of *Natividad vs. Natividad*, supra.

In deciding that appeal, the Supreme Court relied upon section 27 of the Code of Civil Procedure, which provides that lawyers 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, citing the rulings of the Supreme Court of Georgia in *Davis vs. First National Bank of Blakely* ([1913], 139 Ga., 702; 46 L. R. A. [N. S.], 750); *Holker vs. Parker* ([1813], 7 Cranch, 436) ; and *Jordan vs. Russell* (8 Ohio Dec. Reprint, 467).

Further considering that the case involved the interests of two minors, the court decided to grant a new trial to bring out all the pertinent evidence. Accordingly it vacated the order in question and remanded the record for trial to determine if the will of Gregorio Natividad should be admitted to probate.

On April 30, 1927, or a year prior to the decision of this court above-mentioned, the committee on claims and appraisals adopted the following resolution:

"Whereas no claim having been presented since March 21st with regard to the testamentary proceedings of the Estate of the late. Gregorio Natividad, although publication has been made in the newspaper 'Bicolandia' published in the capital, Naga, and notices have been posted in the most public places of this locality as well as in other municipalities of Partido Lagonoy, all further proceedings in the premises are hereby suspended with respect to the undersigned committee, unless the Court of First Instance orders that they should continue acting in said capacity, should any claim be presented hereafter. Resolved until further orders. (Sgd.) Sebastian Moll, Member.

(Sgd.) FRANCISCO ALGARATE, Member."

The record having been remanded to the Court of First Instance of Camarines Sur, Casimiro Natividad, the testator's son was appointed coadministrator of the estate on October 4, 1928. On November 9, 1928, Dr. Jose Alvarez moved the court to extend the session of the committee thirty days, in order that it might hear and pass upon his P10,774 credit, for which he was about to put in a claim. On November 27, 1928, counsel for the opponents answered this motion, objecting thereto. On January 10, 1929, the court ordered the committee to act thirty days longer to give the movant, Doctor Alvarez, an opportunity to file his claim. On January 29th, counsel for the opponents filed another motion praying that Sebastian Moll and Francisco Algarate be removed from the committee on claims, and that Lino Cabaero and Pedro Briones be named in their stead, upon the following grounds:

"1. The said members are incompetent to discharge their duties.

"2. The said members committed perjury.

"3. The appointment of said members was recommended by Alfredo Natividad whose interest is diametrically opposed to the herein oppositors.

"4. The newly proposed appointees are competent and honest persons."

On January 26, 1930 (this should be 1929) Casimiro Natividad, the coadministrator, received the following notice:

"Mr. CASIMIRO NATIVIDAD: The committee on claims and appraisals with reference to the estate of the late Gregorio Natividad is now sitting in special session to hear Dr. Alvarez's claim for professional fees in the amount of P10,210. Inasmuch as this case will adversely affect the heirs, you should be present to oppose this claim. We shall await you. Yours; Mr. FRANCISCO ALGARATE."

Upon receipt of this communication, Casimiro Natividad sent back the following reply:

"I cannot at this time go there I expect— (the next word is illegible because the figure '300' has been scrawled

over it to show the page of the record containing this reply) — the decision of the Manila lawyers and the other heirs who are not here. Yours, C. Natividad."

On January 27, 1929, the committee filed its additional report reading as follows:

"On January 26, 1929, at the reopening of its session by this committee on claims and appraisals, Dr. Jose Alvarez and the executor-administrator Alfredo Natividad appeared, but not the coadministrator, Casimiro Natividad, who asked to be excused because he was still awaiting his lawyers instructions. Nevertheless the claimant-creditor Jose Alvarez served him with notice in due form, and this committee before reopening its session sent him the official notice (see appendix No. 1) attached to this report.

"At 2 p. m. the committee reopened its session to hear and pass upon Dr. Jose Alvarez's claim as set forth in his pleading which, with his evidence, is attached to this report as appendix No. 2 and No. 3. The claimant asked for ten thousand two hundred and ten pesos (P10,210) against the estate, for professional medical services rendered to the late Gregorio Natividad during his illness; and as it appeared to the committee that the administrators of the estate had been duly notified of the hearing, it proceeded to hear Dr. Jose Alvarez's evidence in support of his claim.

"Dr. Jose Alvarez was examined under oath with reference to his claim against the estate, and it appears that he had rendered professional services to the late Gregorio Natividad during the latter's illness for the time mentioned in his bill (Exhibit A), which was adduced in evidence, and that the executor-administrator Alfredo Natividad admits both that the creditor really rendered such services and that they have not been paid for either wholly or in part.

