

ALEKO E. LILIUS. FOR HIMSELF AND AS GUARDIAN AD LITEM OF HIS MINOR CHILD, BRITA MARIANNE LILIUS, AND SONJA MARIA LILIUS, PLAINTIFFS AND APPELLEES, VS. MANILA RAILROAD COMPANY, D...

G.R. No. 42551. September 04, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

In this case Laura Lindley Shuman, the Manila Wine Merchants, Ltd., the Bank of the Philippine Islands, and the Manila Motor Co., Inc., have appealed from an order of the Court of First Instance of Manila fixing the degree of preference of the claimants and distributing the proceeds of the judgment of this court in the case of Lilius vs. Manila Railroad Co. (59 Phil., 758), the amount of which judgment in the sum of P33,525.03, including interest and costs, was deposited by the railroad company with the clerk of the lower court in that case. After deducting the attorneys' fees in the sum of P8,016.88, which is not questioned, the net amount in the hands of the clerk of the lower court pertaining to each of the plaintiffs in the original action is as follows:

Aleko E. Lilius

P13, 181.33

Sonja Maria Lilius

8, 218.54

Brita Marianne Lilius

4, 109.28

There was a total of twenty-eight claimants to these funds, whose claims were presented and decided without objection in the original case in the lower court.

The trial court in its order from which these appeals are taken, allowed:

(a) As against the sum of P8,218.54, separately awarded to the plaintiff Sonja Maria Lilius, the following claims or portions thereof in the order stated:

One-half of the claim of Dr. W. H. Waterous by virtue of a written assignment of March 9, 1933, by the said Sonja Maria Lilius to him

P1,500.00

One-third of the claim of the appellant Laura Lindley Shuman by virtue of a joint judgment obtained by her on August 10, 1933, in Case No. 44254 of the Court of First Instance of Manila, against the said Sonja Maria Lilius, Aleko E. Lilius and Brita Marianne Lilius.

661.13

One-third of the claim of the St. Paul's Hospital by virtue of a joint written assignment of September 21, 1933, by the said Sonja Maria Lilius, Aleko E. Lilius and Brita Marianne Lilius to it

518.19

and the balance of the award was ordered paid to the said Sonja Maria Lilius. (b) As against the sum of P4,109.28, separately awarded to the plaintiff Brita Marianne Lilius, the following claims or portions thereof in the order stated:

One-third of the claim of Laura Lindley Shuman by virtue of a joint judgment obtained by her on August 10, 1933, in Case No. 44254 of the Court of First Instance of Manila, against the said Brita Marianne Lilius, Sonja Maria Lilius and Aleko E. Lilius

P661.13

One-third of the claim of St. Paul's Hospital by virtue of a joint written assignment of September 21, 1933, by the said Brita Marianne Lilius, Sonja Maria Lilius and Aleko E. Lilius

518.18

and the balance of the award was ordered paid to the said Brita Marianne Lilius, and

(c) As against the sum of P13,181.33, awarded to the plaintiff Aleko E. Lilius, the following claims or portions thereof in the order stated:

The other half of the claim of Dr. W. H. Waterous by virtue of the final judgment in the original case, G. R. No. 39587

P1,500.00

The claim of Dr. M. Marfori, by virtue of the final judgment in the original Case, G. R. No. 39587

250.00

The claim of John R. McFie, jr., by virtue of a written assignment to him by the said Aleko E. Lilius of November 13, 1931

500.00

The balance of P10,931.33 of that judgment pertaining to the said Aleko E. Lilius was allowed and distributed by the lower court proportionately among the following claimants by virtue of their written assignment of January 27, 1932:

Erlanger & Galinger, Inc

3,374.50

Philippine Education Co., Inc

3,394.94

Hamilton Brown Shoe Co

1,878.98

Estrella del Norte

1,850.76

Eastern & Philippine Shipping Agencies, Ltd

432.15

APPEAL OP LAURA LINDLEY SHUMAN

First assignment of error: "The lower court erred in holding that Dr. W. H. Waterous and Dr. M. Marfori had a claim against the plaintiff, Aleko E. Lilius, superior to the claim of the appellant, Laura Lindley Shuman, against him."

