

**ALBERTO F. LACSON, EDITHA F. LACSON, ROMEO F. LACSON AND
ZENA F. VELASCO, PETITIONERS, VS. HON. LUIS R. REYES, IN HIS
CAPACITY AS PRESIDING JUDGE OF BRANCH 22 OF THE REGIONAL
TR...**

G.R. No. 86250. February 26, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

On August 26, 1987, the private respondent, Ephraim Serquina, petitioned the respondent court for the probate of the last will and testament of Carmelita Farlin. His petition was docketed as Sp. Proc. No. 127-87 of the respondent court, entitled "Re Testate Estate of Carmelita S. Farlin, Ephraim J. Serquina, Petitioner." He also petitioned the court in his capacity as counsel for the heirs, the herein petitioners, and as executor under the will.

The petition was not opposed and hence, on November 17, 1987, the respondent court issued a "certificate of allowance,"[1] the dispositive part of which reads as follows:

WHEREFORE, upon the foregoing, the Court hereby renders certification that subject will and testament is accordingly allowed in accordance with Sec. 13 of Rule 76 of the Rules of Court.

SO ORDERED.[2]

On March 14, 1988, Atty. Ephraim Serquina filed a "motion for attorney's fees"[3] against the petitioners, alleging that the heirs had agreed to pay, as and for his legal services rendered, the sum of P68,000.00.

Thereafter summonses were served upon the heirs "as if it were a complaint against said heirs"[4] directing them to answer the motion.

Thereafter, the heirs filed their answer and denied the claim for P68,000.00 alleging that the sum agreed upon was only P7,000.00, a sum they had allegedly already paid.

After pre-trial, the respondent court rendered judgment and disposed as follows:

In the light of the foregoing, considering the extent of the legal services rendered to the clients, the value of the properties gained by the clients out of said services, the petition for attorney's fees is granted. Judgment is hereby rendered directing the respondent heirs to pay their lawyer the sum of P65,000.00 as true and reasonable attorney's fees which shall be a lien on the subject properties. Cost against the respondent.

SO ORDERED.[5]

On October 21, 1988, eleven days after the heirs received a copy of the decision,[6] the latter filed a notice of appeal.

On November 7, 1988, the respondent court issued an order directing the heirs to amend their notice of appeal.[7]

On October 27, 1988, the respondent court issued an order "noting" the notice on appeal "appellants [the heirs] having failed to correct or complete the same within the reglementary period to effect an appeal." [8]

On November 24, 1988, the respondent court issued yet another order denying the notice of appeal for failure of the heirs to file a record on appeal. [9]

Thereafter, Atty. Serquina moved for execution.

On December 5, 1988, the respondent court issued an order granting execution. [10]

The petitioners submit that the decision, dated October 26, 1988, and the orders, dated October 27, 1988, November 24, 1988, and December 5, 1988, respectively, are null and void for the following reasons: (1) the respondent court never acquired jurisdiction over the "motion for attorney's fees" for failure on the part of the movant, Ephraim Serquina, to pay docket fees; (2) the respondent court gravely abused its discretion in denying the heirs' notice of appeal for their failure to file a record on appeal; and (3) the respondent court also gravely abused its discretion in awarding attorney's fees contrary to the provisions of Section 7, of Rule 85, of the Rules of Court.

Atty. Serquina now defends the challenged acts of the respondent court: (1) his motion was a mere incident to the main proceedings; (2) the respondent court rightly denied the notice of appeal in question for failure of the heirs to submit a record on appeal; and (3) in collecting attorney's fees, he was not acting as executor of Carmelita Farlin's last will and testament because no letters testamentary had in fact been issued.

We take these up seriatim.

I.

Anent docket fees, it has been held [11] that the court acquires jurisdiction over any case only upon payment of the prescribed docket fee.

Although the rule has since been tempered, [12] that is, there must be a clear showing that the party had intended to evade payment and to cheat the courts, it does not excuse him from paying docket fees as soon as it becomes apparent that docket fees are indeed payable.