"Whereas no evidence was adduced against this claim by the executor or the administrator of the estate, the committee hereby admits Dr. Jose Alvarez's claim, of ten thousand two hundred and ten pesos (P10,210) as a credit against the estate of Gregorio Natividad, with interest at six per cent per annum from the date of the claim,, all of which is to be paid to said creditor.

"Another claim was filed by Fr. Sinforoso Ubalde, the parish priest of Tigaon, through Mr. Casimiro Natividad, for burial fees with reference to the late Gregorio Natividad. Whereas this credit is rather against the heirs than the estate, and inasmuch as the committee has re-opened its session for the sole purpose of passing upon creditor Jose Alvarez's claim, pursuant to the order of the court, the committee hereby disallows the claim.

"Summary of credits claimed against estate:

"Dr. Jose Alvarez: P10,210 at 6 per cent per annum. Allowed. Father Sinforoso Ubalde. Disallowed.

"In witness whereof we sign these presents at Tigaon, Camarines Sur, upon this 27th day of January, 1929.—
(Sgd.) FRANCISCO ALGARATE, Member. (Sgd.) SEBASTIAN MOLL, Member."

This additional report was received in the office of the clerk of the Court of First Instance on February 6, 1929, and the appellants were given notice of the fact.

On February 18, 1929, the opponents filed the following motion:

"Come now the oppositors and the administrator Casimiro Natividad in the above entitled cause, and respectfully state:

"1. That a notice was served on the undersigned by the clerk of this court, informing us of an additional report submitted by the actual committee on claims and appraisals;

"2. That, up to this time, neither the administrator Casimiro Natividad, nor your oppositors are aware of the nature of said report, they having received no copy of same;

"3. That on or about January 24, 1929, a motion was filed by your oppositors praying, for reasons therein contained, for the discharge of the said committee and the appointment of a new one, said motion being up to this time pending resolution by this court.

"4. That the said committee failed to notify either your oppositors or the administrator Casimiro Natividad of its session or sessions for the allowance or disallowance of any claim or claims to it submitted; and in spite thereof the said committee appears to have allowed claims against the decedent's estate without due hearing and in spite of the further fact that the said administrator asked for a continuance of the hearing requested by Dr. Jose Alvarez in his motion of the 16th ultimo;

"That, so far as the undersigned are concerned, the said committee has not set any date or dates for the hearing of the claim of said claimant.

"Wherefore, it is respectfully prayed that all the proceedings had up to this time by the said committee be declared null and void, the report disallowed, and that our petition for the discharge of the present members thereof, granted, and new members appointed.—Manila, for Naga, Camarines Sur, P. I., February 14, 1929.—Camus & Delgado.

By (Sgd.) Macario S. Calayag, Attorneys for oppositors and administrator, 313 Masonic Temple, Manila."

Subsequently, i. e., on November 27, 1929, the parties compounded their difference and submitted to the court for decision the agreement transcribed on pages 43 to 46 of the record on appeal; upon hearing thereof on November 29, 1929, the court reaffirmed its order dated July 31, 1926, admitting Gregorio Natividad's will to probate, presented in this case as Exhibit A of the petition.

On January 13, 1930, Dr. Alvarez filed a motion asking the court to approve the committee's additional report and to order the executor to pay his P10,774 credit.

On February 12, 1930, the court entered the following ruling:

"There has been presented to the undersigned for decision, the motion of the creditor, Dr. Jose Alvarez, asking for the approval of the report submitted by the committee on claims and appraisals with reference to the claim against the estate in the amount of P10,210, and that the administrator be ordered to pay him this amount, with the opposition of Casimiro Natividad et al, who, in turn, filed a motion praying for the removal of the present members of the committee, and the appointment of others in their stead.

"With regard to the first motion, a careful examination of all the orders and proceedings of the case, fails to show any sufficient reason for the opponents' contention, particularly with reference to the notice given, for it seems evident that opponent Casimiro Natividad had been notified of the hearing of the claim before the committee, or at least, that he had constructive notice thereof. In so far as to the claim of the oppositors, it should be further observed that whatever anomalies there may have been in the allowance of this claim, the court cannot properly take cognizance of them unless the case be brought up to it on appeal under sections 773 et seq. of the Code of Civil Procedure ; for which reason the motion of the creditor praying that the court approve the report of the committee is likewise improper. There is no law nor judicial usage requiring this court to approve or disapprove the report of the committee, allowing or disallowing the claims filed before it. Such rulings of the committee have the force of a judgment. Therefore, inasmuch as no appeal was taken within the time fixed in section 775 of the Code of Civil Procedure from the ruling of the committee allowing the creditor's claim^ this court is unable, in any manner, to disturb such ruling.

