

**JULIANA BAGTAS, PLAINTIFF AND APPELLEE, VS. ISIDORO PAGUIO ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 6801. March 14, 1912*

Ponente: TRENT, J.

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This is an appeal from an order of the Court of First Instance of the Province of Bataan, admitting to probate a document which was offered as the last will and testament of Pioquinto Paguio y Pizarro. The will purports to have been executed in the pueblo of Pilar, Province of Bataan, on the 19th day of April, 1908. The testator died on the 28th of September, 1909, a year and five months following the date of the execution of the will. The will was propounded by the executrix, Juliana Bagtas, widow of the decedent, and the opponents are a son and several grandchildren by a former marriage, the latter being the children of a deceased daughter.

The basis of the opposition to the probation of the will is that the same was not executed according to the formalities and requirements of the law touching wills, and further that the testator was not in the full enjoyment and use of his mental faculties and was without the mental capacity necessary to execute a valid will.

The record shows that the testator, Pioquinto Paguio, for some fourteen or fifteen years prior to the time of his death suffered from a paralysis of the left side of his body; that a few years prior to his death his hearing became impaired and that he lost the power of speech. Owing to the paralysis of certain muscles his head fell to one side, and saliva ran from his mouth. He retained the use of his right hand, however, and was able to write fairly well. Through the medium of signs he was able to indicate his wishes to his wife and to other members of his family.

At the time of the execution of the will there were present the four testamentary witnesses, Agustin Paguio, Anacleto Paguio, Francisco Paguio, and Pedro Paguio, an attorney, Sefior Marco, and one Florentino Ramos. Anacleto Paguio and the attorney have since died, and consequently their testimony was not available upon the trial of the case in the lower court. The other three testamentary witnesses and the witness Florentino Ramos testified as to the manner in which the will was executed. According to the uncontroverted testimony of these witnesses the will was executed in the following manner:

Pioquinto Paguio, the testator, wrote out on pieces of paper notes and items relating to the disposition of his property, and these notes were in turn delivered to Senor Marco, who transcribed them and put them in form. The witnesses testify that the pieces of paper upon which the notes were written were delivered to the attorney by the testator; that the attorney read them to the testator asking if they were his testamentary dispositions; that the testator assented each time with an affirmative movement of his head; that after the will as a whole had been thus written by the attorney, it was read in a loud voice in the presence of the testator and the witnesses; that Senor Marco gave the document to the testator; that the latter, after looking over it, signed it in the presence of the four subscribing witnesses; and that they in turn signed it in the presence of the testator and of each other.

These are the facts of record with reference to the execution of the will and we are in perfect accord with the judgment of the lower court that the formalities of the Code of Civil Procedure have been fully complied with.

This brings us now to a consideration of appellants' second assignment of error, viz, the testator's alleged mental incapacity at the time of the execution of the will. Upon this point considerable evidence was adduced at the trial. One of the attesting witnesses testified that at the time of the execution of the will the testator was in his right mind, and that although he was seriously ill, he indicated by movements of his head what his wishes were. Another of the attesting witnesses stated that he was not able to say whether decedent had the full use of his mental faculties or not, because he had been ill for some years, and that he (the witness) was not a physician. The other subscribing witness, Pedro Paguio, testified in the lower court as a witness for the opponents. He was unable to state whether or not the will was the wish of the testator. The only reasons he gave for his statement were the infirmity and advanced age of the testator and the fact that he was unable to speak. This witness stated that the testator signed the will, and he verified his own signature as a subscribing witness.

Florentino Ramos, although not an attesting witness, stated that he was present when the will was executed and his testimony was cumulative in corroboration of the manner in which the will was executed and as to the fact that the testator signed the will. This witness also stated that he had frequently transacted matters of business for the decedent and had written letters and made inventories of his property at his request, and that immediately before and after the execution of the will he had performed offices of this character. He stated that the decedent was able to communicate his thoughts by writing. The testimony of this witness clearly indicates the presence of mental capacity on the part of the testator. Among other witnesses for the opponents were two physicians, Doctor Basa and Doctor Viado. Doctor Basa testified that he had attended the testator some four or five years prior to his death and that the latter had suffered from a cerebral congestion from which the paralysis resulted. The following question was propounded to Doctor Basa:

"Q. Referring to the mental condition in which you found him the last time you attended him, do you think he was in his right mind?—A. I can not say exactly whether he was in his right mind, but I noted some mental disorder, because when I spoke to him he did not answer me."

Doctor Basa testified at more length, but the substance of his testimony is that the testator had suffered a paralysis and that he had noticed some mental disorder. He does not say that the testator was not in his right mind at the time of the execution of the will, nor does he give it as his opinion that he was without the necessary mental capacity to make a valid will. He did not state in what way this mental disorder had manifested itself other than that he had noticed that the testator did not reply to him on one occasion when he visited him.

Doctor Viado, the other physician, had never seen the testator, but his answer was in reply to a hypothetical question as to what would be the mental condition of a person who was 79 years old and who had suffered from a malady such as the testator was supposed to have had according to the testimony of Doctor Basa, whose testimony Doctor Viado had heard. He replied and discussed at some length the symptoms and consequences of the disease from which the testator had suffered; he read in support of his statements from a work by a German physician, Dr. Herman Eichost. In answer, however, to a direct question, he stated that he would be unable to certify to the mental condition of a person who was suffering from such a disease.

