

INTESTATE ESTATE OF THE LATE IGNACIO UY QUIMCO. MONICO UY YT (ADMINISTRATOR), OPPOSITOR-APPELLANT, VS. QUIRINA RIOS & SONS, MOVANTS-APPELLEES.*G.R. No. 48577. February 11, 1944*

Ponente: OZAETA, J.

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On December 7, 1937, one year and six months after the project of partition of the estate of the deceased Ignacio Uy Quimco had been approved by the court, the latter granted the petition of the administrator Monico Uy Yt for authority to withdraw from the China Banking Corporation the sum of P600 and to pay the same to his attorney, Mr. Jose G. Macatañgay, for services rendered by him to the estate covering the period from November 6, 1934, up to that date. The estate consisted of real property valued at P13,390 and credits amounting to P15,673.73. The said sum of P600 was the only money remaining undistributed with which to pay the services of the attorney for the administrator. Pursuant to said authority the administrator withdrew the said sum from the bank and out of it paid P350 to Attorney Macatañgay, retaining the balance of P250 in his hands pending the result of the motion for reconsideration filed by the attorney for Quirina Rios on behalf of her two minor children who are heirs of the estate. Said motion for reconsideration, wherein the movants contended that one-half of the P600 should be paid to them, was denied by the court, and Quirina Rios and her children appealed to the Court of Appeals from the order of December 7, 1937, authorizing the withdrawal of the said sum of P600 from the bank and its payment to Attorney Jose G. Macatañgay. The Court of Appeals, in its decision promulgated on February 27, 1941, affirmed the order appealed from. Thus the authority of the administrator to withdraw the sum of P600 and pay all of it to his attorney was definitely established.

In the meantime the appeal of two of the heirs, Benito Uy and Maria Uy, from the approval of the project of partition was decided in their favor with costs against the appellee administrator. The costs amounted to P141.60. And on August 15, 1939, pending the appeal of Quirina Rios and her children from the order authorizing the payment of P600, her attorney filed a petition with the court to order the administrator to pay the said costs. That petition was granted on August 30, 1939, and inasmuch as the property of the deceased had been distributed among his heirs, the court (Judge Gervasio Diaz presiding) ordered all of the heirs to pay the said costs amounting to P141.60. The attorney for Quirina Rios and her children moved for the reconsideration of that order on the ground that his clients, the minors Benito Uy and Maria Uy, who were among the heirs of the deceased, should not be made to bear any part of the costs which were awarded in their favor against the appellee administrator. The court granted the motion for reconsideration and amended its previous order in the sense that the costs of P141.60 be paid by the appellee administrator. Subsequently, and in another order, the court (Judge Abeto presiding) ordered the administrator not to dispose of the balance of P250 in his hands without previous order of the court.

On October 7, 1940, upon petition of the attorney for Quirina Rios and her children, Judge Abeto ordered the administrator to pay the costs of P141.60 out of the sum of P250 in his hands. From that order the present appeal

has been taken.

The question is whether the costs of P141.60 should be paid out of the sum of P250 remaining in the hands of the administrator, which, by a previous order of the probate court subsequently affirmed by the Court of Appeals, had been authorized to be paid to the attorney for the administrator as his fees for his services, or whether said costs should be paid by the heirs and distributees of the estate out of the property they had received. The question is not one of preference of credits, for the estate was not insolvent. Both claims—the administrator's attorney's fees of P600 and the costs of P141.60 awarded against the administrator —were expenses of administration. Had both claims been authorized by the court at the same time, they could have been paid partly out of the remaining cash of P600, and the balance out of the properties that had been delivered to the heirs. But since the said remaining cash of P600 had been adjudicated by the court to the attorney for the administrator in payment of his fees long before the said costs were awarded against the administrator, it would be inequitable and would cause unnecessary inconvenience to said attorney to require him to pursue two remedies, to wit, against the cash on hand and against the properties that had been distributed to the heirs.

