



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IRIS MORALES,

Petitioner,

G.R. No. 198994

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN,* JJ.

ANA MARIA OLONDRIZ, ALFONSO
JUAN OLONDRIZ, JR., ALEJANDRO
MORENO OLONDRIZ, ISABEL ROSA
OLONDRIZ and FRANCISCO JAVIER
MARIA OLONDRIZ,

Promulgated:

03 FEB 2016

HON. CARPIO

Respondents.

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DECISION

BRION, J.:

This is a petition for review on *certiorari* filed by Iris Morales from the May 27, 2011 decision and October 12, 2011 resolution of the Court of Appeals (CA) in **CA-G.R. SP No. 102358**.¹ The CA denied Morales' petition for certiorari from the Regional Trial Court's (RTC) July 12, 2007 and October 30, 2007 orders in **SP. Proc. No. 03-0060** and **SP. Proc. No. 03-0069**.²

Antecedents

Alfonso Juan P. Olondriz, Sr. (*the decedent*) died on June 9, 2003. He was survived by his widow, Ana Maria Ortigas de Olondriz, and his children: Alfonso Juan O. Olondriz, Jr., Alejandro Marino O. Olondriz,

* On Leave.

¹ Both penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario. *Rollo*, pp. 23-33.

² RTC, Las Piñas City, Branch 253 through Presiding Judge Salvador V. Timbang, Jr. *Rollo*, pp. 130-134.

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Isabel Rosa O. Olondriz, Angelo Jose O. Olondriz, and Francisco Javier Maria Bautista Olondriz. His widow and children are collectively referred to as *the respondent heirs*.

Believing that the decedent died intestate, the respondent heirs filed a petition with the Las Piñas RTC for the partition of the decedent's estate and the appointment of a special administrator on July 4, 2003. The case was raffled to **Branch 254** and docketed as **Sp. Proc. Case No. SP-03-0060**.

On July 11, 2003, the RTC appointed Alfonso Juan O. Olondriz, Jr. as special administrator.

However, on July 28, 2003, Iris Morales filed a separate petition with the RTC alleging that the decedent left a will dated July 23, 1991. Morales prayed for the probate of the will and for her appointment as special administratrix. Her petition was also raffled to **Branch 254** and docketed as **Sp. Proc. Case No. SP-03-0069**.

The pertinent portions of the decedent's will reads:

1. Upon my death, IRIS MORALES OLONDRIZ shall be the executor hereof and administrator of my estate until its distribution in accordance herewith. x x x
2. My entire estate shall be divided into six (6) parts to be distributed equally among and between (1) IRIS MORALES OLONDRIZ, my children (2) ALFONSO JUAN OLONDRIZ, JR., (3) ALEJANDRO OLONDRIZ, (4) ISABEL OLONDRIZ, (5) ANGELO OLONDRIZ, and their mother (6) MARIA ORTEGAS OLONDRIZ, SR.³

Notably, the will omitted Francisco Javier Maria Bautista Olondriz, an illegitimate son of the decedent.

On September 1, 2003, Morales filed a manifestation in **Sp. Proc. Case No. SP-03-0060** and moved to suspend the intestate proceedings in order to give way to the probate proceedings in **Sp. Proc. Case No. SP-03-0069**. The respondent heirs opposed Morales' motion for suspension and her petition for allowance of the will.

On November 27, 2003, the RTC consolidated **Sp. Proc. Case No. SP-03-0060** with **Sp. Proc. Case No. SP-03-0069**.

On January 6, 2004, the respondent heirs moved to dismiss the probate proceedings because Francisco was preterited from the will.

On January 10, 2006, Morales agreed to the holding of an evidentiary hearing to resolve the issue of preterition. Thus, the RTC ordered the parties

³ *Rollo*, p. 34.

to submit their factual allegations to support or negate the existence of preterition. Only the respondent heirs complied with this order.

After several postponements at the instance of Morales, the reception of evidence for the evidentiary hearing was scheduled on May 29, 2006. However, Morales failed to appear, effectively waiving her right to present evidence on the issue of preterition.

On June 23, 2006, the RTC, through Judge Gloria Butay Aglugub, suspended the intestate proceedings in **Sp. Proc. Case No. SP-03-0060** and set the case for probate. The RTC reasoned that probate proceedings take precedence over intestate proceedings.

The respondent heirs moved for reconsideration of the suspension order but the RTC denied the motion on September 1, 2006. The RTC also summarily revoked the Letters of Administration previously issued to Alfonso Jr.

