

SECOND DIVISION

[G.R. No. 74769. September 28, 1990.]

BEATRIZ F. GONZALES, *petitioner*, vs. **HON. ZOILO AGUINALDO**, Judge of Regional Trial Court, Branch 143, Makati, Metro Manila and **TERESA F. OLBES**, *respondents*.

Andres V. Maglipon for petitioner.

Sycip, Salazar, Hernandez & Gatmaitan for private respondent.

DECISION

PADILLA, J :

This is a petition for certiorari which seeks to annul, on the ground of grave abuse of discretion, the Order of the respondent Judge, dated 15 January 1985, canceling the appointment of the petitioner Beatriz F. Gonzales as a co-administratrix in Special Proceedings No. 021 entitled "In the Matter of the Intestate Estate of Ramona Gonzales Vda. de Favis," Branch 143, RTC, Makati, Metro Manila; and the Order of 15 May 1985 denying reconsideration of the same.

The facts are:

Special Proceedings No. 021, pending before the court *a quo*, is an intestate proceeding involving the estate of the deceased Doña Ramona Gonzales Vda. de Favis. Doña Ramona is survived by her four (4) children who are her only heirs, namely, Asterio Favis, Beatriz F. Gonzales, Teresa F. Olbes, and Cecilia Favis-Gomez.

On 25 October 1983, the court *a quo* appointed petitioner Beatriz F. Gonzales and private respondent Teresa Olbes as co-administratrices of the estate.

On 11 November 1984, while petitioner Beatriz F. Gonzales was in the United States accompanying her ailing husband who was receiving medical treatment in that country, private respondent Teresa Olbes filed a motion, dated 26 November 1984, to remove Beatriz F. Gonzales as co-administratrix, on the ground that she is incapable or unsuitable to discharge the trust and had committed acts and omissions detrimental to the interest of the estate and the heirs. Copy of said motion was served upon petitioner's then counsel of record, Atty. Manuel Castro who, since 2 June 1984, had been suspended by the Supreme Court from the practice of law throughout the Philippines. 1

After the filing of private respondent's aforesaid motion, respondent Judge Zoilo Aguinaldo issued an Order dated 4 December 1984 which required Beatriz F. Gonzales and the other parties to file their opposition, if any, thereto. Only Asterio Favis opposed the removal of Beatriz F. Gonzales as co-administratrix, as the latter was still in the United States attending to her ailing husband.

In an Order dated 15 January 1985, respondent Judge canceled the letters of administration granted to Beatriz F. Gonzales and retained Teresa Olbes as the administratrix of the estate of the late Ramona Gonzales. The Court, in explaining its action, stated:

" . . . In appointing them, the court was of the opinion that it would be to the best interest of the estate if two administrators who are the children of the deceased would jointly administer the same. Unfortunately, as events have shown, the two administrators have not seen eye to eye with each other and most of the time they have been at

loggerheads with each other to the prejudice of the estate. Beatriz F. Gonzales has been absent from the country since October, 1984 as she is in the United States as stated in the motion and opposition of Asterio Favis dated December 11, 1984, and she has not returned even up to this date so that Teresa F. Olbes has been left alone to administer the estate. Under these circumstances, and in order that the estate will be administered in an orderly and efficient manner, the court believes that there should be now only one administrator of the estate." [2](#)

Petitioner moved to reconsider the Order of 15 January 1985. Her motion was opposed separately by private respondent Teresa Olbes and another co-heir Cecilia Gomez. In her manifestation and opposition to petitioner's motion for reconsideration, Cecilia Gomez stated that it would be pointless to re-appoint Beatriz F. Gonzales as co-administratrix of Teresa Olbes, as the former would be leaving soon for the United States to attend to unfinished business. Moreover, she expressed satisfaction with the rather respondent Teresa Olbes had been managing and administering the estate.

In his Order dated 7 May 1986, a part of which is hereunder quoted, respondent Judge denied petitioner's motion for reconsideration for lack of merit. He said:

"xxx xxx xxx

After a consideration of the motion for reconsideration and the oppositions thereto, the court believes and so holds that it should be denied. The court in its discretion has issued its order dated January 15, 1985 canceling the appointment and the letters of administration issued to Beatriz F. Gonzales and it reiterates the same for the best interest of the estate of the deceased. It is noteworthy that of the four heirs of the deceased, one of them being the movant Beatriz F. Gonzales, two of them, namely, Cecilia F. Gomez and Teresa F. Olbes opposed the motion. The other heir Asterio Favis, did not file or make any comment to the motion. As can be gathered from the oppositions of Cecilia F. Gomez and Teresa F. Olbes, the reappointment of Beatriz F. Gonzales as a co-administratrix would not be conducive to the efficient and orderly administration of the estate of the deceased Ramona Gonzales vda. de Favis." [3](#)

Petitioner contends before this Court that respondent Judge's Order dated 15 January 1985 should be nullified on the ground of grave abuse of discretion, as her removal was not shown by respondents to be anchored on any of the grounds provided under Section 2, Rule 82, [Rules of Court](#), which states:

"Sec. 2. *Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation or removal* — If an executor or administrator neglects to render his account and settle the estate according to law, or to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may remove him, or in its discretion, may permit him to resign. . . ."