"With regard to the opponents' motion for the removal of the present members of the committee on claims, this raises merely a moot question, for, at any rate, the past acts of these members will not be affected, and, moreover, there are no more claims for the committee to pass upon, as, apparently, all the periods and extensions of time provided in section 690 of the Code of Civil Procedure have been exhausted.

"Wherefore, the opponents' contention is overruled, and the judicial administrator is hereby ordered to pay the amount of this claim to Dr. Jose Alvarez as soon as he has the necessary funds. So ordered.

"Given at Naga, Camarines Sur, this twelfth day of February, 1930.

"(Sgd.) C. M. VILLAREAL

"Judge of the Court of First Instance

"Camarines Norte and Sur"

After a motion for the reconsideration of this ruling had been denied, the opponents presented their appeal against this order of February 12, 1930, and now assign the following errors:

"1. The lower court erred in not declaring that the additional report filed by the committee on claims is null and void on account of grave irregularities, if not illegalities, committed in connection with the allowance of said claim.

"2. The court below likewise erred in not ordering the committee on claims to proceed to publish and post the notice required by section 687 of the Code of Civil Procedure before passing upon the merit of the claim in question.

"3. The lower court likewise erred in not holding that the committee could not have legally met to hear as it did hear the claim in question, without due notice served on appellants in accordance with the law.

"4. The lower court likewise erred in not declaring that the report was null and void on the ground that the committee could not have legally met to hear as it did hear the claim in question while appellants' motion to discharge the members of said committee was pending consideration.

"5. The lower court likewise erred in holding that the additional report has been properly filed even though no notice thereof had been sent by the committee to appellants' counsel.

"6. The lower court likewise erred in holding that no proper appeal had been taken from the additional report filed by the committee."

The appellant prays that the order appealed from be set aside, the additional report of the committee on claims be declared null, and the record be remanded to the court of origin for the purpose of having the proper trial to determine the real merits of Dr. Jose Alvarez's claim, in accordance with section 776 of the Code of Civil Procedure.

One of the grounds alleged by the appellant is that the committee did not notify the administrator's lawyer of the day when Dr. Alvarez's claim dealt with in the additional report would be heard, and did not apprise Casimiro Natividad, the coadministrator, of the date and place of said hearing.

With reference to lack of notice to the administrator's attorney, we are of the opinion that the doctrine laid down in the case of *Palad vs. Cui and Calatrava* (28 Phil., 44), cited by the appellant, is not applicable to the case before us, which is governed rather by section 690 of the Code of Civil Procedure. This section provides that when the court decides to authorize the committee on claims to extend its session beyond the time formerly fixed, the parties are to be served with notice of the date and place of the hearing personally. The notice served on the coadministrator, Casimiro Natividad, by the committee recites that on January 26, 1929, it was sitting in extraordinary session at Tigaon, Camarines Sur, to hear Dr. Alvarez's claim, to which said coadministrator was cited to be present and hear or oppose the claim. But the latter did not respond to the call of the committee, alleging that he was awaiting instructions from his attorneys in Manila and from the other heirs. Therefore, the coadministrator, Casimiro Natividad, was notified of the place and date in which the claim of Dr. Alvarez was to

be heard.

In our opinion, the decision of this case depends upon whether the coadministrator did or did not appeal from the committee's ruling allowing Dr. Alvarez's claim. In accordance with section 775 of the Code of Civil Procedure, it appears that the administrator has not technically appealed from the committee's ruling; but we incline to regard the motion filed on February 18, 1929, as a substantial fulfillment of this provision, as it was filed fourteen days after the committee had submitted its additional report, and it manifests the appellant's dissatisfaction with the allowance of Dr. Alvarez's claim. And we are constrained to place this liberal interpretation upon section 775 in order to do justice to the parties, in view of the several irregularities we have noticed in the record on appeal with reference to the filing and allowance of Dr. Alvarez's claim. This claim was not presented during the ordinary session of the committee on claims and appraisals, but almost one year after this court had promulgated the judgment in the case of *Natividad vs. Natividad*, supra; coadministrator Casimiro Natividad was not given a reasonable time to object to the claim of Dr. Alvarez; and this claim was allowed by the committee without coadministrator Alfredo Natividad's making any effort to protect the interests of the estate against it, and without any further evidence than the sworn statement of the claimant himself, or Dr. Alvarez.

Wherefore, let the order of February 12, 1930, be set aside, and the record remanded to the court of origin in order to afford the parties an opportunity to thresh out the merits of the claim presented by the alleged creditor, Dr. Alvarez, in accordance with the provisions of section 776 of the Code of Civil Procedure, without special pronouncement as to costs. So ordered.

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

IMPERIAL, J.:

I reserve my vote.

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