

ESTATE OF THE DECEASED FRUTO SANTOS MACARIO SULIT, PETITIONER AND APPELLANT, VS. FAUSTA SANTOS ET AL., OPPOSITORS AND APPELLEES.

G.R. No. 34895. March 15, 1932

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from orders of the Court of First Instance of Rizal, disallowing certain items of the account rendered by the executor of the estate of the deceased Fruto Santos. A legal question which has not heretofore been decided in this jurisdiction is presented, and is whether the expenses incurred by an executor or administrator to procure a bond is a proper charge against the estate.

One of the contested items in the account of the administrator which invites but brief comment has to do with a claim of P500 for attorney's fees, which the trial judge reduced to P250. The action of the presiding judge was predicated on the failure of the executor to secure authority from the court for the incurring of expenses for legal services, and on the fact that some of the services performed by the attorney should have been performed by the executor personally. It is well settled that the Court of First Instance has a discretionary right to fix attorney's fees in testamentary proceedings pending before it, and no improper misuse of that discretion is here disclosed.

The trial judge further refused to permit the executor of the estate to secure reimbursement from the estate for money paid as premium on the bond filed by him as special administrator, and for the preparation, filing, and substitution of his bond as such and as executor of the estate, all totalling P173.95. These are the facts from which arise the question suggested in the beginning of this decision.

Our Code of Civil Procedure provides that "Before an executor, or an administrator, enters upon the execution of his trust, and letters testamentary or of administration are issued, the person to whom they are issued shall give a bond in such reasonable sum as the court directs, with one or more sufficient sureties, * * *" (sec. 643). In the event an executor neglects to give a bond, the court may grant letters testamentary to another (sec. 646). Finally, section 680 of the Code provides that "The executor or administrator shall be allowed necessary expenses in the care, management, and settlement of the estate, * * *, and for his services certain specified per diems and percent ages. The case of the Testamentaria de la Finada Felipa. Alonzo y de Mesa, trusteeship of the "Institute Burgos",; Luis Lauchengco, trustee and appellee, vs. Vicente E. Reyes, executor and appellant, No. 24699,[1] which the trial court refused to follow, tout which the appellant contends is decisive of the appeal, was a case in division which related to the construction of a will in determining if the premium for the bonds and attorney's fees should be allowed, and so is neither in point nor" controlling in this instance. In the case of Lizarraga Hermanos vs. Abada ([1919], 40 Phil., 124), this court deduced that the expenses of administration are those necessary for the management of the property, for protecting it against destruction or deterioration, and possibly for the production of fruits.

Turning to the authorities, we find the rule relative to the bond of the executor or administrator announced in

Corpus Juris in the following language:

"In some states the statutes allow the expense of procuring a bond for the representative to be charged against the estate; but in the absence of such a statute it is well settled as a general rule that the amount paid by the personal representative to a guaranty or indemnity company or to individual bondsmen, in order to procure" sureties on his official bond is not chargeable against the estate, in addition to his usual recompense, although a contrary view has been expressed." (24 C. J., 112.)

Woerner in his treatise on the American Law of Administration states the rule even more tersely as follows:

"Unless the statute in terms so provides, (and such is now the case in a number of States) an administrator or executor will not be entitled to charge the estate with money which he paid a surety corporation or trust company for becoming surety on his bond." (Vol. 3, p. 1775.)

We are shown no good reason for not accepting in this jurisdiction the general rule, but out of caution will examine some of the authorities more closely.

The State of California, as an example, in 1905 adopted a statute reading: "Any * * * executor required by law or by order of court to give a bond as such, shall be allowed as part of the lawful expense of executing his trust, the sum paid for such bond, not exceeding, however, one-half (1/2) or one (1) per cent, of the amount of such bond, for each year that the same shall remain in force." The question arose if this law should be given a retrospective effect, but the appellate court held that it should not be thus construed, and that before the act was enacted the expenditure could not have been legally allowed. (In re Richmond's Estate [1908], 99 Pac, 554.) In Missouri, likewise, it was the holding of the Court of Appeals of that State that the law of 1917, allowing administrators a reasonable cost for a surety company bond, does not apply where the bond was secured and the account approved by the probate court before the act was adopted. (In re Buck's Estate [1920], 220 S. W., 714.)

