

**THE INTESTATE ESTATE OF JOSEFA GARCIA PASCUAL, APPELLEE,
VS. LUIS PALOMAR BALDOVI, EX-ADMINISTRATOR, APPELLANT.***G.R. No. 4027. August 12, 1908*

Ponente: TORRES, J.

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Luis Palomar Baldovi was appointed judicial administrator of the intestate estate of the late Josefa Garcia Pascual, by the Court of First Instance of Albay, on the 9th of December, 1902, and by order of the said court, on the 20th of April, 1904, he presented the first account of the administration of the, said estate, from the date of his appointment to the 16th of April, 1904, with the statement that the same contained all the details concerning the receipt and disbursement of the moneys pertaining to the intestate succession, and that with the exception of the percentage due him, which had not been included, he was not aware of any error or omission therein which might prejudice any of the parties in interest.

On the 24th of April, 1905, he presented the second yearly account with the details already mentioned, and on the 19th of March, 1906, he rendered his final account with the following, notes: that the rentals of the warehouse in Tabaco, due for the months of November and December, 1905, and January and February, 1900, had not been debited for the reason that they had not been collected, although the receipts therefor had already been signed; that for the same reason the returns from the house in Tabaco and the warehouse in Legaspi, for the latter months, were not shown in the account; that the last sale of hemp made in the latter part of February would appertain to the new administrator; and that the salary of the administrator, which he expected would be fixed by the court, did not appear in the account, nor did the fees of the attorneys Manly and McMahon, nor the cost for a plan made by L. Szily; this account contained the same details as the preceding ones.

On the 21st of September, 1905, the attorneys of Angel Ortiz requested that notice be taken of their appearance on behalf of the latter as a party in interest in these special proceedings and as a creditor to the amount of more than P300,000.

On the 17th of February, 1906, the attorney Tomas Lorayes appeared in court, and asked that his appearance on behalf of the firm of Mendezona & Co. as the creditors of (Merino Aramburu y Garcia, one of the heirs to this intestate succession, be noted.

Under date of March 5, 1900, the attorneys for the creditor Angel Ortiz filed a petition objecting to the first two accounts rendered by the administrator, Baldovi, praying that the approval thereof in the form in which the same had been presented be denied, and that they be ordered to be changed.

On the 8th of March of the "same year, the representative of Mendezona & Co., in liquidation, stated that he concurred in the objection made by the attorneys of Ortiz to the account presented by the administrator, Baldovi.

On March 24, 1906, the attorneys for Ortiz also wrote objecting to the final account rendered by the ex administrator, Baldovi requesting that said accounts be either rejected or approved with such modifications as

might be considered, just.

In the beginning of March, 1906, Baldovi was removed from the office of administrator, and Arlington U. Betts was appointed in his stead; the latter took charge of the administration of the intestate succession on the 13th of the said month.

The question at issue is the approval of the accounting rendered by Luis Palomar Baldovi of the property of the intestate succession of Josef a Garcia Pascual, wife of Ceferino Aramburu y Lambarri, for which he was appointed judicial administrator.

The said Palomar Baldovi, is the husband of one of the heirs to the deceased, and performed the duties of said office for a period of a little over three years.

The cognizance of these special proceedings, and the disposition and settlement of the hereditary property are within the jurisdiction of the Court of First Instance of the Province of Albay, where the said Garcia died, and where all or the greater part of the property forming said succession is located. (Secs. 599 et seq., Code of Civil Procedure.)

Section 672 of said code provides as follows:

"Every executor or administrator shall render an account of his administration within one year from the time of receiving letters testamentary or of administration, unless the court extends the time on account of an extension of the time for selling the estate and paying the debts; and he shall render further accounts of his administration as may be required by the court until the estate is wholly settled; and he may be examined upon oath upon every matter relating to account."

Under this provision and others contained in the same code, it is evident that it was Baldovi's duty to render accounts as administrator of the estate of the said deceased, and that the judge, in his turn, had and has the right to examine them prior to approving the same, whether or not there be any objection or opposition by the parties in interest.