In the case at bar, the "motion for attorney's fees" was clearly in the nature of an action commenced by a lawyer against his clients for attorney's fees. The very decision of the court states:

This case is an out-growth from Sp. Proc. No. 127-87 of same Court which was long decided (sic). It resulted from the filing of a petition for attorney's fees by the lawyer of the petitioner's heirs in the case against the latter.

Upon the filing of the petition for attorney's fees, the heir-respondents (sic) were accordingly summoned to answer the petition as if it were a complaint against said heirs who retained the petitioner as their lawyer in the said case. [13]

In that event, the parties should have known, the respondent court in particular, that docket fees should have been priorly paid before the court could lawfully act on the case, and decide it.

It may be true that the claim for attorney's fees was but an incident in the main case, still, it is not an escape valve from the payment of docket fees because as in all actions, whether separate or as an offshoot of a pending proceeding, the payment of docket fees is mandatory.

Assuming, therefore, *ex gratia argumenti*, that Atty. Serquina's demand for attorney's fees in the sum of P68,000.00 is valid, he, Atty. Serquina, should have paid the fees in question before the respondent court could

validly try his "motion".

II.

With respect to the second issue, it has been held that in appeals arising from an incident in a special proceeding, a record on appeal is necessary, otherwise, the appeal faces a dismissal.[14] It has likewise been held, however, that in the interest of justice, an appeal, brought without a record on appeal, may be reinstated under exceptional circumstances. Thus:

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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.[15]

In the instant case, the Court notes the apparent impression by the parties at the outset, that a record on appeal was unnecessary, as evidenced by: (1) the very holding of the respondent court that "[i]t is now easy to appeal as there is no more need for a record on appeal ... [b]y merely filing a notice of appeal, the appellant can already institute his appeal ...;"[16] (2) in its order to amend notice of appeal, it did not require the appellants to submit a record on appeal; and (3) Atty. Serquina interposed no objection to the appeal on that ground.

In any event, since we are annulling the decision appealed from, the matter is a dead issue.

III.

As we have indicated, we are granting certiorari and are annulling the decision appealed from, but there seems to be no reason why we can not dispose of the heirs appeal in a single proceeding.

It is pointed out that an attorney who is concurrently an executor of a will is barred from recovering attorney's fees from the estate. The Rule is specifically as follows:

SEC. 7. What expenses and fees allowed executor or administrator. Not to charge for services as attorney. Compensation provided by will controls unless renounced. — An executor or administrator shall be allowed the necessary expenses in the care, management, and settlement of the estate, and for his services, four pesos per day for the time actually and necessarily employed, or a commission upon the value of so much of the estate as comes into his possession and is finally disposed of by him in the payment of debts, expenses, legacies, or distributive shares, or by delivery to heirs or devisees, of two per centum of the first five thousand pesos of such value, one per centum of so much of such value as exceeds five thousand pesos and does not exceed thirty thousand pesos, one-half per centum of so much of such value as exceeds thirty thousand pesos and does not exceed one hundred thousand pesos, and one-quarter per centum of so much of such value as exceeds one hundred thousand pesos. But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed. If objection to the fees allowed be taken, the allowance may be re-examined on appeal.

If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively.

When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him.

When the deceased by will makes some other provision for the compensation of his executor, that provision shall be a full satisfaction for his services unless by a written instrument filed in the court he renounces all claim to the compensation provided by the will.[17]

The rule is therefore clear that an administrator or executor may be allowed fees for the necessary expenses he has incurred as such, but he may not recover attorney's fees from the estate. His compensation is fixed by the rule but such a compensation is in the nature of executor's or administrator's commissions, and never as attorney's fees. In one case,[18] we held that "a greater sum [other than that established by the rule] may be allowed 'in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator.'"[19] It is also left to the sound discretion of the court.[20] With respect to attorney's fees, the rule, as we have seen, disallows them. Accordingly, to the extent that the trial court set aside the sum of P65,000.00 as and for Mr. Serquina's attorney's fees, to operate as a "lien on the subject properties,"[21] the trial judge must be said to have gravely abused its discretion (apart from the fact that it never acquired jurisdiction, in the first place, to act on said Mr. Serquina's "motion for attorney's fees).