In the State of Texas, the law provided that before the issuance of letters testamentary or of administration the person to whom such letters are granted must enter into bond with at least two good and sufficient sureties. The law further provided for commissions to executors and administrators. Article 3623 of the Civil Statutes specifically provided this: "Executors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe keeping and management of the estate, and all reasonable attorney's fees that may be necessarily incurred by them in the course of the administration:" The Court of Appeals observed "that it is under the last-cited article, if at all, that statutory authority must be found for charging the estate" with the premium paid for the making of the administrator's bond. The court ruled (1) That in the absence of some statutory authority, a premium paid for the making of an administrator's bond is not a proper charge against the estate, but should be borne by the administrator, and (2) that the Civil Statutes, including article 3623, do not authorize the administrator to charge against the estate a premium paid for the making of his bond. (Jarvis vs. Drew [1919], 215 S. W., 970.) The close analogy between the Texas statute and the Philippine statute will not escape attention.

The aforementioned cases, in reality, seem superfluous in ascertaining the true principle. The position of an executor or administrator is one of trust. In fact, the Philippine Code of Civil Procedure so mentions it is proper for the law to safeguard the estates of deceased persons by requiring the executor or administrator to give a suitable bond. The ability to give this bond is in the nature of a qualification for the office. The execution and approval of the bond constitute a condition precedent to acceptance of the responsibilities of the trust. If an individual does not desire to assume the position of executor or administrator, he may refuse to do so. On the other hand, when the individual proffers an adequate bond and has it approved by the probate court, he thereby admits the adequacy of the compensation which is permitted him pursuant to law. It would be a very far-fetched construction to deduce, that the giving of a bond in order to qualify for the office of executor or administrator is a

necessary expense in the care, management, and settlement of the estate within the meaning of section 680 of the Code of Civil Procedure, for these are expenses incurred after the executor or administrator has met the requirements of the law and has entered upon the performance of his duties. (See *In re Eby's Estate* [1894], 30 Atl, 124.)

We feel that the orders of Judge Mapa in this case rested on a fine sense of official duty, sometimes lacking in cases of this character, to protect the residue of the estate of a deceased person from unjustifiable inroads by an executor, and that as these orders conform to the facts and the law, they¹ are entitled to be fortified by an explicit pronouncement from this court. We rule that the expense incurred by an executor or administrator to procure a bond is not a proper charge against the estate, and that section 680 of the Code of Civil Procedure does not authorize the executor or administrator to charge against the estate the money spent for the presentation, filing, and substitution of a bond. Accordingly, the orders appealed from will be affirmed in all particulars, with the costs of this instance against the appellant.

Avanceña, C. J., Johnson, Street, Ostrand, and Romualdez, JJ., concur.

[1] Promulgated March 15, 1926, not reported

Imperial, J., with whom concur Villamor and Villa Real., JJ., concurring and dissenting in part:

We concur with the majority in so far as the attorney's fees are concerned. But for the reasons hereinafter stated, we are of opinion that the appellant should be credited with the sum of P173.95, which he paid for the premium, preparation, and filing of his bond as administrator and substitution thereof.

We agree that the Code of Civil Procedure does not expressly authorize the reimbursement, by way of administration expenses, of the premium the administrator or executor has had to pay upon the bond; but the same is true of attorney's fees, and yet we have uniformly held that such fees constitute legal expenses of administration, for which the administrator is entitled to reimbursement. Since the same reason exists (in both cases), we do not see why they should not be decided the same way.

The law in this jurisdiction defining¹ and regulating the expenses of judicial administration is set forth in section 680 of the Code of Civil Procedure, reading in part as follows:

"How Allowed, for Services.—The executor or administrator shall be allowed necessary expenses in the care, management, and settlement of the estate, * * *"

It is evident that by expenses of administration we are to understand those made for the benefit of an hereditary estate, its care and preservation, and the prevention of deterioration. (*Lizarraga-Hermanos vs. Abada*, 40 Phil., 124.) Undoubtedly the bond upon which the administrator or executor pays the premium is given for the benefit of the inheritance, answering as it does directly for the faithful performance of the charge, to wit, the good care, custody, and preservation of the inheritance. The nature and purpose of the expenses must determine whether or not it is an expense of administration.

"* * * In some states it is provided by statute that any executor or administrator required to give bond may include as a part of the lawful expense of executing his trust the sum paid a bonding corporation for the premium on the administration bond. The rule has been laid down in broad terms that whenever any statute or other law imposes a personal duty upon an executor or administrator to pay money for the benefit of the estate in his care, it follows under the general principles of jurisprudence, without special statutory provision, that the money so paid will be chargeable to the estate, and that in equity at least he will be entitled to reimbursement. * * *" (11 R. C. L., par. 263, p. 235.)

In our opinion, the item of expense under discussion should have been approved as were the attorney's fees.

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