

JUANA CAGUIOA, ADMINISTRATRIX OF THE ESTATE OF THE DECEASED EMIGDIO ZARATE, PETITIONER AND APPELLEE, VS. MARIA CALDERON, OPPONENT AND APPELLANT.

G. R. No. 6625. October 24, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the plaintiff, upon the 17th of February, 1910, presented a petition in the Court of First Instance of the Province of Pangasinan, praying for the probate of the last will and testament of Emigdio Zarate, deceased, in conformity with section 630 of the Code of Procedure in Civil Actions. The petition was accompanied by the original will, marked "Exhibit A," of said Emigdio Zarate.

Due notice of said petition was given in accordance with law, and the hearing for the probate of said will was fixed for the 9th of March, 1910. Later the said hearing was transferred to the 16th of July, 1910. On the latter date the said Maria Calderon appeared, by her attorney, and opposed the probate of said will upon the following grounds:

"1. That the said Emigdio Zarate was mentally incapacitated at the time he authorized and signed his will.

"2. That he executed the said will under illegal and undue influence or persuasion on the part of some persons who acted in behalf of the beneficiaries or heirs.

"3. That the signature of the testator was obtained by deceit or fraud, for the reason that it was not his intention that all that was recorded in the said instrument should be his will at the time he signed it; for the testator had informed the opponent, Maria Calderon, before and after the said will had been signed, that he had not disposed of the one-half of the house and lot now mentioned in the third clause, letter (a), of the said will, because the said testator recognized that the house and lot referred to belonged to the said Maria Calderon.

"Therefore, the opponent prays the court to annul the will alleged to have been executed by Emigdio Zarate, and to order that its probate be disallowed, with the costs against the petitioner."

After hearing the evidence adduced pro and con, the lower court reached the following conclusion:

"It having been proved completely on the part of the petitioner that the will in question was executed and signed in entire conformity with all the requirements and solemnities set out in the Code of Civil Procedure, the court over-rules the opposition, sustains the petition, admits to probate Exhibit A, holding that the same is legal in all its parts as the last will and testament of the deceased Emigdio Zarate."

From that conclusion of the lower court, the oppositor appealed to this court and made the following assignments of error:

"I. The court erred in holding that the deceased, Emigdio Zarate, was in the full possession of his mental faculties at the time of the execution of his will.

"II. The court erred in holding that the said Emigdio Zarate executed his last will and testament without illegal persuasion or influence on the part of persons working in behalf of the heirs.

"III. The court erred in holding that Emigdio Zarate executed and signed his last will without fraud and deceit being brought to bear upon him,

"IV. The court erred in holding that the testator signed his will in the presence of four witnesses, Sabino Sandoval, Esteban Sandoval, George Zarate and Eugenio Zarate, who, on their part, signed, each of them, in the presence of the others.

"V. The court erred in holding that it was proved that the will in question was executed and signed in conformity with the requirements and solemnities set out in the Code of Civil Procedure.

"VI. The court erred in holding that the document Exhibit A, of the petitioner, is legal in all its parts, as the last will and testament of the deceased Emigdio Zarate.

"VII. The court erred in rendering judgment in this matter without waiting for the written argument of both sides.

"VIII. The court erred in not holding that all the proof taken together sustained the claim of the oppositor, Maria Calderon.

"IX. The court erred in imposing the costs upon the oppositor."

With reference to the first assignment of error above noted, it appears from the record that upon the 13th day of January, 1910, Emigdio Zarate executed his last will and testament, the original of which appears in the record and is marked "Exhibit A." Emigdio Zarate died on the 19th day of January, 1910.

From an examination of said Exhibit A it appears to have been signed by Emigdio Zarate and by four witnesses, Sabino M. Sandoval, Esteban Sandoval, George Zarate and Eugenio Zarate. From the record it appears that the testator dictated his will in the Pangasinan dialect and it was then translated into Spanish. After the will had been written in Spanish it was read to the deceased and translated to him in the Pangasinan dialect, and, according to the allegations of the appellee, the said Exhibit A received his approval as his last will and testament.

