

**AGUSTIN GUTIERREZ, JR., AND CYNTHIA GUTIERREZ, PETITIONERS,
VS. JUDGE ANTONIA CORPUZ MACANDOG, ELPEDIA GUTIERREZ,
PROVINCIAL SHERIFF AND HIS DEPUTY, EDILBERTO CABALLERO,
AND PHI...**

G.R. No. 58654. May 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari seeks to annul two orders of the respondent judge of the then Court of First Instance of Negros Occidental. The first order authorized the release of P50,000.00 to the private respondent to be taken from the loan secured by the estate of Agustin Gutierrez, Sr., from the Philippine National Bank (PNB); and the second denied the motion for reconsideration which was filed by the heirs of the decedent.

Agustin Gutierrez, Sr. died intestate on January 3, 1977 in the municipality of New Escalante, Negros Occidental. He was survived by the following legal heirs: Lolita A. Gutierrez, his surviving spouse by the third marriage, Agustin, Jr., Herne, Mauricio, Cynthia, Augusto and Bambi (minor) all surnamed Gutierrez, Rosario G. Tabares, Concepcion G. Balane, Eva G. Gamo, Susan G. Medalla, Corazon G. Espelita, and Thelma G. Bering.

Upon proper motion dated April 18, 1977, the respondent court issued an order appointing Cynthia B. Gutierrez as special administratrix of the estate of the late Agustin Gutierrez, Sr., pending the issuance of the letters of administration.

On July 15, 1977, the corresponding letters of administration was issued by the court.

On February 20, 1981, Cynthia Gutierrez, acting in her capacity as administratrix of the estate, filed with the court a "Motion for Authority to Secure Additional Loan" of at least P300,000.00, which she needed "to manage and operate the estate for this crop year 1981-1982."

On March 20, 1981, the respondent judge issued the questioned order providing, among others:

"Acting on the Motion for Authority to Secure Additional Loan dated February 20, 1981 filed by the counsel for the Administratrix, and the Motion for Extension of Time to Submit Accounting and for an Order to Release Portion of the Amount direct to the Planters Product, which is P148,440.00, said motions are granted, provided the verbal claim in open court in the amount of P50,000.00 by the oppositor in this case, Mrs. Elpedia Gutierrez, shall be given to her upon the release of the additional loan of P300,000.00 for the crop year 1981-1982 for her support, considering that she is the wife of one of the heirs of the estate of Agustin Gutierrez, who is Mauricio Gutierrez. The husband not giving support to his wife, this Court due to compassionate justice, hereby grants as aforementioned said Elpedia Gutierrez the amount of Fifty Thousand Pesos (P50,000.00);" (p. 27, Rollo)

xxx xxx xxx

On March 23, 1982, administratrix Cynthia Gutierrez as well as Mauricio Gutierrez, among others, filed a verified

"Motion to Reconsider Order dated March 20, 1981 and for an Order Directing the PNB Not to Release Any Withdrawals by Elpedia Gutierrez" on the following grounds: a) that the grant of P50,000.00 in favor of Elpedia Gutierrez was never prayed for by the administratrix in her motion; b) that Elpedia Gutierrez is not an heir of the late Agustin Gutierrez, Sr. and neither is the estate under obligation to give support to her; c) that to add more burden to the estate to the tune of P50,000.00 is highly unjustifiable and detrimental to the affairs of said estate; and d) the heirs of Agustin Gutierrez, Sr. are not agreeable to releasing the amount from the estate in favor of Elpedia Gutierrez.

It is noteworthy to mention that on August 31, 1979, Mauricio Gutierrez filed a petition for legal separation against the private respondent stating as ground, the latter's attempt on his life. However, before a decision could be handed down by the Juvenile and Domestic Relations Court of Bacolod City, Mauricio Gutierrez and his eldest son were killed in an ambush.

On June 18, 1981, the respondent judge issued the second questioned order denying the motion for reconsideration with the additional directive that the sum of P50,000.00 "be released by the PNB to her (Elpedia Gutierrez) due to the urgency and exigency as the said amount is needed for her support and her children" and that the above amount "be deducted from whatever share Mauricio Gutierrez is entitled to the estate of the late Agustin Gutierrez, Sr. his father." (Rollo, p. 34).

Hence, this petition.

Petitioner maintains that the questioned orders are null and void ab initio because in the first place, the claim in question was in the nature of support for the private respondent and her children against one of the heirs of the decedent and therefore, was not enforceable against the estate of the latter. Secondly, the amount of P50,000.00 to be given to the private respondent was ordered to be charged not against the assets of the estate but against the loan obtained by it. Thus, there would be no valid basis for the deduction of P50,000.00 from the said loan as the borrowed money does not even form part of the estate. Thirdly, assuming that the claim for support can be made against the estate of Agustin Gutierrez, Sr., the same was made verbally and without the prior notice to the administratrix of the estate and without conformity of the heirs before payment of all the debts due from the estate.

