

IN THE MATTER OF THE TESTATE ESTATE OF THE LATE MARGARITA DAVID. GONZALO D. DAVID, PETITIONER AND APPELLANT, VS. CARLOS SISON, OPPOSITOR AND APPELLANT.

G.R. No. 49108. March 28, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

This is an appeal against a resolution issued by Judge Gervasio Diaz, of the Court of First Instance of Manila, ordering the administrator of the estate of Margarita David to pay petitioner as attorney's fees, for services rendered to the estate, from March, 1941, to March, 1943, in the amount of P18,000.

In the petition filed in the lower court on March 24, 1943, petitioner prayed that he be awarded an amount equivalent to 5 percent of the original inventoried estate, namely, the sum of P72,779.10, although in his brief, dated April 11, 1944, he claims that the 5 percent he is charging should be estimated not only on the basis of the inventoried estate but including besides the income thereof for two and one-half years, totalling P1,627,507.24, the 5 percent thereof would amount to P81,375.36, more or less.

The oppositor contended that the amount granted by the lower court is exorbitant, but failed to state in his brief what the reasonable amount should be. At the hearing of this case he manifested he would consider reasonable the amount of P3,000, although he would not mind any amount that may be fixed, provided the payment of any part of said attorney's fees would not be shouldered by his wife, Priscila F. Sison, one of the heiresses of the estate, nor affect any part of the property adjudicated to her.

From the above, it can be seen that the two contending parties went to possible extremes, allowed by their respective feelings and imaginations, and that the reasonable amount should be found between the two extremes. It is inconceivable that two reasonable persons, such as we presume the petitioner and the oppositor to be, neither one showing that he is beyond any standard of normality, both cultured and trained in the science of law, should disagree from P3,000 to P81,375.36 in appraising the pecuniary value of the legal services in question. The reason for this so wide a difference must be found in the fact that both allowed themselves to give way, not to fair dealing and fair judgment, but to uncontrollable emotions aroused by intransigent conflict of monetary interest.

The parties thresh in this appeal three main questions:

(1) Whether the donation executed by the deceased on September 6, 1940, as appears in Exhibit FFFFFF, should be considered as inter vivos or mortis cattsu, the parties placing great importance on this question under the theory that, in the first place, the donated properties must be excluded from the estate proceedings; but in case the donation is mortis causa, that should be included in the inventory of the estate.

(2) Whether heiress Priscila F. Sison should or should not shoulder the corresponding burden in the payment of petitioner's fees for the properties adjudicated to her.

(3) The reasonable amount that must be granted to petitioner as attorney's fees.

The lower court, after considering the facts in the case, arrived at the conclusion that the donation was inter vivos, on the strength of the doctrine that a donation in order to be mortis causa must have for consideration the donor's death.

We do not have before us the full text of the deed of donation, but only the following paragraphs of the same as quoted in the record on appeal of petitioner and in the briefs of both parties:

"Na ang naturang 'donor,' Margarita David y Puato, alang-alang sa malaki niyang pagtingiri, paglingap at pagmamahal sa mga nabanguit na 'donees' Narcisa de la Fuente at Priscila de la Fuente, sa pamamagitan nang ltasulatang ito, malayang ibinibigay at ipinagkakaloob sa mga naturang Narcisa de la Fuente at Priscila de la Fuente, at sa kanilang mga tagapagmana, 'albacea' at 'Administradores', sa habang panahon, ang kanyang mga titulo, interes at participacion sa mga sumusunod na ari-aiyan na pawang malines sa lahat nang mga pananagutan:" (Rec. on Appeal, pg. 209, 210.)

"Datapwa't ang lahat nang mga tubo at pakinabangan nang raga pagaaring nasasaad sa itaas nito, ay para sa kapakinabangan nang nagbibigay o 'donor' na si Margarita David y Puato hanggang siya ay hindi binabawian nang buhay nang maykapal; at ang mga pinagbibigyan na si Narcisa de la Fuente at Priscila de la Fuente ay hindi maaaring maipagbili, maisangla, maipagpalit o sa ano pa man paraan, kung walang kaalaman at pahintuiot nang naturang Margarita David y Puato." (Rec. on Appeal, pp. 212, 218.)

The following facts are pointed to us concerning the deed of donation:

(1) That on December 20, 1938, Margarita David executed her first and only last will and testament in favor of her grandnieces Narcisa de la Fuente de Teodoro and Priscila de la Fuente de Sison as residuary heiresses, and other relatives of the same degree as legatees and devisees.

(2) That on October 21, 1939, Margarita David adopted, in special proceedings No. 55861 of the Court of First Instance of Manila, said grandnieces Narcisa de la Fuente de Teodoro and Priscila de la Fuente de Sison, making them her adopted children.

(3) That on September 6, 1940, Margarita David executed the deed of donation in question in favor of her newly adopted children, the same testamentary residuary heiresses, donating to them practically the same properties disposed of in the will.