The respondent heirs moved for reconsideration of the summary revocation of the Letters of Administration. They also moved for the inhibition of Judge Aglugub of Branch 254.

On November 16, 2006, the RTC granted the motion for inhibition. The case was transferred to **Branch 253** presided by Judge Salvador V. Timbang, Jr.

On July 12, 2007, the RTC resolved (1) the respondent heirs' motion for reconsideration of the revocation of the Letters of Administration and (2) Morales' motion to be appointed Special Administratrix of the estate. The RTC noted that while testacy is preferred over intestacy, courts will not hesitate to set aside probate proceedings if it appears that the probate of the will might become an idle ceremony because the will is intrinsically void.

The RTC observed: (1) that Morales expressly admitted that Francisco Javier Maria Bautista Olondriz is an heir of the decedent; (2) that Francisco was clearly omitted from the will; and (3) that based on the evidentiary hearings, Francisco was clearly preterited. Thus, the RTC reinstated Alfonso Jr. as administrator of the estate and ordered the case to proceed in intestacy.

Morales moved for reconsideration which the RTC denied on October 30, 2007, for lack of merit.

On February 7, 2008, Morales filed a petition for *certiorari* against the orders of the RTC. Morales alleged that the RTC acted with grave abuse of discretion in proceeding intestate despite the existence of the will. The petition was docketed as **CA-G.R. SP No. 102358**.

On May 27, 2011, the CA dismissed Morales' petition for *certiorari*. The CA reasoned that while probate proceedings take precedence over intestate proceedings, the preterition of a compulsory heir in the direct line annuls the institution of heirs in the will and opens the entire inheritance into intestate succession.⁴ Thus, the continuation of the probate proceedings would be superfluous and impractical because the inheritance will be adjudicated intestate. The CA concluded that the RTC did not act with grave abuse of discretion.

Morales moved for reconsideration which the CA denied on October 12, 2011. Hence, she filed the present petition for review on *certiorari* on December 5, 2011.

The Petition

Morales maintains that the RTC committed grave abuse of discretion when it ordered the case to proceed intestate because: (1) the probate of a decedent's will is mandatory; (2) the RTC Branch 254 already ordered the case to proceed into probate; (3) the order setting the case for probate already attained finality; (3) the probate court cannot touch on the intrinsic validity of the will; and (4) there was no preterition because Francisco received a house and lot *inter vivos* as an advance on his legitime.

The respondent heirs counter: (1) that it is within the RTC's jurisdiction to reverse or modify an interlocutory order setting the case for probate; (2) that the petitioner failed to mention that she did not appear in any of the evidentiary hearings to disprove their allegation of preterition; (3) that the RTC and the CA both found that Francisco was preterited from the will; and (4) that Francisco's preterition annulled the institution of heirs and opened the case into intestacy. They conclude that the RTC did not exceed its jurisdiction or act with grave abuse of discretion when it reinstated Alfonso Jr. as the administrator of the estate and ordered the case to proceed intestate.

Our Ruling

We join the ruling of the CA.

Preterition consists in the omission of a compulsory heir from the will, either because he is not named or, although he is named as a father, son, etc., he is neither instituted as an heir nor assigned any part of the estate without expressly being disinherited – tacitly depriving the heir of his legitime.⁵

⁴ *Id.* at 28.

⁵ *Nuguid v. Nuguid*, G.R. No. L-23445, June 23, 1966, 17 SCRA 449, 454, citing VI Manresa, *Commentarios al Código Civil Español*, 7th Ed. (1951), p. 424; *Aznar v. Duncan*, G.R. No. L-24365, 17 SCRA 590, 595, citing VI Manresa, p. 428.

Preterition requires that the omission is total, meaning the heir did not also receive any legacies, devises, or advances on his legitime.⁶

In other words, preterition is the complete and total omission of a compulsory heir *from the testator's inheritance* without the heir's express disinheritance.

Article 854 of the Civil Code states the legal effects of preterition:

Art. 854. The preterition or omission of one, some, or all of the **compulsory heirs in the direct line**, whether living at the time of the execution of the will or born after the death of the testator, **shall annul the institution of heir**; but the devises and legacies shall be valid insofar as they are not inofficious.

If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation. (emphasis supplied)

Under the Civil Code, the preterition of a compulsory heir **in the direct line** shall annul the institution of heirs, but the devises and legacies shall remain valid insofar as the legitimes are not impaired. Consequently, if a will does not institute any devisees or legatees, the preterition of a compulsory heir in the direct line will result in total intestacy.⁷

In the present case, the decedent's will evidently omitted Francisco Olondriz as an heir, legatee, or devisee. As the decedent's illegitimate son, Francisco is a compulsory heir in the direct line. Unless Morales could show otherwise, Francisco's omission from the will leads to the conclusion of his preterition.

