

ESTATE OF THE DECEASED MODESTO JINON. FELIX BENEDICTO, OPPOSITOR AND APPELLANT, VS. PERFECTO ESPINO, ADMINISTRATOR AND APPELLEE.

G.R. No. 45381. April 10, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

These two cases are appealed to this court to have us determine, at the instance of the oppositor Felix Benedicto, if the orders entered by the Court of First Instance of Iloilo, dated September 12, 1936 and September 28, 1936, are in accordance with law. The appellant alleges that they are not, and contends that the lower court committed the errors assigned in his brief as follows:

"I. The lower court erred in approving the administrator-appellee's annual accounts dated August 11, 1936.

"II. The lower court erred in denying appellant's motion for reconsideration dated September 15, 1936.

"III. The lower court erred in not ordering the administrator-appellee to recover from the spouses Leon Jinon and Victoria Jiao the total amount of P1,885.25 which was illegally paid to them by the administrator for their maintenance and also for the maintenance and education of their children.

"IV. The lower court erred in not ordering the administrator-appellee to pay the appellant one-third of the said amount of P1,885.25 or the sum of P628.41 as part payment for his professional services in accordance with the contract executed between the appellant and the spouses Leon Jinon and Victoria Jiao, on October 6, 1934."

The two cases before us are those of the estate of the deceased Modesto Jinon and the estate of the deceased Andrea Espino, respectively.

The order dated September 12, 1936 approves the account presented by the administrator of the said two estates, which comprises the period from April 14, 1934 to June 1, 1936, inasmuch as they are supported and justified by the vouchers attached thereto; and it authorizes the appellant at the same time to amend his motion for attorney's fees dated September 7, 1936; and the order dated September 26, 1936 states that the spouses Leon Jinon and Victoria Jiao and said appellant agreed on the same date that the fees, which the first two had to pay the latter for his professional services as an attorney, who had been representing them in the said estates, be P1,000, and that his right of retention up to the said amount be noted on any judgments which might be rendered in favor of said spouses and entered in the corresponding records.

It is a fact admitted and not disputed by the parties that the appellant never entered into a contract regarding his fees with the administrator of the two estates, either before or during the time he had been representing the spouses Leon Jinon and Victoria Jiao as an attorney; and it is also a fact that the two spouses are only the usufructuaries therein of the estates to be adjudicated to their children Rebeca, Maria, Godofredo and Josefa Jinon. Said facts are sufficient in themselves to destroy appellant's claim that the lower court committed the various errors assigned in his brief. For all purposes, he has no action against the said two estates. If any he has or

may have, that action would be against the usufructuaries, the spouses Leon Jinon and Victoria Jiao, who bound themselves personally to the appellant, but in no case against the estates. This is more so considering that when the lower court approved the administrator's account in question, it had; before it the vouchers supporting and justifying the account.

On the other hand, there has been no determination in the said two estates of the portions or properties to be finally adjudicated to the children of said spouses Jinon and Jiao and of the amount and value of their respective usufructuary rights. Moreover, in the order of September 26, 1936 aforesaid, the rights of the appellant are sufficiently safeguarded, with regard to the collection of his professional fees of P1,000 that should be paid to him in due time, but certainly not by the estates but by the spouses Leon Jinon and Victoria Jiao, inasmuch as the lower court has formally recognized his right of retention up to the said sum of P1,000 from what the spouses might receive if any, which is yet to be seen as its amount can only be known after all the obligations of the two estates have been paid.

In view of the foregoing, we are of the opinion and so hold that the appeal interposed by Felix Benedicto is totally without basis.

Wherefore, we affirm the appealed orders, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, JJ., concur.

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