

J. GONZALES-ORENSE, PETITIONER, VS. COURT OF APPEALS AND PRIMA M. CAGUIAT-ALBA, RESPONDENTS.

G.R. No. 80526. July 18, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The novel question presented in this case is whether or not, when an award of attorney's fees by the probate court is elevated to the Court of Appeals, a record on appeal is necessary.

The issue arose when, having been retained by the private respondent on July 1, 1982, to represent her in the probate of her husband's will, the petitioner was subsequently dismissed on March 5, 1984. He claimed the stipulated attorney's fees equivalent to 10% of the estate but the probate court,[1] in its order dated December 8, 1986, allowed him only P20,000.00 on the basis of quantum meruit. On December 19, 1986, he filed a notice of appeal from this order, and the probate court then transmitted the records of the case to the Court of Appeals, which notified the petitioner accordingly. On July 20, 1987, he submitted the brief for the appellant. The private respondent traversed with her brief for the appellee on September 8, 1987. On September 22, 1987, however, the Court of Appeals[2] declared the petitioner's appeal abandoned and dismissed for his failure to submit his record on appeal as required under BP 129 and the Interim Rules and Guidelines. The petitioner then came on appeal by certiorari to this Court to ask that the said resolution be set aside as null and void.

The pertinent provision of BP 129 reads as follows:

"Sec. 39. Appeals. - The period for appeal from final orders, resolution, awards, judgment or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution award, judgment or decision appealed from. Provided, however, that in habeas corpus cases the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.

"No record on appeal shall be required to take an appeal. In lieu thereof, the entire original record shall be transmitted with all the pages prominently numbered consecutively together with an index of the contents thereof.

"This section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court."

The Interim Rules and Guidelines provide thus:

"Sec. 18. Elimination of record on appeal and appeal bond. - The filing of a record on appeal shall be dispensed with except in the cases referred to in sub-paragraph (b) of paragraph 19 hereof.

"No appeal bond shall be required for an appeal."

"Sec. 19. Period of Appeal. - (a) All appeals except in habeas corpus cases and in the cases referred to in paragraph (b) hereof, must be taken within fifteen (15) days from notice of the judgment, order, resolution or award appealed from; (b) In appeals in special proceedings in accordance with Rule 109 of the Rules of Court

and other cases wherein multiple appeals are allowed, the period of appeal shall be 30 days, a record on appeal being required."

The petitioner contends that under the above rules it was not necessary for him to file a record on appeal because his appeal involves an ordinary claim for payment of attorney's fees which may be asserted against the private respondent either in the probate case or in a separate civil action. The appeal should therefore be covered by the general rule rather than by the exception. The probate court apparently believed as much because it immediately directed the transmittal of the records of the case to the respondent court in lieu of the record on appeal, and so too did the appellee for she filed her brief in due time instead of moving to dismiss because of the non-filing of the record on appeal. He adds that he could not be regarded as having abandoned his appeal as in fact he had filed a motion for execution pending appeal on August 11, 1987, without prejudice to the final outcome of his appeal.

The private respondent, for her part, supports the respondent court and argues that the above-cited provisions specifically exclude from the general rule special proceedings and other cases where multiple appeals are allowed. The period for appeal in these cases is retained at thirty days and the record on appeal is still necessary. Non-compliance will result in dismissal of the appeal as the requirements are mandatory, and more so in this case since the petitioner was required to file the record on appeal and did not choose to comply with the order of the respondent court. It is stressed that the petitioner's appeal was in Sp. Proc. No. 35398 in the Regional Trial Court of Quezon City and not in any ordinary or separate civil action.

In the view of the Court, the decisive provision is Rule 109, Section 1, of the Rules of Court, which reads in full as follows:

"Section 1. Orders or judgments from which appeals may be taken. An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

"(a) Allows or disallows a will;

"(b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;

"(c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

"(d) Settles the account of an executor, administrator, trustee or guardian;

"(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

"(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration."

It is settled that the fees of the lawyer representing the executor or administrator are directly chargeable against the client for whom the services have been rendered and not against the estate of the decedent.[3] However, the executor or administrator may claim reimbursement of such fees from the estate if it can be shown that the services of the lawyer redounded to its benefit.[4]

As the petitioner's claim for attorney's fees is not a claim against the estate of the private respondent's husband, he could have filed it in an ordinary civil action, in which event an appeal therefrom will not be regarded as involved in a special proceeding requiring the submission of a record on appeal. It appears, however, that it was not filed in

such separate civil action but in the probate case itself, which is a special proceeding and so should be deemed governed by Rule 109 on appeals from such proceedings. The appeal would come under Subsection (e) thereof as the order of the probate court granting the challenged attorney's fees "constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing." The consequence is that the exception rather than the rule in BP 129 and the Implementing Rules and Guidelines should be followed and, therefore, the record on appeal should be required.

Rule 50, Section 1, of the Rules of Court provides in part as follows:

"Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x

"(b) Failure to file, within the period prescribed by these rules, the notice of appeal, appeal bond or record on appeal."

On the basis of the above rule, the challenged resolution of the respondent court dismissing the petitioner's appeal cannot be faulted.

It is noted, however, that the question presented in this case is one of first impression; that the petitioner acted in honest, if mistaken, interpretation of the applicable law; that the probate court itself believed that the record on appeal was unnecessary; and that the private respondent herself apparently thought so, too, for she did not move to dismiss the appeal and instead impliedly recognized its validity by filing the appellee's brief.

In view of these circumstances, and in the interest of justice, the Court feels that the petitioner should be given an opportunity to comply with the above-discussed rules by submitting the required record on appeal as a condition for the revival of the appeal. The issue raised in his appeal may then be fully discussed and, in the light of the briefs already filed by the parties, resolved on the merits by the respondent court.

ACCORDINGLY, the respondent court is directed to REINSTATE the petitioner's appeal upon his submission, within thirty days from notice hereof, of the required record on appeal as duly approved by the probate court. No costs.

Narvasa, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] RTC, Quezon City, Br. 90, presided by Judge Abraham P. Vera.

[2] Pe, J., ponente, with De Pano and Fule, JJ.

[3] Uy Tioco v. Imperial, 53 Phil. 802; Aldamiz v. Judge of the CFI of Mindoro, et al., 85 Phil. 228.

[4] Uy Tioco, supra; Aldamiz, supra.

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