

**INTESTATE ESTATE OF THE DECEASED SANTIAGO NICOLAS.
DOMINGO NICOLAS, EX-ADMINISTRATOR AND APPELLANT, VS.
TIMOTEA NICOLAS, ET AL., OPPOSITORS AND APPELLEES.**

G. R. No. 42516. August 22, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Domingo Nicolas, ex-administrator of the intestate of the deceased Santiago Nicolas, from the order of the Court of First Instance of Tarlac, the dispositive part of which reads as follows:

"The court, therefore, approves the two accounts dated August 14, 1933 and March 14, 1934, presented by the ex-administrator Domingo Nicolas, with the amendments above-stated and with a balance of P726.01 in favor of the administration, which sum said Domingo Nicolas must turn over to the administrator Protasio Santos, through the clerk of this court, within the period of twenty (20) days from this date. In case of noncompliance with this order on the part of Domingo Nicolas, let the bond given by said ex-administrator be attached in order to collect said sum of P726.01.

"Let copies of this order be sent by registered mail to the sureties of Domingo Nicolas. It is so ordered."

In support of his appeal the appellant assigns eight alleged errors as committed by the court a quo in its order in question, which will be discussed in the course of this decision.

The first assignment of alleged error consists in that the lower court erred in disapproving the record on appeal presented by the appellant on August 1, 1934, and in ordering the amendment thereof by eliminating certain pleadings, orders, decrees and judgments not related to the order of June 20, 1934, appealed from. The appellant in insisting upon the inclusion of said pleadings, orders, decrees and judgments in the record on appeal alleges as a ground thereof that they constitute the best evidence of the services rendered by him and his attorney. What section 779 of the Code of Civil Procedure requires to be transmitted to this court in case of an appeal from a decree or order approving or disapproving the accounts of an administrator, in accordance with the provisions of section 778, is a certified transcript of the appeal, order, decree or judgment appealed from and of the accounts embraced in the order, the inclusion of any other order, decree or judgment from which no appeal has been taken being unnecessary and superfluous. The appealed order is the one dated June 20, 1934, and accounts partially disapproved therein are those submitted by the ex-administrator-appellant, dated August 14, 1933, and March 15, 1934, respectively, which accounts appear in the record on appeal, as amended by order of the court.

The court a quo, therefore, committed no error in ordering the elimination from the record on appeal of the other pleadings, decrees, orders and judgments not appealed from, which, according to the appellant himself, are nothing more than evidence of the services rendered by him and his attorney.

The second question to be decided, by reason of its procedural nature, which is raised in the eighth and last assignment of alleged error, is whether or not the court a quo erred in not submitting the appellant to an examination under oath and in not holding a hearing on his accounts.

The record shows that the court a quo, on May 21, 1934, ordered the accounts in question to be called for hearing, setting July 18, 1934, at 9.30 a. m. therefor, in order that the parties might present evidence in support of their respective claims, and in rendering its order relative to said accounts on June 20, 1934, the court a quo said:

"Upon calling for hearing the accounts of the ex-administrator Domingo Nicolas, the one dated August 14, 1933, only with respect to Nos. 3, 5 and 6 of the item 'III—Payments', and No. 9 of the item 'IV—Traveling Expenses', and another dated May 15, 1934, there appeared the said ex-administrator Domingo Nicolas in his own behalf and Sisenando Palarca who is opposed to the approval thereof.

"After these accounts were submitted to the court with no more evidence than the vouchers attached to the record, the court, upon hearing the parties and duly considering the items in question, sustains * * *."

It is clear, therefore, that the ex-administrator-appellant Domingo Nicolas was given the opportunity to explain his accounts and present his evidence in support thereof, and that he appeared at the hearing of said accounts. Consequently he cannot now allege, on appeal, that he was not examined under oath and that no hearing was held on the accounts in question.

As to the items 3, 5, 6 and 9 under the heading "III— Payments", consisting in "Money advanced to Attorney Bartolome Domingo, P400", "Partial payment of the debt of the deceased in favor of Miguel Julian, P105.10", "Partial payment to Commissioner Gregorio Gabriel, P100", and "Expenses during the anniversary of the deceased, P36.50", we are of the opinion that the court a quo correctly rejected them on the ground that they had not been authorized by said court and because they had already been discussed in Judge Buenaventura Ocampo's order of November 14, 1933, from which no appeal was taken. Item 9 thereof, consisting in expenses incurred by the appellant on the occasion of the anniversary of the death of the deceased, amounting to P36.50, cannot be considered a part of the funeral expenses nor treated as the erection of a mausoleum which forms part of the sepulture of the deceased, because it bears no relation to the funeral.

With respect to the other expenses and fees which the ex-administrator-appellant seeks to collect and which the lower court rejected, the law only authorizes the administrator to collect for his services as such the sum of P4 for every day actually and necessarily spent by him in the administration and care of the estate of a deceased person, not for every act or task he might perform, even if it were to take only a few minutes to do so, as indicated by the nature of the great majority of the task performed by him, for each and every one of which he seeks to collect P4. Therefore this court is of the opinion that the 18 days granted by the lower court to the ex-administrator-appellant as actually and necessarily spent by him in the performance of his duties, at P4 a day, are reasonable.

As the bills pending payment enumerated in the account of March 15, 1934, are of the same nature as those rejected in his account of August 14, 1933, they should also be rejected for the same reason.

Wherefore, not finding any error in the order appealed from, it is affirmed in toto, with costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Recto, and Laurel, JJ., concur.

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