In the above-mentioned proceedings in connection with the intestate estate of Garcia Pascual, and by reason of the appeals interposed by Angel Ortiz on the ground that he is a party in interest in the succession, and by the present administrator, A. U. Betts, it was held by this court that the said Ortiz had no right to intervene as a party in the proceedings, as he was allowed to do by the court below. Nevertheless, his intervention in this matter with respect to the rendering of accounts by Palomar Baldovi, administrator of the estate, does not nullify the proceedings in any respect, even though in the decisions of the court below some of the observations on allegations of the pretended creditor of the estate were, taken into consideration, inasmuch as the judge, after examining the account rendered by the accounting administrator, together with the vouchers and other particulars in support thereof, approved some of the items and disallowed others which he considered unjustifiable and illegal. The action on the part of the judge should be considered entirely apart from the remarks and petitions of the interested party, Angel Ortiz, because the only thing to be considered is, which of the items should be accepted or rejected, according to the vouchers presented by the party rendering the account.

Bearing this in mind, we now come to the examination of the nine errors enumerated by the petitioner Baldovi in his brief. The first, as alleged, consists in not permitting the appellant to make an addition to the account that he submitted to the court below, in respect of his salaries due but not collected.

With regard to this matter, on folio 51 of the printed bill of exceptions to the judgment appealed from it appears that the administrator and, petitioner is entitled to be credited, with the uncollected salaries earned by him in accordance with the rulings of September 12, 1904, and October 2, 1905, until the day he ceased to act. And, by

the order of court of the 22d of September, 1906, folio 59, two items of expenses and per diems amounting to P2,552.68 were approved; for this reason the Court of First Instance of Albay, by an order dated September 26, of said year, refused to consider the pretension of the ex-administrator Baldovi with respect to the presentation of an additional account and the appointing of a day for the admission of new evidence. The resolution of the court below was proper and just in view of the length of time that the appellant has had at his disposal, and of the language of the decisions of March 30 and September 22, 1906, appealed from; and hereinbefore referred to, wherein his claims with reference to salary, per diems and traveling expenses were duly settled.

As to the second error, which according to the appellant, the court below incurred in not acceding to his petition for a new trial for the examination of his accounts, if the new trial was for the purpose of submitting an additional account to include therein his salaries and other expenses, as this point has already been settled in his favor, it is not proper to take it up again in this decision. And if at the new trial it was the intention of the appellant to offer further evidence in connection with other items in his accounts, the court below acted in accordance with the law in denying his request on the 26th of September 1906, because it was offered too late and because such procedure would make the approval of his accounts an interminable question, to the prejudice of the estate and the parties in interest.

Leaving the third error for later discussion, we will now consider the fourth error attributed to the court below in declaring null and void the sale, made under judicial authority by the appellant administrator, of the property situated in Nueva Caceres. Palomar Baldovi was authorized by the court below to sell privately to the highest bidder, the right to redeem the property situated in Nueva Caceres, assessed at P12,000, and forming a part of the said estate; administrator Baldovi, however, exceeding the authority granted him by the court, sold the property outright to Robert E. Manly, for which reason the court below, in the said order of March 30, 1906, declared the sale to be null and void, and ordered the present administrator to return to the purchaser the sum of P1,000 paid for the property, together with the taxes and necessary expenses incurred for the repair and preservation thereof. Said sum having been paid into the estate, the resolution of the court below does not affect Baldovi who, for such reason, can have no interest as to whether the same is complied with or not.

The appellant contends that the court below committed the third and fifth errors in refusing to accept the evidence offered in connection with the reconstruction of the house in Daraga, and in rejecting the expenses incurred in the repairs to the said house, which belonged to the estate administered by him. By the order of the 19th of October, 1903, the court, while denying the right of the administrator, Baldovi, to rebuild houses on lots that belonged to the estate administered by him, authorized him to do only such work as was necessary to keep the property described in good repair (folios 8 and 9); but, acting contrary to the said order, and without authority therefor, he built the house in Daraga on a lot belonging to the intestate estate and with funds belonging thereto; for this reason, the court below, by its said order of March 30, disallowed the expenses incurred in the construction of said house, and ordered the present administrator to hold the same until Palomar Baldovi should refund to the estate the money used in its construction, and to apply the rentals thereof to pay the balance due by Baldovi; thereafter, if necessary, the said house should be sold and its proceeds applied to the payment of his indebtedness. The provisions of sections 679 and 680 of the Code of Civil Procedure, cited by the petitioner, are not applicable to this case.