The only objection of the appellees against the order requiring the heirs to pay the costs in question out of the properties they had received from the estate is that since they (the appellees) are also heirs, and since the costs were awarded in their favor against the administrator, they as heirs should not be made to bear part of said costs. This objection, altho plausible, is not intrinsically sound. The costs having been adjudged against the administrator in relation to his endeavor to sustain an order of the probate court, he had the right to charge the same as expense of administration against the estate. The fact that the assets of the estate had been distributed among the heirs at the time the costs were awarded, did not affect the nature of the expense and could not redound to the benefit of any of the heirs and to the prejudice of the others.

It has been suggested that the attorney for the administrator has no lien on the cash of P600 and that, therefore, the probate court could properly modify its order of December 7, 1937, in the sense that out of the said sum the costs of P141.60 should be paid, and that the balance should be used to satisfy part of the fees of the attorney for the administrator. We think, however, that the trial court had no more jurisdiction to modify its order after an appeal therefrom had been perfected and was pending consideration by the appellate court; and the latter having subsequently affirmed that order in toto, the same must be enforced as originally granted by the trial court.

The order of Judge Quirico Abeto dated October 7, 1940, requiring the administrator to pay the sum of P141.60 out of the sum of P250 remaining in his hands is hereby set aside, and the order originally issued by Judge Garvasio Diaz dated August 30, 1939, requiring the heirs to pay the said sum of P141.60 out of the properties they had received from the estate is hereby reinstated, with costs against the appellees.

Yulo, C. J., Horrilleno, and Bocobo, JJ., concur.

DISSENTING

MORAN, J.,

The sum of P260.90 in the hands of the administrator is here disputed between the administrator's attorney, Jose Macatañgay, for the payment of his fees and two of the heirs, Benita Uy and Maria Uy, for the payment of the costs awarded them in their appeal against said administrator in connection with the project of partition. This amount represents the balance of P600 first withdrawn from the bank by order of the Court for the payment of attorney's fees, there being then no other money claim against the estate except for said fees. The question, however, as to the proper amount of attorney's fees was raised and was pending in the Court of Appeals when the

final award for costs came for immediate payment. The probate court having then no other available cash except the sum in question, the costs in the amount of P141.60 was ordered paid therefrom. Hence this appeal.

The majority predicate their judgment of reversal upon two grounds: (1) That as the sum of P600 had been adjudicated by the probate court to the attorney in payment of his fees long before the award for costs, it would Cause said attorney unnecessary inconvenience as it would in effect require him to pursue his remedy against the properties of the estate already distributed to the heirs; and (2) That as the order awarding attorney's fees has been appealed and was affirmed, the probate court was without jurisdiction to modify the same. I do not share this view.

It is not disputed that the order in question in no way imperils the attorney's right to his fee, whatever its amount might be. The estate is admittedly solvent. If the cash remaining in the hands of the administrator is insufficient to pay attorney's fees after the appeal has been finally decided by the Court of Appeals, the attorney faces no contingency of non-payment because said fees may be paid, by order of the court, by all the heirs proportionately out of the estate already distributed among them. (Rule 89, sec. 6, Rules of Court). An order of execution may even be issued at the discretion of the court, as provided in said rule. It is thus immaterial whether the attorney's fees be paid out of the cash on hand or out of the properties already distributed, because at all events they will surely be paid. There is accordingly no justiciable ground for complaint. But the majority evidently seeks to protect the convenience of the attorney on the matter of collection. I cannot, however, perceive how individual convenience can be made to prevail over the convenience of the judicial administration in any measure calculated to protect the interests in general of all the creditors and heirs. If the court refuses to touch the P250.00 cash, it would have no other alternative than to order the sale of some of the properties for the payment of the costs. If this is done and later it turns out that the claim for attorney's fees is denied by the Court of Appeals, the sale would obviously have been not only unnecessary but damaging to the heirs. On the other hand, if the attorney's claim for fees is approved by the appellate court, its payment is assured out of the distributed properties of the estate. True, the collection might suffer some delay if the payment is made out of the properties of the estate, but such delay is a legal incident of such proceeding in which the party concerned has no choice but acquiescence and which will cause him no injury at all because of the award of interest. Thus adequately protected by the law, the attorney cannot seek, and this Court should not grant, extra measures of protection to him at the risk of the interests of the judicial administration.