One of the contentions of this appellant under this assignment of error is that her claim, having been made the basis of the plaintiffs' action and of the award for damages, as shown in the original decision herein, should constitute, and does constitute a superior lien against the funds awarded said plaintiffs, to those of any other claimants, except the two doctors, the hospital and the other nurse, and that as to the claims of the two doctors, the hospital and the other nurse the claim of this appellant has equal preference with their claims.

The following items were made the basis of a part of the judgment for damages awarded to the plaintiffs in the original action against the Manila Railroad Company:

Por honorarios del Dr. Waterous (Exhibit N-2) P3,000.00

Por la primera cura hecha en el Hospital de Calauang (Exhibit N-5) 250.00

Por el alquiler de la ambulancia del Hospital General (Exhibit N-4) 10.00

Por la estancia en el Hospital Saint Paul (Exhibit N-3) 3,355.00

Por los servicios prestados por la enfermera Laura Shuman (Exhibit N-6) 2,156.00

Por los servicios prestados por la enfermera Alexandra Al cayaga (Exhibit N-9) 1,450.00

Por los servicios prestados por la enfermera Carmen Villa nueva (Exhibit N-11) 240.00

Por la perdida de la camara fotografica, pluma fuente y lapiz (Exhibit N-1) 43.00

Por trajes danados en el choque 131.00

Total 10,635.00

The trial court in that case directed the defendant Rail road Company to pay P3,000 to Dr. Waterous and to pay to Dr. Marfori P250, but failed to direct the defendant to pay the corresponding sums to the other persons and entities mentioned in the portion of the decision copied above.

It must be admitted that the amounts due Dr. Waterous and the others mentioned in the original decision, including the appellant Shuman, were all used as a basis for a part of the judgment which plaintiffs secured against the defendant Railroad Company.

From the foregoing it is clear that the claim of this appellant rests upon the same ground as those of Doctors Waterous and Marfori. She was also among those who rendered services to plaintiffs in aid of their recovery from the injuries received by them in the accident for which damages were awarded them in the case against the Rail road Company. The fact that the trial court did not direct the defendant Railroad Company to pay directly to this appellant the amount of her claim does not modify or do away with her equitable right to the same status as that

given to the two doctors mentioned above. The inevitable conclusion is that the claims of Waterous and Marfori have no preference over her claim for her services as a nurse. This assignment of error should be and is hereby sustained.

This appellant in her second assignment of error contends that the trial court erred in failing to allow her claim in the sum of P61.94 as costs in the case in which judgment was rendered in her favor against the herein plaintiffs appellees. The record shows that the reason for the disallowance of this item was because no proof was offered as to the amount of such costs. The only thing appearing in the transcript on this point is the statement of counsel that the amount of costs in case No. 44254, as shown by the bill of costs, was P61.94. Rule 38 of the Revised Rules of Courts of First Instance requires that "costs shall be taxed by the clerk on five days' written notice given by the prevailing party to the adverse party, with which notice a statement of the items of cost claimed by the prevailing party, verified by his oath or that of his attorney, shall be served. * * *" The proper evidence, therefore, of the costs in that case would have been the bill of costs and the taxation of such costs by the clerk. In order to recover such costs in a separate proceeding, such as this, evidence must be presented as to the amount of the same. As there was no evidence offered in this case as to the amount of said costs, the lower court was correct in disallowing that item. This assignment of error is overruled.

Under her third assignment of error this appellant contends (1) that the funds separately awarded the wife, Sonja Maria Lilius, partake of the nature of conjugal property, at least to the extent of the sum of P800 awarded to her as interest on the principal award of P10,000 made in her favor by the trial court, and as such should respond for the support of the family, including medical expenses and (2) that even assuming that the sums awarded separately to Sonja Maria Lilius are not conjugal property, but her own paraphernal property, still under the provisions of the Civil Code payment may be required out of said funds, her husband being insolvent, under her liability for the medical expenses incurred by her husband, one of the obligations imposed by law upon the wife.

