

IN RE WILL OF THE DECEASED MARIANO LOPEZ. NATALIA AREVALO, EX-ADMINISTRATRIX AND APPELLEE, VS. CARMEN ADRIANO, OPPOSITOR AND APPELLANT.

G.R. No. 42510, December 21, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the oppositor and coheiress Carmen Adriano from the decision of the court dated December 19, 1933, approving the referee's amended reports of July 3, and August 3, 1933, respectively, which passed upon and determined the semestral account of July 30, 1932, presented¹ by the executrix and coheiress for the period from January 1, to June 30, 1932.

The oppositor's appeal involves only some items of the referee's reports approved by the court, which constitute the subject matter of her assignments of error.

The first assignment of error refers to the extra or additional compensation granted by the administratrix to the employees of the deceased, named Valeriano Toral, Deogracias Tupas and R. Bermudes. The account shows that each of these employees received additional compensation of P20, P10 and P5, respectively, besides their fixed salaries. The referee, a. public accountant as well as an attorney, after investigating their cause and purposes, recommended the approval thereof and the court approved the corresponding items. The appellant contends that this additional compensation had not previously been approved by the court. While this is true, it has been proven that this extra compensation had been authorized by the testator himself, in life, because he was convinced that they were entitled thereto. When he reduced the salaries of all his employees, he deemed it best to make no exception and therefore caused it to appear in the payrolls that he had also included said three employees; but because he believed on the other hand, that their services warranted the salaries they were then receiving, he conceived the idea of paying them the same salaries by handing them the difference in the form of additional compensation. For this reason, we are of the opinion that the first assignment of error is unfounded.

The second assignment of error questions the sum of P20 paid to Ulpiano Sarmiento and the P26 also paid to M. Angeles. It is alleged that inasmuch as the former had been dismissed after the death of the testator, the administratrix was no longer justified in paying him his salary. The salary of said employee was really P75 a month, not P20. Having been dismissed without justifiable cause, the administratrix paid him his salary for the month of February pursuant to the provisions of article 302 of the Code of Commerce. It should be noted that the testator, as pharmacist also engaged in other business, was a merchant, wherefore the administratrix believed in good faith that she was bound by said article of the Code of Commerce. It appears that M. Angeles was a calendar agent and the administratrix had established the plan of retaining 25 per cent of the commissions to which the agents were entitled. The sum of P26 paid to the agent in question was nothing more than his deposit delivered or returned to him by the administratrix upon liquidating his account. We likewise believe that the second assignment of error is unfounded.

The third assignment questions the legality of the item of P1,099.35 approved by the court which, the appellant alleges, should not have been sanctioned because the administratrix was not previously authorized to incur said expense. This amount was used to pay the commissions of the agents who worked in the printing business of the testamentary estate and sold calendars, stationery and other articles; to pay the extra salaries of the laborers who had to work at night in order to meet the demands of the business, and in the expenses occasioned by the suppers which were served to said laborers and employees. The administratrix had incurred all these expenses following the practice established by her husband who incurred the same extra expenses for the benefit of his business. These facts alone justify the approval of the item. objected to and show that the court correctly confirmed the expense incurred by the administratrix. In view of the foregoing reasons, we overrule the third assignment of error.

The fourth assignment objects to the item of P200 paid by the administratrix as expenses of the last illness of her deceased husband for his stay in the San Juan de Dios Hospital. The appellant does not deny the fact that the payment had been actually made but alleges that, according to the report of the referee, said sum of P200 could not form part of the amount of P2,500 withdrawn from the bank by means of checks. Frankly speaking, we find neither force nor merit in the argument because whatever be the place or funds from which the sum in question had been taken, if it has been really employed for a lawful and justifiable purpose, as it so appears, the administratrix has the right to be credited with it in her accounts or to be reimbursed therefor. Said sum is a part of the amount of P1,970 paid to the hospital as expenses of the testator's last illness. While the appellant did not question this gross amount, she opposed the sum of P200 because, as already stated, the referee's report showed that it could not come from the money withdrawn from the bank by means of checks. *The expenses of the last illness of the deceased are legal and proper expenses of administration. We hold that the fourth assignment of error is likewise unfounded.

The fifth assignment of error refers to the item of P5,000 which the court approved because, according to the evidence, it was used to repurchase a certain property. The appellant contends that the transaction was fictitious and the item should have been disapproved. The evidence shows that the testator, in life, needed money to meet certain drafts drawn against him for merchandise which he ordered for his business; in order to meet these drafts, he sold with pacto de retro his property on Camba Street to Angela Sabinosa, for P5,000, both having agreed that he could repurchase it within six (6) months. The repurchase was made during the lifetime of the testator, when he had sufficient funds, and the P5,000 were paid to the then purchaser Angela Sabinosa. However, as the appellant had applied for and obtained from the court that the administratrix state in her account all the expenses incurred during the lifetime of her husband, the latter was compelled to account for the transaction and the disbursement of the sum of P5,000. It follows from all the foregoing that the item in question had been correctly approved because, after all, the administratrix, in stating the item, did no more than justify the entry of the P5,000 received by her husband, in life, as proceeds of the said sale with pacto de retro. We likewise overrule the fifth assignment of error, for being unfounded.

The sixth and last assignment of error objects to the item of P485 which was approved by the court because it had been shown that the money had been paid to Attorney Perfecto Gabriel for services rendered by him. The administratrix states that the true amount thereof is P325, not that mentioned by the appellant. It is undeniable that Attorney Gabriel rendered services to the testator, in life, which consisted in the preparation and ratification of various instruments, conferences with the former in his residence and money advanced for registration fees and documentary stamps. The court appraised said services at the amount above stated. Making use of our own experience as attorneys, we are not inclined to hold that the attorney's fees thus fixed are unreasonable or exorbitant. The reason alleged in support of the disapproval of the item consists in that the instruments prepared by said attorney were declared fictitious and void, first by the lower court and later by this court. We hold that this

result cannot in the least detract from the value of the fees allowed or justify the disapproval of the item in the absence of evidence that Attorney Gabriel had knowledge of or was in connivance with his employer in the commission of the acts which gave rise to the nullity of said public documents. For these reasons, we likewise hold that the last assignment of error is unfounded.

In view of the foregoing, the appealed judgment is affirmed, with the costs of this instance to the oppositor-appellant. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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