The appellant alleges that at the time of the execution of the said alleged will of Emigdio Zarate, he was not in the full possession of his mental faculties. This question was presented to the lower court. After hearing the evidence, the lower court found that Emigdio Zarate, at the time of the execution of the said will, was in the possession of his faculties. Two of the witnesses who signed the will, as well as others who were present in the house at the time the said will was executed, testified that in their opinion Emigdio Zarate was of sound mind and memory at the time he signed the said will. Practically the only testimony to the contrary adduced during the trial of the cause in the lower court was the testimony given by two doctors, one of whom had not seen the deceased for many months before his death, whose testimony was based wholly upon hypothetical questions.

The appellant attempted to show that Emigdio Zarate for some months prior to his death had been troubled with insomnia, as well as some other physical infirmities. The hypothetical questions were based upon the question whether or not a person who had been suffering with insomnia for some months would have sufficient mental capacity to execute a will. The two doctors who appeared on behalf of the opponents testified that insomnia tended to destroy the mental capacity, but that there were times, even during the period while they were suffering from insomnia, when they would be perfectly rational. Even admitting that there was some foundation for the supposition that Emigdio Zarate had suffered from the alleged infirmities, we do not believe that the testimony was sufficiently direct and positive, based upon the hypothetical questions, to overcome the positive and direct testimony of the witnesses who were present at the time of the execution of the will in question. The evidence

adduced during the trial of the case, shows a large preponderance of proof in favor of the fact that Emigdio Zarate was in the full possession of his mental faculties at the time he executed his last will and testament.

The second and third assignments of error may be considered together. Upon the question presented by the said assignments of error, the lower court found from the evidence that Emigdio Zarate executed his last will and testament without threats, force or pressure or illegal influence. The basis of the claim that undue influence had been exercised over Emigdio Zarate is that a day or two before the said will was made, it is claimed by the opponent, Maria Calderon, that the deceased promised to will to her a certain house (one-half of which seems to belong to her) upon the payment by her to the deceased of the sum of P300. The P300 was never paid to the deceased and the said property was not willed to the defendant herein. The agreement between Maria Calderon and the deceased, if there was an agreement, seems to have been made between them privately, at least at the time the will was made the deceased made no reference to it whatever. Those present at the time the will was made and the witnesses who signed the same heard no statement or conversation relating to the said agreement, between the opponent herein and the deceased. There is no proof in the record which shows that any person even spoke to the deceased with reference to the willing of the said house to the opponent. There is nothing in the record to indicate in the slightest degree that any person interested in the will, or who was present at the time of the making of the same, induced or attempted to induce the deceased not to will the said house to the opponent herein. The theory of the opponent that the deceased did not will to her the house in question is a mere presumption and there is not a scintilla of evidence in the record to support it.

The fourth, fifth, and sixth assignments of error may be considered together.

During the trial of the cause two of the persons who signed the will as witnesses appeared and testified. They testified that the deceased signed the will in their presence and in the presence of the other witnesses to the will; that they each signed the will in the presence of the testator and in the presence of the other witnesses; that the other two witnesses who were not called also signed the will in the presence of the testator and in the presence of each of the other witnesses. There is no sufficient proof in the record to overcome the declarations of these witnesses. We find no reason, therefore, for modifying the conclusion of the lower court upon these assignments of error.

With reference to the seventh assignment of error, to wit: that the court erred in rendering judgment without waiting for the written arguments of both parties, it may be said that it is customary for courts to wait until the parties have presented their arguments before deciding a cause, nevertheless, it is not reversible error for a court to decide a cause without waiting for written arguments to be presented by the respective attorneys. It appears from the record (p. 102) that the trial of the cause was closed on the 5th of August, 1910, and that the decision in the cause was not rendered until the 5th of October, 1910, or until after two months had expired. There is nothing in the record which shows that either of the attorneys during these two months asked for additional time in which to present their written arguments. It also appears of record (p. 102) that the respective attorneys asked for fifteen days' time within which to present their written arguments. There is nothing in the record which shows whether they presented their written arguments or not. If there was any fault for not having the written arguments presented before the decision was rendered in the cause, it was clearly not the fault of the judge.

The arguments heretofore given seem to be sufficient also to answer the eighth and ninth assignments of error.

Upon a full consideration of the evidence and the assignments of error, we are of the opinion that the will of Emigdio Zarate, deceased, was executed and signed in entire conformity with all the requirements and solemnities required by law. Therefore the judgment of the lower court is hereby affirmed with costs.

Torres, Carson, and Moreland, JJ., concur.

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