The second contention under this assignment of error can be disposed of by calling attention to the fact that there is no proof in this case that her husband is insolvent. It has not been proved that Aleko E. Lilius had no other property outside of the sum awarded to him in the case against the Railroad Company.

APPEAL OF THE MANILA WINE MERCHANTS, LTD., AND THE BANK OF THE PHILIPPINE ISLANDS

The appellants, the Manila Wine Merchants, Ltd., and the Bank of the Philippine Islands also contend that the sum separately awarded Sonja Maria Lilius is conjugal property and therefore liable for the payment of the private debts of her husband, Aleko E. Lilius, contracted during her marriage.

It is contended that damages awarded for personal injury are not classified as separate property of each of the spouses in article 1396 of the Civil Code and they should therefore be presumed conjugal. In answer to this, article 1401 of the same Code, in enumerating the property belonging to the conjugal partnership, does not mention damages for personal injury.

The question raised by these appellants is one of first impression in this jurisdiction and apparently has never been passed upon by the Supreme Court of Spain.

The following comment is found in *Colin y Capitant*, Vol. 6, pages 217 and 218:

"No esta resuelta expresamente en la legislaci6n espa fiola la cuestion de si las indemnizaciones debidas por accidentes del trabajo tienen la eonsideraci6n de gananciales o son bienes particulares de los conyuges.

"Inclinan a la solucion de que estas indemnizaciones deben ser consideradas como gananciales, el hecho de que la sociedad pierde la capacidad de trabajo con el accidente, que a ella le pertenece, puesto que de la

sociedad son los frutos de ese trabajo; en cambio, la consideration de que de igual manera que los bienes que sustituyen a los que cada cónyuge lleva al matrimonio como propios tienen el caracter de pro 4 pios, haee pensar que las indemnizaciones que vengan a suplir la capacidad de trabajo aportada por cada conyuge a la sociedad, deben ser juridicamente reputadas como bienes propios del conyuge que haya, sufrido el accidente. As! se Uega a la misma solucion aportada por la jurisprudencia francesa."

From the above it appears that there are two distinct theories as to whether damages arising from an injury suffered by one of the spouses should be considered conjugal or separate property of the injured spouse. The theory holding that such damages should form part of the conjugal partnership property is based wholly on the proposition,'also advanced by the Manila Wine Merchants, Ltd., that by the injury the earning capacity of the injured spouse is di minished to the consequent prejudice of the conjugal part nership. Assuming the correctness of this theory, a read ing of the decision of this court in G. R. No. 39587 will show that the sum of P10,000 was awarded to Sonja Maria Lilius "by way of indemnity for patrimonial and moral damages." The pertinent part of that decision on this point reads:

"Taking into consideration the fact that the plaintiff Sonja Maria Lilius, wife of the plaintiff Aleko E. Lilius is—in the language of the court, which saw her at the trial— 'young and beautiful and the big scar, which she has on her forehead caused by the lacerated wound received by her from the accident, disfigures her face and that the fracture of her left leg has caused a permanent deformity which ren ders it very difficult for her to walk, and taking into further consideration her social standing, neither is the sum of P10,000, adjudicated to her by the said trial court by way of indemnity for patrimonial and moral damages, ex cessive."

It should be added that the interest on that sum is part of the damages "patrimonial and moral" awarded to Sonja Maria Lilius.

Furthermore it appears in the decision of the trial court in G. R. No. 39587 that Aleko E. Lilius claimed the sum of P10,000 as damages on account of the loss of the services of Sonja Maria Lilius as secretary and translator, her particular work as a member of the conjugal partnership. The trial court disallowed this claim and neither of the plaintiffs in that case appealed to this court.

In view of the foregoing it is held that the sum of P10,000 with interest thereon awarded to Sonja Maria Lilius as damages is paraphernal property.

The third assignment of error of the appellant Shuman, the second assignment of error of the appellant Bank of the Philippine Islands and the sole assignment of error of the appellant Manila Wine Merchants Ltd., are overruled.

In its first assignment of error it is contended by the Bank of the Philippine Islands that by virtue of its writ of garnishment served on the Manila Railroad Company of February 8, 1933, it acquired a lien superior to the preference granted by article 1924 of the Civil Code to prior judgments. This error, if at all, is however non prejudicial as the record shows that all the creditors de clared by the court as having a right to participate in the proceeds of the judgment in favor of Aleko E. Lilius were so held by virtue of deeds of assignment executed prior to the date of the service of notice of the bank's writ of gar nishment on the Manila Railroad Company. These cred itors are John R. McFie, jr., whose claim is based on a deed of assignment dated November 13, 1931, and Erlanger & Galinger, Philippine Education Co., Inc., Hamilton Brown Shoe Co., Estrella del Norte and Eastern & Philippine Shipping Agencies, Ltd., whose claims are based on a deed of assignment dated November 17, 1931. As the record shows that whatever was left of the judgment in favor of Aleko E. Lilius is not sufficient to pay in full the credits of the above mentioned creditors and furthermore, in view of the fact that strictly speaking, there was no existing credit in favor of Aleko E. Lilius to be garnished on February 3, 1933, as it had been assigned, before that date, to his creditors, this assignment of error, therefore, must be overruled.

APPEAL OF THE MANILA MOTOR CO., INC.

The two errors assigned by this appellant read as follows:

"I. The lower court erred in considering the date of the judgment, Exhibit A, Manila Motor Co., Inc., instead of the date of the public document upon which it was based in determining the preference among the several claims filed and litigated in this proceeding.

"II. The lower court erred in not holding the claim of the claimant-appellant, Manila Motor Co., Inc., preferred over all other claims against Aleko E. Lilius evidenced by public instruments and final judgments."

The claimant has not proven that its credit is evidenced by a public document within the meaning of article 1924 of the Civil Code. The only evidence offered by the Manila Motor Co., Inc., in support of its claim of preference against the fund of Aleko E. Lilius was a certified copy of its judgment against him in civil case No. 41159 of the Court of First Instance of Manila, together with a certified copy of the writ of execution and the garnishment issued by virtue of said judgment. These documents appear in the record as Exhibits A, B and C. The alleged public document evidencing its claim was not offered in evidence and counsel of the Manila Motor Co., Inc., merely stated at the hearing in the lower court that its judgment was based on a public document dated May 10, 1931. There is no explanation as to why it was not presented as evidence along with Exhibits A, B and C. In their brief in this court, counsel for the Manila Motor Co., Inc., merely assume that its credit is evidenced by a public document dated May 10, 1931, because the court, in its judgment in said civil case No. 41159, refers to a mortgage appearing in the evidence in that case as Exhibit A as the basis of its judgment, without mentioning the date of the execution of that exhibit. This reference in said judgment to a mortgage is not competent or satisfactory evidence as against third persons upon which to base a finding that the Manila Motor Company's credit is evidenced by a public document within the meaning of article 1924 of the Civil Code. This court is not authorized to make use of that judgment as a basis for its findings of fact in this proceeding. This is shown by the decision of this court in the case of *Martinez vs. Diza* (20 Phil., 498). In the syllabus of that decision it is stated:

"1. COURTS OF FIRST INSTANCE; JUDGMENT IN FORMER CIVIL ACTION AS BASIS FOR FINDINGS OF FACT; ERROR.—A person who was not a party to a former civil action, or who did not acquire his rights from one of the parties there to after the entry of judgment therein, is not bound by such judgment; nor can it be used against him as a basis for the findings of fact in a judgment rendered in a subsequent action."

But even if the court is authorized to accept the statement in that judgment as a basis for its finding of fact in relation to this claim, still it would not establish the claim of preference of the Manila Motor Co., Inc. Granting that a mortgage existed between the Manila Motor Co., Inc., and Aleko E. Lilius, this does not warrant the conclusion that the instrument evidencing that mortgage is a public document entitled to preference under article 1924 of the Civil Code. Under section 5 of Act No. 1507 as amended by Act No. 2496, a chattel mortgage does not have to be acknowledged before a notary public. As against creditors and subsequent encumbrancers, the law 'does require an affidavit of good faith appended to the mortgage and recorded with it. (See *Giberson vs. A. N. Jureidini Bros.*, 44 Phil., 216, and *Betita vs. Ganzon*, 49 Phil., 87.) A chattel mortgage may, however, be valid as between the parties without such an affidavit of good faith. In 11 *Corpus Juris*, 482, the rule is expressly stated that as between the parties and as to third persons who have no rights against the mortgagor, no affidavit of good faith is necessary. It will thus be seen that under the law, a valid mortgage may exist between the parties without its being evidenced by a public document. This court would not be justified, merely from the reference by the lower court in that case to a mortgage, in assuming that its date appears in a public document. If the Manila Motor Co., Inc., desired to rely upon a public document in the form of a mortgage as establishing its preference in this case, it should have offered that document in evidence, so that the court might satisfy itself as to its nature and unquestionably fix the date of its execution. There is nothing either in the judgment relied upon or in the evidence

to show the date of said mortgage. The burden was upon the claimant to prove that it actually had a public instrument within the meaning of article 1924 of the Civil Code. It is essential that the nature and the date of the document be established by competent evidence before the court can allow a preference as against the other parties to this proceeding. Inasmuch as the claimant failed to establish its preference, based on a public document, the lower court properly held that its claim against the said Aleko E. Lilius was based on the final judgment in civil case No. 41159 of the Court of First Instance of Manila of May 3, 1932. That court, therefore, committed no error in holding that the claim of the Manila Motor Co., Inc., was inferior in preference to those of the appellees in this case.

This appellant's assignments of error are overruled.

In view of the foregoing the following portion of the dispositive part of the decision of the trial court is affirmed.

"Por estas consideraciones, se ordena y se decreta (a) que del saldo de P8,218.54, que pertenece a Sonja Maria Lilius y que se halla depositado en la Escribania del Juzgado, se pague por el Escribano al Dr. W. H. Waterous la suma de mil quinientos pesos (P1,500), a Laura L. Shuman, seiscientos sesenta y un pesos con trece centavos (P661.13), y al St. Paul's Hospital, quinientos diez y ocho pesos con diez y ocho centavos (P518.18), y el remanente de cinco mil cuatrocientos setenta y siete pesos con veinticuatro centavos (P5,477.24), a Sonja Maria Lilius, o su apoderado; (6) que del saldo de P4,109.28 que pertenece a Brita Marianne Lilius y que se halla depositado en la Escribania del Juzgado, se pague por el Escribano a Laura Shuman, la suma de seiscientos sesenta y un pesos con trece centavos (P661.13); y al St. Paul's Hospital, quinientos diez y ocho pesos con diez y ocho centavos (P518.18), y el saldo de dos mil ochocientos sesenta y siete pesos con noventa y siete centavos (P2,867.97), a Brita Marianne Lilius, por conducto de su tutor;"

The remaining portion of the dispositive, part of the decision of the trial court is modified as follows:

"That from the sum of P13,181.33 pertaining to Aleko E. Lilius, which is deposited with the clerk of the trial court, the following claims shall first be paid:

Dr. W. H. Waterous P1,500.00

Dr. M. Marfori 250.00

Laura Lindley Shuman 661.13

John R. Mcfie, Jr. 500.00

and the balance of the sum pertaining to Aleko E. Lilius shall be divided among the following entities in proportion to their respective claims:

Amount of claim

Enlarger & Galinger, Inc. P3,672.76

Philippine Education Co., Inc. 3,695.20

Hamilton-Brown Shoe Co. 2,045.75

Estrella Del Norte 2,014.45

Eastern and Philippine Shipping Agencies, Ltd 470.38"

So ordered without special pronouncement as to costs.

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

Order modified.

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