While appellate courts are generally disinclined to interfere with the action taken by the probate court in the matter of removal of an administrator, ⁴ we find, in the case at bar, sufficient cause to reverse the order of the probate court removing petitioner as co-administratrix of the estate.

The rule is that if no executor is named in the will, or the named executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, the court must appoint an administrator of the estate of the deceased [5](#) who shall act as representative not only of the court appointing him but also of the heirs and the creditors of the estate. [6](#) In the exercise of its discretion, the probate court may appoint one, two or more co-administrators to have the benefit of their judgment and perhaps at all times to have different interests represented. [7](#)

In the appointment of the administrator of the estate of a deceased person, the principal consideration reckoned with is the interest in said estate of the one to be appointed as administrator. ⁸ This is the same consideration which Section 6 of Rule 78 takes into account in establishing the order of preference in the appointment of administrators for the estate. The underlying assumption behind this rule is that those who will reap the benefit of a wise, speedy,

economical administration of the estate, or, on the other hand, suffer the consequences of waste, improvidence or mismanagement, have the highest interest and most influential motive to administer the estate correctly. [2](#)

Administrators have such an interest in the execution of their trust as entitle them to protection from removal without just cause. ¹⁰ Hence, Section 2 of Rule 82 of the [Rules of Court](#) provides the legal and specific causes authorizing the court to remove an administrator. ¹¹

While it is conceded that the court is invested with ample discretion in the removal of an administrator, *it however must have some fact legally before it in order to justify a removal*. There must be evidence of an act or omission on the part of the administrator not conformable to or in disregard of the [rules](#) or the orders of the court, which it deems sufficient or substantial to warrant the removal of the administrator. In making such a determination, the court must exercise good judgment, guided by law and precedents.

In the present case, the court *a quo* did not base the removal of the petitioner as co-administratrix on any of the causes specified in respondent's motion for relief of the petitioner. Neither did it dwell on, nor determine the validity of the charges brought against petitioner by respondent Olbes. The court based the removal of the petitioner on the fact that in the administration of the estate, conflicts and misunderstandings have existed between petitioner and respondent Teresa Olbes which allegedly have prejudiced the estate, and the added circumstance that petitioner had been absent from the country since October 1984, and up to 15 January 1985, the date of the questioned order.

Certainly, it is desirable that the administration of the deceased's estate be marked with harmonious relations between co-administrators. But for mere disagreements between such joint fiduciaries, *without misconduct*, one's removal is not favored. ¹² Conflicts of opinion and judgment naturally, and, perhaps inevitably, occur between persons with different interests in the same estate. Such conflicts, if unresolved by the co-administrators, can be resolved by the probate court to the best interest of the estate and its heirs.

We, like petitioner, find of material importance the fact that the court *a quo* failed to find hard facts showing that the conflict and disharmony between the two (2) co-administratrices were unjustly caused by petitioner, or that petitioner was guilty of incompetence in the fulfillment of her duties, or prevented the management of the estate according to the dictates of prudence, or any other act or omission showing that her continuance as co-administratrix of the estate materially endangers the interests of the estate. Petitioner Beatriz F. Gonzales is as interested as respondent Olbes and the other heirs in that the properties of the estate be duly administered and conserved for the benefit of the heirs; and there is as yet no ground to believe that she has prejudiced or is out to prejudice said estate to warrant the probate court into removing petitioner as co-administratrix.

Respondent Judge removed petitioner Beatriz F. Gonzales as co-administratrix of the estate also on the ground that she had been absent from the country since October 1984 and had not returned as of 15 January 1985, the date of the questioned order, leaving respondent Olbes alone to administer the estate.