The next question is quite obvious: Who shoulders attorney's fees? We have held that a lawyer of an administrator or executor may not charge the estate for his fees, but rather, his client.[22] *Mutatis mutandis*, where the administrator is himself the counsel for the heirs, it is the latter who must pay therefor.

In that connection, attorney's fees are in the nature of actual damages, which must be duly proved.[23] They are also subject to certain standards, to wit: (1) they must be reasonable, that is to say, they must have a bearing on the importance of the subject matter in controversy; (2) the extent of the services rendered; and (3) the professional standing of the lawyer.[24] In all cases, they must be addressed in a full-blown trial and not on the bare word of the parties.[25] And always, they are subject to the moderating hand of the courts.

The records show that Atty. Ephraim Serquina, as counsel for the heirs, performed the following:

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5. That after the order of allow-ance for probate of the will, the undersigned counsel assisted the heirs to transfer immediately the above-mentioned real estate in their res-pective names, from (sic) the payment of estate taxes in the Bureau of Internal Revenue to the issuance by the Registry of Deeds of the titles, in order for the heirs to sell the foregoing real estate of 10,683 sq. m. (which was also the subject of sale prior to the death of the testator) to settle testator's obligations and day-to-day subsistence being (sic) that the heirs, except Zena F. Velasco, are not employed neither doing any business;[26]

The Court is not persuaded from the facts above that Atty. Serquina is entitled to the sum claimed by him (P68,000.00) or that awarded by the lower court (P65,000.00). The Court observes that these are acts performed routinely since they form part of what any lawyer worth his salt is expected to do. The will was furthermore not contested. They are not, so Justice Pedro Tuason wrote, "a case [where] the administrator was able to stop what appeared to be an improvident disbursement of a substantial amount without having to employ outside legal help at an additional expense to the estate,"[27] to entitle him to a bigger compensation. He did not exactly achieve anything out of the ordinary.

The records also reveal that Atty. Serquina has already been paid the sum of P6,000.00.[28] It is our considered opinion that he should be entitled to P15,000.00 for his efforts on a quantum meruit basis. Hence, we hold the heirs liable for P9,000.00 more.

WHEREFORE, premises considered, judgment is hereby rendered: (1) GRANTING the petition and making the temporary restraining order issued on January 16, 1989 PERMANENT; and (2) ORDERING the petitioners to PAY the private respondent, Atty. Ephraim Serquina, attorney's fees in the sum of P9,000.00. The said fees shall not be recovered from the estate of Carmelita Farlin.

No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, 3.

[2] Id.

[3] Id., 4.

[4] Id., 20.

[5]] Id., 22.

[6] Id., 5.

[7] Id., 26.

[8]] Id., 25.

[9] Id., 27.

[10] Id., 28.

[11] Manchester Development Corporation v. Court of Appeals, No. 75919, May 27, 1987, 149 SCRA 562.

[12] See e.g., Gregorio v. Angeles, G.R. No. 85847, December 21, 1989.

[13] Rollo, id., 20.

[14] Gonzales-Orense v. Court of Appeals, No. 80526, July 18, 1988, 163 SCRA 477.

[15]] Supra, 481.

[16] Rollo, id., 24.

[17] RULES OF COURT, Rule 85, sec. 7.

[18] Rodriguez v. Silva, 90 Phil. 752 (1952).

[19] Supra, 754-755.

[20] Supra, 755.

[21] Rollo, id., 22.

[22] Gonzales-Orense, supra.

[23] CIVIL CODE, art. 2199, in relation to art. 2208.

[24] Metropolitan Bank and Trust Company v. Court of Appeals, G. R. Nos. 86102-03, January 23, 1990, per

Regalado, J.

[25] Supra.

[26] Rollo, id., 72.

[27] Rodriguez, supra, 755-756. This factor was considered, however, in assessing the administrator's commissions and not attorney's fees.

[28] Rollo, id. The heirs put the figure, however, at P7,000.00. Rollo, id., 4.

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