It is true that the order awarding the claim for attorney's fees has been appealed and thereafter affirmed. But the award for costs came when the appeal was still pending. And, what is important, the only issue in the appeal was whether the award of P600 for attorney's fees was reasonable or not—not whether said sum may still be made available for other purposes of judicial administration. The segregation, by withdrawal from the bank, of the sum in question was not in pursuance of statutory requirement. It was purely a mere measure of expediency which as an act of administration may, before it is carried out, be charged according to changing circumstances of administration. The appeal, therefore, withdraws from the jurisdiction of the probate court no more than the question of the reasonableness of the amount it has adjudged for attorney's fees, but did not withdraw from it the power to render the amount it has segregated for one particular purpose available for other purposes, if convenience so demands. That the appeal in the instant case did not preclude the probate court from doing what it had done can best be illustrated by two hypothetical cases. For instance, the probate court has approved certain credits and for their payment has ordered the sale of the properties of the estate. An appeal was taken from the order approving the credits and incidentally the order of sale was therein involved. The order of approval is affirmed and with it collaterally the order of sale. Initial steps are taken for the consummation of the sale, but before it is actually carried out, an actual cash comes from an unexpected debtor into the hands of the administrator. Upon this new turn of circumstances, may not the probate court revoke the order of sale and order

instead the payment of the credits out of the cash thus received? This new mode of payment is more expedient, but the creditors are now interested in the properties to be sold, and claim an earmark thereon because of the order of sale collaterally affirmed on appeal. May they rightly claim such earmark? There is of course a difference between this hypothetical case and the case before in that collection in the former is easier and this may be the justification for the court. But then the supposed finality of the order cannot be invoked and the question turns out to be one of expediency which should be left to the discretion of the administrative court. Again, suppose the estate is insolvent and its only asset is a certain amount of cash ordered to be paid for attorney's fees. This order is affirmed on appeal. Then comes in a creditor and establishes his claim for costs. May the probate court rightly deprive this creditor of his share in the cash on hand merely to maintain its original order affirmed on appeal? I believe the probate court always retains a residuary authority to modify its order in the interest of judicial administration. I cannot see how the instant case could call for a contrary rule.

I, therefore, vote for the affirmance of the order.

CONCURRING and DISSENTING

PARAS, J.,

After the distribution of the estate of the deceased Ignacio Uy Quimco among his heirs, the administrator still has on hand the sum of P250 which was part of a bank deposit in the name of the deceased discovered only after such distribution. It turned out that two more claims remain to be paid, namely, (a) P141.60, awarded for costs in favor of Quirina Rios and children by judgment of the Court of Appeals on July 20, 1939, and (b) P250, representing the balance of the fees of the attorney for the administrator awarded by order of the Court of First Instance of Manila of December 7, 1937, which was affirmed by the Court of Appeals only on February 27, 1941.

Both claims are correctly held by the majority to be administration expenses. But which one is to be paid first? The Court of First Instance of Manila ruled that it is the claim for costs, whereas the majority are of the opinion that the attorney's fees should enjoy priority. Under the circumstances of the case, I would apply the amount in the possession of the administrator proportionately to both claims, that is, P159.85 to attorney's fees and P90.15 to costs. There is no need to enforce the payment of the balance of each claim by execution. As far as Quirina Rios and children are concerned, they may be considered as creditors and debtors at the same time because they are also heirs of Ignacio Uy Quimco. With reference to the attorney, it should be borne in mind that while he represented the administrator, he was also the attorney for all the heirs except Quirina Rios and children. He can therefore easily collect from his clients the amount still due to him. Moreover, he was in a way responsible for the premature distribution of the estate because, as the records show, he should have known that there were cases for or against the estate still pending final decision of the court, the result of which ought to have been awaited before effecting the distribution of the properties under his administration.

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