

IN RE INTESTATE OF THE DECEASED ROMAN LAZO. JACOB LAZO, ADMINISTRATRIX AND APPELLEE, VS. MAURO LAZO, SPECIAL ADMINISTRATOR AND APPELLANT.*G.R. No. 46198. October 10, 1938*

Ponente: LAUREL, J.

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Roman Lazo having died intestate in San Vicente, Ilocos Sur, the Court of First Instance of the province, on April 25, 1925, appointed Mauro Lazo as administrator of the estate of his deceased uncle. Thereafter, the court reconsidered its order and, on May 9, 1925, appointed Jacobe Lazo, widow of the deceased, instead. Difficulties having arisen in connection with the administration of the properties; the court, on August 28, 1926, appointed Mauro Lazo as special administrator. After various incidents which are not necessary to mention, the administratrix presented her final account showing expenses and disbursements amounting to P6,098, but the court reduced the amount to P4,619.73. (Pp. 40-47, Record on Appeal.) The order of the lower court allowing this amount was affirmed by this court on appeal. (Lazo vs. Lazo, G. R. No. 41031, 60 Phil., 1043.) On October 29, 1934, Mauro Lazo presented his account as special administrator and sought the approval of the court of the expenses incurred by him as such special administrator, totalling P1,288.07. The court, in its order of November 27, 1935, reduced this amount to P738.07.

The special administrator claimed preference of his credit over that of the administratrix. The lower court, however, declared preferential the claim of the administratrix. Its resolution dated August 6, 1936, is as follows:

"RESOLUCION

"Resolviendo la cuestion planteada por los abogados Sres. Jose Singson Tongson y B. Quitoriano del administrador especial Mauro Lazo, y la oposicion presentada por el abogado Sr. Juan Amor de la administradora Jacobe Lazo en su escrito del 8 de julio de 1935, sobre la preferencia de creditos de ambos administradores, el Juzgado cree que es mas preferente el credito de la administradora Jacobe Lazo ya aprobado por este Juzgado en su orden de fecha 15 de agosto de 1933, la cual fue confirmada por la Honorable Corte Suprema en su decision promulgada el 17 de septiembre de 1934. Es preferente dicho credito de Jacobe Lazo, puesto que el mismo goza del derecho de relacion, en virtud de una sentencia firme de este Juzgado, que asi quedo, antes aun de la aprobacion de la cuenta del administrador especial Mauro Lazo, que otorgo este Juzgado solamente el 27 de noviembre de 1935. Dichas aprobaciones a las cuentas de autos tienen el caracter de sentencias firmes.

"Los creditos o deudas que constan en escritura publica o por sentencia firme tendran preferencia entre si por el orden de antiguedad de sus respectivas fechas. Un credito obrante en escritura publica otorgada el 9 de mayo de 1909, goza de preferencia con relacion a una sentencia firme fechada en primero de agosto del mismo año. (Martinez contra Holliday, Wise & Co., 1 Jur. Fil., 198; Art. 1924, par. 13, Cod. Civ.)

"Por tanto, se deniega la peticion del administrador especial Mauro Lazo, por medio de su abogado, pidiendo que su credito sea declarado preferente, y, en su lugar, se declara preferente el credito de la administradora

Jacobe Lazo."

* * * * *

From the foregoing order, special administrator Lazo appeals and assigns the following error:

"El Juzgado a quo incurrio en error al no declarar que el credito de P738.07 del administrador especial Mauro Lazo es preferente al credito de la viuda Jacobe Lazo y que ha de ser pagado antes que cualquier otro credito."

Section 735 of the Code of Civil Procedure, as amended by Act No. 3960, provides as follows:

"SEC. 735. Order of payment if estate insolvent.—If the assets which can be appropriated for the payment of debts are not sufficient for that purpose, the executor or administrator shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

"1. The necessary funeral expenses;

"2. The expenses of the last sickness;

"3. What is owing to the laborer for salaries and wages earned and for indemnities due to him, for the last year;

"4. Debts due to the United States;

"5. Taxes and assessments due to the Government, or any branch or subdivision thereof;

"6. Debts due to the province;

"7. Debts due to other creditors."

It should be observed that necessary expenses of administration have preference over the debts against the estate. The lower court was of the opinion that the credit of Jacobe Lazo is entitled to preference, for the reason that the same was approved by the lower court long before the approval of the account of Mauro Lazo. The aforesaid section 735, as amended, of the Code of Civil Procedure, however, does not establish any preference as between the necessary expenses of administration. Preferences and priorities in cases of this nature are a matter of statutory regulation. (11 R. C. L., par. 288, p. 254.) In our case, the expenses of administration are on the same level and entitled to the same priority of payment. Examining the account presented by the administratrix, shown on pages 29 to 32 of the Record on Appeal, none of the items appearing under paragraphs I (expenses of the last illness) and II (expenses of family mourning) can be considered as expenses of administration. The amounts, therefore, of P320 and P115 thereunder should have been disallowed. Under paragraph III the amount of P325 for the purchase and transportation of maguey shoots are properly chargeable as administration expenses. Under paragraph IV (miscellaneous), the item of P3,300 was properly allowed for general expenses of administration at the rate of P25 per month during the period indicated. Under paragraph V, only the item of P308 for real property taxes should be allowed. All in all, the administratrix should be credited with the total amount of P3,933.

With reference to the claim of the special administrator, he should be credited with the amount of P738.07 for expenses of his administration.

As the properties under administration appear to have been sold at public auction and the amount of some P900 is all that has been realized, which amount is even insufficient to defray the expenses of administration, the amount realized from the sale ordered by the lower court on August 18, 1936, should be divided between the administratrix, Jacobe Lazo, and the special administrator, Mauro Lazo, pro rata, or in proportion to the amount hereinabove indicated and with which each of them is credited.

The judgment of the lower court is accordingly modified, without pronouncement regarding costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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