In her motion for reconsideration of the Order dated 15 January 1985, petitioner explained to the court *a quo* that her absence from the country was due to the fact that she had to accompany her ailing husband to the United States for medical treatment. ¹³ It appears too that petitioner's absence from the country was known to respondent Olbes, and that the latter and petitioner Gonzales had continually maintained correspondence with each other with respect to the administration of the estate during the petitioner's absence from the country. [15](#)

The above facts, we note, show that petitioner had never abandoned her role as co-administratrix of the estate nor had she been remiss in the fulfillment of her duties. Suffice it to state, temporary absence in the state does not disqualify one to be an administrator of the estate. Thus, as held *in re Mc Knight's Will*, a temporary residence outside of the state, maintained for the benefit of the health of the executors' family, is not such a removal from the state as to

necessitate his removal as executor.

" . . . It seems quite clear that a temporary absence from the state on account of ill health, or on account of business, or for purposes of travel or pleasure, would not necessarily establish the fact that an executor 'has removed' from the estate, within the intent of the statute. The learned surrogate was evidently satisfied that the sojourn of these executors in New Jersey was nothing more than a departure from the state for the benefit of relatives, not designed to constitute a permanent change of abode, and contemplating a return to New York as soon as the purpose of their absence should be accomplished. In this view, I am inclined to think that he was right in refusing to hold that he was constrained to revoke the letters by the provisions of the Code to which I have referred. I therefore advise an affirmance of the order." [16](#)

Finally, it seems that the court *a quo* seeks refuge in the fact that two (2) of the other three (3) heirs of the estate of the deceased (Teresa Olbes and Cecilia Favis Gomez) have opposed the retention or re-appointment of petitioner as co-administratrix of the estate. Suffice it to state that the removal of an administrator does not lie on the whims, caprices and dictates of the heirs or beneficiaries of the estate, nor on the belief of the court that it would result in orderly and efficient administration. In *re William's Adm'r.*, the court held:

"A county court having appointed a stranger administrator as expressly authorized by Ky. St. 3897, after the relatives of decedent had lost their right of precedence, could not remove the appointee merely because of the request of relatives and the belief upon the part of the court that the best interest of deceased would be thereby subserved, since the administrator had such an interest as entitled him to protection from removal without cause." [17](#)

As the appointment of petitioner Beatriz F. Gonzales was valid, and no satisfactory cause for her removal was shown, the court *a quo* gravely abused its discretion in removing her. Stated differently, petitioner Beatriz F. Gonzales was removed without just cause. Her removal was therefore improper.

WHEREFORE, the petition is GRANTED. The Order of the court *a quo* dated 15 January 1985 removing petitioner Beatriz F. Gonzales as co-administratrix in Special Proceedings No. 021, entitled "In the Matter of the Intestate Estate of Ramona Gonzales Vda. de Favis" and the Order of the same Court dated 15 May 1985 denying reconsideration of said Order, are hereby REVERSED and SET ASIDE. Petitioner is ordered reinstated as co-administratrix of said estate.

SO ORDERED.

Melencio-Herrera, Sarmiento and Regalado, JJ., concur.

Footnotes

- 1. Rollo, p. 159.
- 2. *Ibid.*, pp. 11-12.
- 3. *Ibid.*, p. 13.
- 4. [Borromeo v. Borromeo](#), G.R. No. L-6363, September 15, 1955, 97 Phil. 549.
- 5. Sec. 6, Rule 78, [Rules of Court](#) which states:

Sec. 6. *When and to whom letters of administration granted.* — If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

6. [San Diego v. Nobre](#), G.R. No. L-19265, May 29, 1964, 11 SCRA 165; [Chua Tan v. Del Rosario](#), 57 Phil. 411.
7. In re Drews Estate, 236 N.W. 701, 702.
8. [Nicolasa de Guzman v. Angela Limcolioc](#), 67 Phil. 404.
9. Cooper v. Cooper, 88 NE 341, 342.
10. Rieke's Adm'r. v. Rieke, 208 SW 764, citing Dunlap v. Kennedy, 10 Bush 539, Ex-parte Williams' Adm'r., 158 Ky. 61, 164 SW 307, and Davis' Adm'r. v. Ruth Davis, 162 Ky. 318, 17 SW 665.
11. Section 2, *Supra*.
12. Bronson v. Bronson, 48 How Pr. (N.Y.) 482; Oliver v. Frisbie, 3 Denn Surr. (N.Y.) 22; Fairbairn v. Fisher, 57 N.C. 390, cited in Francisco, The Revised Rules of Court in the Philippines, Vol. 5, p. 89.
13. Rollo, pp. 148, 150.
14. *Ibid.*, pp. 151-153.
15. *Ibid.*, p. 154.
16. In re Mc Knight's Will, 80 New York Supplement 251.
17. In re Williams' Adm'r., 164 SW 307.