

**IN THE MATTER OF THE PETITION TO APPROVE THE WILL OF
RICARDO B. BONILLA, DECEASED, MARCELA RODELAS,
PETITIONER-APPELLANT, VS. AMPARO ARANZA, ET. AL.,
OPPOSITORS-APPELLEES, ATTY....**

G.R. No. 58509. December 07, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This case was certified to this Tribunal by the Court of Appeals for final determination pursuant to Section 3, Rule 50 of the Rules of Court.

As found by the Court of Appeals:

"x x x On January 11, 1977, appellant filed a petition with the Court of First Instance of Rizal for the probate of the holographic will of Ricardo B. Bonilla and the issuance of letters testamentary in her favor. The petition, docketed as Sp. Proc. No. 8432, was opposed by the appellees Amparo Aranza Bonilla, Wilferine Bonilla Treyes, Expedita Bonilla Frias and Ephraim Bonilla on the following grounds:

"(1) Appellant was estopped from claiming that the deceased left a will by failing to produce the will within twenty days of the death of the testator as required by Rule 75, section 2 of the Rules of Court;

"(2) The alleged copy of the alleged holographic will did not contain a disposition of property after death and was not intended to take effect after death, and therefore it was not a will;

"(3) The alleged holographic will itself, and not an alleged copy thereof, must be produced, otherwise it would produce no effect, as held in *Gan v. Yap*, 104 Phil. 509; and

"(4) The deceased did not leave any will, holographic or otherwise, executed and attested as required by law.

"The appellees likewise moved for the consolidation of the case with another case (Sp. Proc. No. 8275). Their motion was granted by the court in an order dated April 4, 1977.

"On November 13, 1978, following the consolidation of the cases, the appellees moved again to dismiss the petition for the probate of the will. They argued that:

"(1) The alleged holographic was not a last will but merely an instruction as to the management and improvement of the schools and colleges founded by decedent Ricardo B. Bonilla; and

"(2) Lost or destroyed holographic wills cannot be proved by secondary evidence unlike ordinary wills.

"Upon opposition of the appellant, the motion to dismiss was denied by the court in its order of February 23, 1979.

"The appellees then filed a motion for reconsideration on the ground that the order was contrary to law and settled pronouncements and rulings of the Supreme Court, to which the appellant in turn filed an opposition.

On July 23, 1979, the court set aside its order of February 23, 1979 and dismissed the petition for the probate of the will of Ricardo B. Bonilla. The court said:

'... It is our considered opinion that once the original copy of the holographic will is lost, a copy thereof cannot stand in lieu of the original.

'In the case of *Gan vs. Yap*, 104 Phil. 509, 522, the Supreme Court held that 'in the matter of holographic wills the law, it is reasonable to suppose, regards the document itself as the material proof of authenticity of said wills.'

'MOREOVER, this Court notes that the alleged holographic will was executed on January 25, 1962 while Ricardo B. Bonilla died on May 13, 1976. In view of the lapse of more than 14 years from the time of the execution of the will to the death of the decedent, the fact that the original of the will could not be located shows to our mind that the decedent had discarded before his death his allegedly missing Holographic Will.

Appellant's motion for reconsideration was denied. Hence, an appeal to the Court of Appeals in which it is contended that the dismissal of appellant's petition is contrary to law and well-settled jurisprudence.

On July 7, 1980, appellees moved to forward the case to this Court on the ground that the appeal does not involve question of fact and alleged that the trial court committed the following assigned errors:

"I. THE LOWER COURT ERRED IN HOLDING THAT A LOST HOLOGRAPHIC WILL MAY NOT BE PROVED BY A COPY THEREOF;

"II. THE LOWER COURT ERRED IN HOLDING THAT THE DECEDENT HAS DISCARDED BEFORE HIS DEATH THE MISSING HOLO-GRAPHIC WILL;

"III. THE LOWER COURT ERRED IN DISMISSING APPELLANT'S WILL."

The only question here is whether a holographic will which was lost or cannot be found can be proved by means of a photostatic copy. Pursuant to Article 811 of the Civil Code, probate of holographic wills is the allowance of the will by the court after its due execution has been proved. The probate may be uncontested or not. If un-contested, at least one identifying witness is required and, if no witness is available, experts may be resorted to. If contested, at least three identifying witnesses are required. However, if the holographic will has been lost or destroyed and no other copy is available, the will can not be probated because the best and only evidence is the handwriting of the testator in said will. It is necessary that there be a comparison between sample handwritten statements of the testator and the handwritten will. But a photostatic copy or xerox copy of the holographic will may be allowed because comparison can be made with the standard writings of the testator. In the case of *Gan vs. Yap*, 104 Phil. 509, the Court ruled that "the execution and the contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses who have seen and/or read such will. The will itself must be presented; otherwise, it shall produce no effect. The law regards the document itself as material proof of authenticity." But, in Footnote 8 of said decision, it says that "Perhaps it may be proved by a photographic or photostatic copy. Even a mimeographed or carbon copy; or by other similar means, if any, whereby the authenticity of the handwriting of the deceased may be exhibited and tested before the probate court." Evidently, the photostatic or xerox copy of the lost or destroyed holographic will may be admitted because then the authenticity of the handwriting of the deceased can be determined by the probate court.

WHEREFORE, the order of the lower court dated October 3, 1979, denying appellant's motion for reconsideration dated August 9, 1979, of the Order dated July 23, 1979, dismissing her petition to approve the will of the late Ricardo B. Bonilla, is hereby SET ASIDE.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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