We do not think that the testimony of these two physicians in any way strengthens the contention of the appellants. Their testimony only confirms the fact that the testator had been for a number of years prior to his death afflicted with paralysis, in consequence of which his physical and mental strength was greatly impaired. Neither of them attempted to state what was the mental condition of the testator at the time he executed the will in question. There can be no doubt that the testator's infirmities were of a very serious character, and it is quite evident that his mind was not as active as it had been in the earlier years of his life. However, we can not conclude from this that he was wanting in the necessary mental capacity to dispose of his property by will.

The courts have been called upon frequently to nullify wills executed under such circumstances, but the weight of

authority is in support of the principle that it is only when those seeking to overthrow the will have clearly established the charge of mental incapacity that the courts will intervene to set aside a testamentary document of this character. In the case of Bugnao vs. Ubag (14 Phil. Rep., 163), the question of testamentary capacity was discussed by this court. The numerous citations there given from the decisions of the United States courts are especially applicable to the case at bar and have our approval. In this jurisdiction the presumption of law is in favor of the mental capacity of the testator and the burden is upon the contestants of the will to prove the lack of testamentary capacity. (In the matter of the will of Cabigting, 14 Phil. Rep., 463; in the matter of the will of Butalid, 10 Phil. Rep., 27; Hernaez vs. Hernaez, 1 Phil. Rep., 689.)

The rule of law relating to the presumption of mental soundness is well established, and the testator in the case at bar never having been adjudged insane by a court of competent jurisdiction, this presumption continues, and it is therefore incumbent upon the opponents to overcome this legal presumption by proper evidence. This we think they have failed to do. There are many cases and authorities which we might cite to show that the courts have repeatedly held that mere weakness of mind and body, induced by age and disease do not render a person incapable of making a will. The law does not require that a person shall continue in the full enjoyment and use of his pristine physical and mental powers in order to execute a valid will. If such were the legal standard, few indeed would be the number of wills that could meet such exacting requirements. The authorities, both medical and legal, are universal in the statement that the question of mental capacity is one of degree, and that there are many gradations from the highest degree of mental soundness to the lowest conditions of diseased mentality which are denominated as insanity and idiocy.

The right to dispose of property by testamentary disposition is as sacred as any other right which a person may exercise and this right should not be nullified unless mental incapacity is established in a positive and conclusive manner. In discussing the question of testamentary capacity, it is stated in volume 28, page 70, of the American and English Encyclopedia of Law, that—

"Contrary to the very prevalent lay impression, perfect soundness of mind is not essential to testamentary capacity. A testator may be afflicted with a variety of mental weaknesses, disorders, or peculiarities and still be capable in law of executing a valid will." (See the numerous cases there cited in support of this statement.)

The rule relating to testamentary capacity is stated in Buswell on Insanity, section 365, and quoted with approval in Campbell vs. Campbell (130 Ill., 466), as follows:

"To constitute a sound and disposing mind, it is not necessary that the mind shall be wholly unbroken, unimpaired, or unshattered by disease or otherwise, or that the testator should be in the full possession of his reasoning faculties."

In note, 1 Jarman on Wills, 38, the rule is thus stated:

"The question is not so much, what was the degree of memory possessed by the testator, as, had he a disposing memory? Was he able to remember the property he was about to bequeath, the manner of distributing it, and the objects of his bounty? In a word, were his mind and memory sufficiently sound to enable him to know and understand the business in which he was engaged at the time when he executed his will." (See authorities there cited.)

In Wilson vs. Mitchell (101 Penn., 495), the following facts appeared upon the trial of the case: The testator died at the age of nearly 102 years. In his early years he was an intelligent and well informed man. About seven years prior to his death he suffered a paralytic stroke and from that time his mind and memory were much enfeebled. He became very dull of hearing and in consequence of the shrinking of his brain he was affected with senile cataract causing total blindness. He became filthy and obscene in his habits, although formerly he was observant of the

proprieties of life. The court, in commenting upon the case, said:

"Neither age, nor sickness, nor extreme distress, nor debility of body will affect the capacity to make a will, if sufficient intelligence remains. The failure of memory is not sufficient to create the incapacity, unless it be total, or extend to his immediate family or property. \* \* \*

\* \* \* \* \*

"Dougal (the testator) had lived over one hundred years before he made the will, and his physical and mental weakness and defective memory were in striking contrast with their strength in the meridian of his life. He was blind; not deaf, but hearing impaired; his mind acted slowly, he was forgetful of recent events, especially of names, and repeated questions in conversation; and sometimes, when aroused from sleep or slumber, would seem bewildered. It is not singular that some of those who had known him when he was remarkable for vigor and intelligence, are of the opinion that his reason was so far gone that he was incapable of making a will, although they never heard him utter an irrational expression."

In the above case the will was sustained. In the case at bar we might draw the same contrast as was pictured by the court in the case just quoted. The striking change in the physical and mental vigor of the testator during the last years of his life may have led some of those who knew him in his earlier days to entertain doubts as to his mental capacity to make a will, yet we think that the statements of the witnesses to the execution of the will and the statements of the conduct of the testator at that time all indicate that he unquestionably had mental capacity and that he exercised it on this occasion. At the time of the execution of the will it does not appear that his conduct was irrational in any particular. He seems to have comprehended clearly what the nature of the business was in which he was engaged. The evidence shows that the writing and execution of the will occupied a period of several hours and that the testator was present during all this time, taking an active part in all the proceedings. Again, the will in the case at bar is perfectly reasonable and its dispositions are those of a rational person.

For the reasons above stated, the order probating the will should be and the same is hereby affirmed, with costs of this instance against the appellants.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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