(4) That on November 18, 1940, the Collector of Internal Revenue rejected the donor's and donees' gift tax returns on the deed of donation in question, on the ground that the donation is a transfer in contemplation of death, and subject to an estate and inheritance taxes, which should be paid upon Margarita David's death in accordance with section 88 (b) of the Internal Revenue Code.

(5) That, in fact, after the death of Margarita David the estate and inheritance taxes on the properties were paid.

(6) That, acting upon the claim made by the probate clerk and by the cashier of the Court of First Instance of Manila, said court ordered the executor to pay an additional docketing fee of P786 based on the inventory of the estate as valued at ₱1,415,581.99, including the properties disposed of in the deed of donation.

(7) That when Margarita David signed the deed of donation she was already irretrievably ill and she knew that the end was near and inevitable.

(8) That since the donation was executed on September 6, 1940, until Margarita David's death on February 24, 1941, less than six months had elapsed.

(9) That from the execution of the deed of donation up to the donor's death, the donated properties remained in her office entitled: "Margarita David, Administrator's office."

(10) That Margarita David has reserved to herself the usufruct of all the donated properties during her lifetime, and provided that the donated properties could not be alienated by the donees without the knowledge and consent of the donor, Margarita David.

(11) That the donees, being the universal heirs of Margarita David, as her adopted daughters, without the deed of donation or any will, were to inherit the donated properties by operation of law.

Petitioner mentions, furthermore, that by the adoption of the above-mentioned grandnieces, the inheritance tax was reduced to about one-third of the amount it would have been paid if the said grandnieces were not adopted as children of Margarita David, the inheritance tax actually paid being P224,000, while, otherwise, the amount would have been P672,000; and, lastly, the tax to be paid could have been further reduced by the execution of the deed of donation, as the rate schedule for gift tax is lower than the rate schedule for inheritance tax.

In one of the paragraphs of the deed of donation above-quoted, it appears that all rents, proceeds, fruits, of the donated properties shall remain for the exclusive benefit and disposal of the donor, Margarita David, during her lifetime; and that, without the knowledge and consent of the donor, the donated properties could not be disposed of in any way, whether by sale, mortgage, barter, or in any other way possible, thus making the donees just as paper owners of the properties which, for all practical purposes, remained the properties of Margarita David.

From all the foregoing, we conclude that the donation in question is, in fact, a donation mortis causa, because the combined effect of the circumstances surrounding the execution of the deed of donation and of the above-quoted clauses thereof could not have taken effect before the death of Margarita David. According to the terms of the deed, the most essential elements of ownership—the right to dispose of the donated properties and the right to enjoy the products, profits, possession—remained with Margarita David during her lifetime, and would accrue to the donees only after Margarita David's death.

Although we arrived at the conclusion that the donation in question is a donation mortis causa, we are not inclined to support petitioner's contention that, in the present case, the donated properties should be included in the inventory of the estate and should follow the same proceedings as if they were not donated at all, it appearing that the donated properties (which, by the way, were the object of an extrajudicial partition between the donees) are not necessary to answer for the obligations left by the deceased, there being enough properties not included in the donation to answer for said obligations. The second question, that is, whether heiress Priscila F. Sison should or should not shoulder the corresponding burden in the payment of petitioner's fees for the properties adjudicated to her, our opinion is that the question must be answered affirmatively. No heir, legatee, or devisee may elude the payment of any obligation of the estate which should be answered by the estate as a whole in which no discrimination can be made in favor of or against any heir or heiress.

The third question is not so easy to dispose of, as no fast rules can be set up upon which the reasonable attorney's fees of petitioner can be estimated with mathematical accuracy.

Memorandum of legal services rendered by petitioner from March, 1941, to March, 1943, appears as part of his petition dated March 24, 1943, reproduced in his record on appeal, pages 6 to 42. An additional memorandum of services rendered until August, 1943, is included in the supplement pleading, pages 121-128 of the same record on appeal.

We have examined both memoranda of legal services and, although petitioner spent about two years and a half, the services appear to be generally of routine character, not needing any special skill nor the exertion of unusual

efforts, nor the employment of long hours of legal study and research, nor the waste or expenditure of extraordinary length of time that might deprive him of the opportunity to render legal services in other cases and collect profitable legal fees.

But, at the same time, while there is nothing in the services to require or justify a special compensation, in estimating the reasonable fees that should be awarded to petitioner, we have considered, among other factors and circumstances, the length of time which ran from the first service to the last—around two years and a half—the number of services rendered, and the fact that petitioner, being a near relative of the deceased, would have received a substantial share in the numerous properties left by the deceased, if the latter had died intestate and had not decided to adopt as her children two nieces who were in the same rank of relationship with the deceased as petitioner. It appears that petitioner had received only a small legacy valued at less than P1,000.

After considering all the facts and circumstances in this case, in an effort to fix an amount that could be as reasonable as possible, the court decided that petitioner is entitled to the sum of P10,000, as attorney's fees, to be paid by the estate of the deceased Margarita David, and so modify the appealed resolution, without pronouncement as to costs.

Ozaeta, De Joya, Hilado, and Bengzon, JJ., concur.

Resolution modified.

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