On the other hand, the respondent judge capitalizes on the fact that after she issued the first questioned order, Mauricio Gutierrez died and, therefore, the release of the amount of P50,000.00 was prompted by human compassion, exigency, urgency and common sense. Furthermore, according to the respondent judge, there are conjugal properties belonging to Mauricio and Elpedia Gutierrez which are in the possession of the estate of Agustin Gutierrez, Sr., and which are not accounted for and this is the reason why the private respondent and her two minor children are claiming them. Accordingly, this is also the reason, why only the herein petitioners are interested in questioning the release of the amount of P50,000.00

We find merit in the petition.

The respondent Elpedia's claim for support should no have been addressed to the estate of Agustin Gutierrez, Sr.

When the first questioned order was issued by the respondent judge, Mauricio Gutierrez was still alive. In fact, he was one of those who opposed such order. The respondent judge had no authority to issue the said order because she knew fully well that the claim had no leg to stand on as Elpedia was not an heir to the estate and the decedent had no obligation whatsoever to give her support. Respondent Elpedia, at this point, should have asked for support pendente lite before the juvenile court where the action for legal separation which was filed by her husband was pending. Then, when Mauricio Gutierrez died, she should have filed an action for the settlement of estate of her

husband where she and her children could receive such allowance as may be directed by the court under Section 3, Rule 83 of the Revised Rules of Court.

Therefore, the second order, even though it was issued after the death of Mauricio Gutierrez, is also null and void for being without any legal basis.

While it may be true that by right of representation, the respondent Elpedia and her children are entitled to the rightful share of Mauricio Gutierrez to the estate of Agustin Gutierrez, Sr., the same cannot be given in advance. It has to wait until all the claims against the estate have been settled. Under Section 5, Rule 86 of the Rules of Court, all claims against the estate of a deceased must be filed within a limited time so that thereafter, the heirs can claim their share in the estate.

As was held in *Py Eng Chong v. Herrera*, (70 SCRA 130, 135):

"xxx The above quoted provision (Sec. 5 Rule 86) is mandatory. This requirement is for the purpose of protecting the estate of the deceased by informing the executor or administrator of the claims against it, thus enabling him to examine each claim and to determine whether it is a proper one which should be allowed. The plain and obvious design of the rule is the speedy settlement of the affairs of the deceased and the early delivery of the property to the distributees, legatees, or heirs. 'The law strictly requires the prompt presentation and disposition of the claims against the decedent's estate in order to settle the affairs of the estate as soon as possible, pay off its debts and distribute the residue.'"

It was, therefore, premature for the respondent judge to order the release of the amount in question.

Moreover, the claim for support even assuming that it is meritorious was not reduced into writing and filed with the court. This, alone, should have militated against the granting of such claim. The fact that the private respondent asserts that some of her and her husband's conjugal properties were in the possession of the estate is not sufficient to dispense with the mandatory requirement of filing a claim against the estate. If it were true that said conjugal properties were being included as part of the estate of the decedent, then the private respondent, aside from opposing the inclusion, should have filed a separate action for the recovery of the properties. The alleged inclusion can never be an excuse for the private respondent to acquire P50,000.00 from the estate and much less if the amount is to be taken only from a loan incurred by the said estate.

In the case of *Valero vda. de Rodriguez v. Court of Appeals* (91 SCRA 540, 545-546), we ruled:

"The prevailing rule is that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties (3 Moran's Comments on the Rules of Court, 1970 Edition, pp. 448-449 and 473; *Lachenal v. Salas*, L-42257, June 14, 1976, 71 SCRA 262, 266)."

In the case at bar, the private respondent did not file a separate action for the recovery of the alleged included conjugal properties, and in asking for support, she also failed to file a formal claim with the court. Thus, no hearing was conducted to determine the merit of such claim and the administratrix was not also given ample opportunity to contest the claim which is her rightful duty to examine or oppose, being the administratrix of the estate.

As we have ruled in *Estate of Olave v. Reyes* (123 SCRA 767, 771-772):

"The purpose of presentation of claims against decedents of the estate in the probate court is to protect the estate of deceased persons. That way, the executor or administrator will be able to examine each claim and determine whether it is a proper one which should be allowed. Further, the primary object of the provisions

requiring presentation is to apprise the administrator and the probate court of the existence of the claim so that a proper and timely arrangement may be made for its payment in full or by pro-rata portion in the due course of the administration, inasmuch as upon the death of a person, his entire estate is burdened with the payment of all his debts and no creditor shall enjoy any preference or priority; all of them shall share pro-rata in the liquidation of the estate of the deceased."

We, therefore, find that the respondent judge committed grave abuse of discretion in issuing the two questioned orders without factual and legal bases.

WHEREFORE, the petition is hereby GRANTED. The questioned orders of the respondent judge dated March 20, 1981 and June 18, 1981 are ANNULLED and SET ASIDE. The temporary restraining order and mandatory order we issued on November 16, 1981 are made PERMANENT.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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