During the proceedings in the RTC, Morales had the opportunity to present evidence that Francisco received donations *inter vivos* and advances on his legitime from the decedent. However, Morales did not appear during the hearing dates, effectively waiving her right to present evidence on the issue. We cannot fault the RTC for reaching the reasonable conclusion that there was preterition.

We will not entertain the petitioner's factual allegation that Francisco was not preterited because this Court is not a trier of facts. Furthermore, the CA concurred with the RTC's conclusion. We see no cogent reason to deviate from the factual findings of the lower courts.

The remaining question is whether it was proper for the RTC to (1) pass upon the intrinsic validity of the will during probate proceedings and (2) order the case to proceed intestate because of preterition.

⁶ *Nuguid, id.* at 454; see also *Aznar, supra* note 5, citing Sanchez Roman – Tomo VI, Vol. 2, p. 1133.

⁷ *Nuguid, id.* at 459.

The general rule is that in probate proceedings, the scope of the court's inquiry is limited to questions on the extrinsic validity of the *will*; the probate court will only determine the will's formal validity and due execution.⁸ However, this rule is not inflexible and absolute.⁹ It is not beyond the probate court's jurisdiction to pass upon the intrinsic validity of the will when so warranted by exceptional circumstances.¹⁰ When practical considerations demand that the intrinsic validity of the will be passed upon even before it is probated, the probate court should meet the issue.¹¹

The decedent's will does not contain specific legacies or devices and Francisco's preterition annulled the institution of heirs. The annulment effectively caused the *total abrogation* of the will, resulting in total intestacy of the inheritance.¹² The decedent's will, no matter how valid it may appear extrinsically, is null and void. The conduct of separate proceedings to determine the intrinsic validity of its testamentary provisions would be superfluous. Thus, we cannot attribute error – much less grave abuse of discretion – on the RTC for ordering the case to proceed intestate.

Finally, there is no merit in the petitioner's argument that the previous order setting the case for probate barred the RTC from ordering the case to proceed intestate. The disputed order is merely interlocutory and can never become final and executory in the same manner that a final judgment does.¹³ An interlocutory order does not result in *res judicata*.¹⁴ It remains under the control of the court and can be modified or rescinded at any time before final judgment.¹⁵

Certiorari is a limited form of review confined to errors of jurisdiction. An error of jurisdiction is one where the officer or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.¹⁶ As discussed, it is well within the jurisdiction of the probate court to pass upon the intrinsic validity of the will if probate proceedings might become an idle ceremony due to the nullity of the will.

On the other hand, grave abuse of discretion is the capricious and whimsical exercise of judgment equivalent to an evasion of positive duty, or a virtual refusal to act at all in contemplation of the law.¹⁷ It is present when power is exercised in a despotic manner by reason, for instance, of passion

⁸ *Nepomuceno v. Court of Appeals*, 223 Phil. 418, 423 (1985).

⁹ *Id.* at 424.

¹⁰ See *Nuguid*, *supra* note 5; *Nepomuceno*, *supra*; *Balanay v. Hon. Martinez*, 159-A Phil. 718, 723 (1975).

¹¹ *Balanay*, *supra* note 10, at 723, citing *Nuguid*, *supra* note 5.

¹² *Nuguid*, *supra* note, at 455-459.

¹³ *Montilla v. Court of Appeals*, 244 Phil. 166, 171 (1998); *Denso (Phils.), Inc. v. Intermediate Appellate Court*, 232 Phil. 256, 263-264 (1989).

¹⁴ *Macahilig v. Magalit*, 398 Phil. 802, 804 (2000).

¹⁵ *Manila Electric Co. v. Artiaga*, 50 Phil. 144, 147 (1929).

¹⁶ *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52-54.

¹⁷ *Commission on Internal Revenue v. Court of Appeals*, G.R. No. 119322, June 4, 1996, 257 SCRA 200-201; *Salma v. Hon. Miro*, 541 Phil. 685, 686 (2007); *Ligeralde v. Patalinghug*, G.R. No. 168796, April 15, 2010, 618 SCRA 315.

and hostility. Morales failed to show that the RTC acted in such a capricious and despotic manner that would have warranted the CA's grant of her petition for *certiorari*. On the contrary, the RTC acted appropriately in accordance with the law and jurisprudence.

WHEREFORE, the petition is **DISMISSED**. Costs against the petitioner.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

(On Leave)
MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice