

ESTATE OF THE DECEASED CLAUDE E. HAYGOOD. THE COLLECTOR OF INTERNAL REVENUE, CLAIMANT AND APPELLEE, VS. ANNIE LAURIE HAYGOOD, ADMINISTRATRIX AND APPELLANT.

G.R. No. 44038. May 18, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Annie Laurie Haygood appeals to this court from an order of the Court of First Instance of Rizal, dated May 27, 1935, in which appellant, as administratrix of the estate of her deceased spouse Claude E. Haygood, was ordered to pay to the Collector of Internal Revenue, within ten days from receipt of said order, the sum of P6,295.79, failing which, said amount would be declared preferred claim against the estate of the deceased.

The parties admit, without discussion, the following facts:

On October 9, 1934, Claude E. Haygood, resident of the municipality of Parañaque, Province of Rizal, died in Rochester, Minnesota, United States of America, leaving a will which was duly probated by the Court of First Instance of Rizal.

On December 15, 1934, the provincial fiscal of Rizal, in behalf of the appellee, Collector of Internal Revenue, filed in the testamentary proceedings of the said deceased, a sworn motion claiming the amount of P3,087.99 which represents the merchant's sales tax of one and a half per cent, unpaid by the deceased, plus a surcharge of 125 per cent on undeclared sales, making a total of P91,496.16.

On December 17, 1934, the Court of First Instance of Rizal appointed Annie Laurie Haygood administratrix of the estate of the deceased Claude E. Haygood.

In an order dated January 4, 1935, the same court denied the above-mentioned motion of the provincial fiscal of Rizal, on the ground that the same should be presented to the committee on claims and appraisals, which, at the time, had not yet been appointed.

On January 14, 1935, the said provincial fiscal filed a motion with supporting reasons asking for the reconsideration of the said order. On January 17, 1935, the administratrix, Annie Laurie Haygood, filed an opposition to this motion in which, for the reasons therein stated, she insisted that the claim falls within the competence of the committee on claims and appraisals.

On January 23, 1935, the provincial fiscal of Rizal filed under oath another motion amending the original, accompanied by a sworn statement of the Collector of Internal Revenue (Exh. A), in which, aside from the amount of P3,087.99 claimed as merchant's sales tax, an additional amount of P3,207.80 was also claimed as income tax unpaid by the deceased Claude E. Haygood, including a surcharge of 100 per cent for the years 1930 and 1933, making a total claim of P6,295.79.

On March 14, 1935, the Court of First Instance of Rizal, presided over by Judge Pedro Tuason, entered an order

setting aside its own order of January 4, 1935, and requiring the administratrix to answer, within fifteen days, the amended motion of January 23, 1935, and to state her reasons why the same should not be granted.

On March 29, 1935, the administratrix, Annie Laurie Haygood, in compliance with the above order of the court, filed her answer to the amended motion, insisting, for the reasons stated therein, that the claim of the Collector of Internal Revenue should be presented before the committee on claims and appraisals and should therefore not be allowed in the testamentary proceedings of the deceased Claude E. Haygood.

On May 11, 1935, the provincial fiscal of Rizal, in a reply to the answer of the administratrix, insisted that the case of *Pineda vs. Court of First Instance of Tayabas and Collector of Internal Revenue* (52 Phil., 803) is applicable to the instant case and therefore his claim should be approved.

On May 27, 1935, after considering the answer of the administratrix dated March 29, 1935, and the reply thereto of the provincial fiscal dated May 11, 1935, the Court of First Instance of Rizal, then presided over by Judge Fernando Jugo, rendered the order now subject of the present appeal.

It is alleged by the appellant and admitted by the appellee on page 7 of his brief that the tax in question was discovered after three years from the date it should have been declared.

The first question to be decided in the present appeal, in the light of the evidence before us, is whether or not the lower court erred in entering the order appealed from without any other evidence than the sworn statement (Exh. A) of the appellee, Collector of Internal Revenue, notwithstanding the opposition of the administratrix and without requiring both parties to present evidence.

The administratrix and appellant, Annie Laurie Haygood, sustains the affirmative and relies on the case of *Knowles vs. Government of the Philippine Islands* (60 Phil., 461) in which this court said the following:

"The second point is decisive and resolves the appeal in favor of the administrator. We are of the opinion that it was incumbent upon the Collector of Internal Revenue to prove the certainty of the items constituting his claim, particularly the alleged net income said to have been omitted in the returns filed by the deceased and subsequently discovered, according to the affidavit of the Collector of Internal Revenue, upon investigation, by an official of his bureau. This allegedly omitted net income, for the same reason that it did not appear, in any book or document forming part of the files of the Bureau of Internal Revenue, necessarily had to be proved by means of the testimony of said official. Inasmuch as the latter was not presented or did not testify at the trial, it is clear that the administrator was deprived of his substantial right to cross-examine him. The foregoing conclusion of course, is based upon the premise that the affidavit presented in support of the claim is competent evidence, a quality which we doubt in view of the opposition originally filed by the administrator. When the administrator filed his opposition to the claim and generally and specifically denied its allegations, the character of prima facie evidence of the affidavit attached to the claim was destroyed and it became incumbent upon the claimant to prove his claim by means of material and competent evidence. This duty has not been complied with in view of the fact that no other evidence had been presented and the claim was based solely on said affidavit."

On his part, the appellee, Collector of Internal Revenue, sustains the negative and relies on what this court held in the case of *Pineda vs. Court of First Instance of Tayabas and Collector of Internal Revenue* (52 Phil., 803, 806), as follows:

"As it is the duty of an administrator to pay taxes assessed against the estate of the decedent, where funds are available for that purpose, the court, in the exercise of its administrative control over the administrator, undoubtedly has authority to direct the payment of assessed taxes. Moreover, it is evident that the act of the court in directing the petitioners to pay this tax does not have the effect of depriving the petitioners of the remedy, open to every taxpayer, of paying the tax under protest and bringing an action, to recover the money;

and assuming that leave of the court might properly be required for the institution of such action, it is to be assumed that such leave would be granted if the petitioners should be able to show to the court any plausible ground for concluding that the tax had been improperly collected."

It will be seen that while the two decisions above quoted are in accord in holding that the assessment made by the Collector of Internal Revenue, contained in his sworn declaration, constitutes prima facie evidence of the existence of the unpaid taxes, they, nevertheless, differ in this respect: that in the case of Knowles this evidence is said to be destroyed by the mere objection to the allegations contained in the claim and by the general and specific denial of the alleged facts, the burden of proof falling on the Collector of Internal Revenue, who must substantiate his claim by material and competent evidence; and in the case of Pineda it is held the duty of the administrator of the estate of the deceased to prove that the claim for taxes due the government, made under oath, is unjustified. The discrepancy, if any, is more apparent than real, considering the fact that in the case of Knowles the failure to declare the income tax was discovered after three years" following the expiration of the term within which to file such declaration; while in the case of Pineda the error in the declaration was discovered within three years from the date the declaration was made.

In accordance with section 9, paragraph (a) of Act No. 2833, the assessment made by the Collector of Internal Revenue within three years after the discovery of an erroneous declaration shall be paid by the maker of the return immediately upon being notified of the assessment. The procedure prescribed by law is, therefore, summary, and collection must be made from the person liable for the tax. Since this cannot be done when the person liable is already dead, collection must necessarily be made from the estate of the deceased, either in a testate or intestate proceedings instituted before a competent court, by motion together with a sworn statement of the taxes due filed with said court, so that it may require the administrator to pay the claim if the latter has funds available therefor, that is, following the order of preference provided in section 735 of the Code of Civil Procedure in case the said estate should be insolvent. If the testate or intestate estate is solvent, the court may order the payment of the claim without necessity of its being substantiated by evidence since the sworn statement constitutes prima facie evidence of the existence of the unpaid taxes, and the administrator is under obligation to pay such claim, under protest if he is not agreeable, without prejudice to his right later to recover the taxes so paid, in the manner provided by law (Act No. 2711, sec. 1579, as amended by Act No. 3685). This procedure is sanctioned by the court in the case of Pineda cited above. In the case of Knowles, supra, the discovery of the error in the return of the taxpayer took place after three years from the date the return was filed. The probate court acted correctly in requiring the judicial administrator to answer the claim presented by the Collector of Internal Revenue for taxes due and unpaid by the deceased, during his lifetime, considering the fact that the motion presented by said Collector of Internal Revenue was tantamount to a judicial action, in accordance with the ruling of this court in the case of Collector of Internal Revenue vs. Villegas (56 Phil., 554, 559), and as such, it should have proceeded substantially like an ordinary civil suit, through the filing of a written answer and the presentation of evidence.

The facts in the case of Pineda, supra, differ from those in the case of Knowles and since the law provides a different procedure in each case, there is no conflict in the decisions rendered in the two cases.

In the case before us the facts as to the date of the discovery of the error in the return, which was after the lapse of three years from the date the erroneous return was filed, are identical with those in the case of Knowles; therefore, the rule established in the latter case should be followed with respect to the procedure in collecting a claim for taxes due and unpaid presented by the Collector of Internal Revenue in a testate or intestate proceedings. The appealed order is, therefore, erroneous.

In view of the foregoing, we are of the opinion and so hold that: first, when the discovery of erroneous tax returns is made within three years after the date such returns should have been filed, and the declarant dies, the claim for

payment of the tax assessed by the Collector of Internal Revenue must be made in the testate or intestate proceedings by filing a motion accompanied by a statement of the taxes due sworn to by the Collector of Internal Revenue, and a competent court may summarily order, without previous trial, the judicial administrator to pay the claim if funds are available, taking into consideration the order of payment established in section 753 of the Code of Civil Procedure, and the administrator may pay the claim under protest in order to recover in a separate suit what he may have erroneously paid; and, second, when the discovery of erroneous returns take place after three years from the date the returns are filed, the Collector of Internal Revenue shall present the claim by filing a motion accompanied by a statement under oath of the unpaid taxes, said motion being in the nature of a civil suit which should be prosecuted through the filing of a written answer and the presentation of evidence.

Wherefore, the appealed order is revoked and the record is remanded to the court of origin so that the same may proceed to hear the evidence in support of the claim of the Collector of Internal Revenue and the opposition thereto of the administratrix and appellant, Annie Laurie Haygood, respectively, and render judgment accordingly, without special pronouncement as to costs. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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