With regard to the sixth error attributed to the court below, it must be stated that Palomar Baldovi had a longer time than he needed to prepare and arrange his accounts, together with the proper vouchers, in order to comply with his duties as a faithful administrator; but he did not do so, and the natural consequence was that he was unable to justify certain entries made in his accounts, since at pages 60 and 61 it does not appear that the sums expended on other properties were included in: the account of the cost of rebuilding the aforesaid house in

Daraga; and if, notwithstanding the length of the proceedings in connection with this incident and the time he had at his disposal, the accounts that he presented were confused and amalgamated, nobody but himself is to blame for the omission and the error committed because the said three items of the accounts refer only to the house in Daraga.

As to the seventh error, with regard to the interest on the balance that the party accounting should pay to the estate, it is the opinion of the court that, if by an order of the court below dated September 12, 1904, he was granted the right to live gratuitously in a house belonging to the estate he administered, and if by the order of March 30, 1906, the house that he built in Daraga was charged to Baldovi account, he being in turn responsible to the intestate, estate of Josef a Garcia Pascual for the money invested in it, it is not just that he should be compelled to pay interest thereon, at least, during the time he performed the duties of administrator and lived in the house; but he is unquestionably liable for the legal interest thereon since the 6th of March, 1906, when he ceased to officially perform the said duties, and is further responsible for the legal interest on the sum of P1,253.47 which, up to this date, he has not paid into the funds of the estate.

Baldovi, the accounting party, has not proven that a copyist he employed during the period of his administration at the salary fixed by the said order of court of September 12, 1904, folio 13. and, as it would not be proper to allow the salary of a copyist at the rate of P75 per month, when it does not appear that he ever rendered any services to the estate, the disallowance of the item of P1,800 for the salary of a copyist who never existed, and whose services were never required by the said administrator, is in accordance with law.

As to the ninth error imputed to the court below in declaring that the house in Daraga was the property of Baldovi, it must be stated that in the said order of March 30, appealed from, it does not appear as held that the house in Daraga was legally the property of ex-administrator Baldovi. It was stated therein that Baldovi erected the house on a lot belonging to the intestate estate of Garcia Pascual, on his own account and responsibility, with money pertaining to the estate, but without any judicial authority whatever, and for that reason, considering the house as being his own, he was held liable for the reimbursement to the estate administered by him of the sum of P14,844.78 invested in its construction. It was further provided that the present administrator should retain the house and apply its rentals to cover the balance due by the said Baldovi until his indebtedness was liquidated, without prejudice to the sale of the same if it should be found necessary for the purpose. This decision is clearly in accordance with the weight of the evidence and the law.

The order of September 22, 1906, folio 59, has also been excepted to or appealed from by the appellant, but in his printed brief nothing is stated in the bill of errors with reference to said order, nor was it questioned therein; for this reason the decision has become final.

Many and varied are the reasonings which appear in the brief of the appellant as the basis of his claim. He has not, however, shown the impropriety or injustice of the orders appealed from in so far as they concur with this decision. Nor, under the circumstances, and upon the merits, would a reversal be justified.

In view of the considerations above set forth, and accepting such as are stated in the orders of March 30, and September 26, 1906, in so far as they agree with this decision, it is our opinion that the same should be affirmed; provided, however, that Palomar Baldovi shall be sentenced to pay legal interest on the sum of P11,492.32, referred to in the order of the 22d of September, and on the P1,253.47 which he should have delivered to the administrator who succeeded him in office, beginning only from the 6th of March, 1906, when Palomar Baldovi ceased to hold the office, until such time as both amounts shall be paid to the present administrator; and provided further, that he shall be entitled to deduct, from the balance due by him to the said estate, the salaries allowed at the rate of P300 per month from April 22, 1905, to October 1, 1905, and at the rate of P150 per month from

October 2, 1905, to March 6, 1906, being respectively P1,600 and P775, or a total sum of P2,375, with the costs in this instance against the appellant. So ordered.

Arellano, C. J., Mapa, Willard, and Tracey, JJ., concur.

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