

EN BANC

[A.M. No. P-96-1219, August 15, 1997]

**COURT OF APPEALS VS. CLERK OF COURT MARCELO ESCALANTE,
REGIONAL TRIAL COURT, BRANCH 53, SORSOGON, SORSOGON.**

D E C I S I O N

MELO, J.:

The present administrative case against Marcelo Escalante, Clerk of Court of the Regional Trial Court of the Fifth Judicial Region, Sorsogon, Sorsogon, Branch 53, stemmed from a petition for probate of the will of Henry Grant filed by Atty. Jose Bernabe with said court.

Henry Grant, an American citizen, died on October 6, 1993, in Legaspi City leaving a 4-page notarial will. Atty. Jose Bernabe, who was designated by Henry Grant to execute the will, lodged with the above mentioned court, a petition for probate of will which was docketed as Special Proceeding No. 93-5936.

The probate court then issued an Order dated March 16, 1994, giving Atty. Bernabe 15 days within which to file his formal written offer of documentary exhibits and thereafter, the case would be deemed submitted for resolution.

On April 12, 1994, a certain Gloria Sotto filed with the probate court a petition for relief from the March 16, 1994 Order and an Opposition to the probate of the will, contending, inter alia, that she was the nearest kin of the deceased and that the instituted heirs were all American citizens who have no intention of acquiring property in the Philippines. The probate court denied the petition in an Order dated June 21, 1994.

Sotto filed motions for reconsideration on after the other which were denied. On July 8, 1994, the probate court issued an Order allowing the probate of the last will and testament of Henry Grant.

Sotto then filed with the Court of Appeals a petition for nullification of the allowance of the last will and testament of Henry Grant (p. 2 Rollo). She prayed that the last will and testament of Henry Grant be declared to be fatally defective in form as it lacked the signature of Henry Grant and three attesting witnesses on the left margin of the first, second, and fourth pages thereof; that the probate thereof be declared null and void; and, that the late Henry Grant be disqualified from owning lands in the Philippines and his testamentary heirs be likewise disqualified from inheriting said lands (pp. 10-11, Rollo). The petition was docketed as CA-G.R. SP No. 35697.

In resolving the Sotto petition, the Court of Appeals was confronted with two conflicting photocopies of the last will and testament of Henry Grant.

The first was a photocopy of a true copy, certified by respondent Escalante, without any date and submitted by Sotto. It had no marginal signatures on the first, second and fourth pages, and no exhibit markings. The second was a certified xerox copy, certified by Tomas H. Moral for respondent Escalante, dated December 20, 1994, containing marginal signatures on the first, second, and fourth pages, and exhibit markings.

Due to such conflicting photocopies, the Court of Appeals issued a Resolution dated March 15, 1995 ordering respondent Escalante: a) to transmit to the court within ten days from notice, the original of the last will and testament of Henry Grant; b) to certify if there was any other copy different from that which was submitted to the probate court; and c) to explain why he had certified two apparently conflicting copies of Henry Grant's last will and testament (p. 98, Rollo). In compliance with, respondent Escalante submitted original carbon copy of the last will and testament of Henry Grant, explaining that only an original carbon copy was submitted to the probate court inasmuch as the original could not be found (p. 99, Rollo).

The Court of Appeals, in a Resolution dated May 12, 1995, denied the Sotto petition and made the following findings concerning the apparently tampered photocopy of the true copy of the last will and testament of Henry Grant which was certified by respondent Escalante and submitted by Sotto in support of her petition, to wit:

After comparing the photocopies of the Will submitted by the parties to us with the said original carbon copy of the same, we have ascertained that the certified xerox copy submitted by the private respondent copy matches the carbon original, whereas the photocopy of a certified true copy submitted by the petitioner does not. Moreover, a close scrutiny of the photocopy attached by the petitioner to her Petition reveals marks thereon which indicate that the original thereof actually bore the necessary marginal signatures, but they were covered with a piece of paper when photocopied, to make it appear that they were not present. Such act of deceit and misrepresentation is highly reprehensible. (p. 109, Rollo)

In view of such finding, the Court of Appeals ordered Sotto's counsel to show cause why they should not be disciplined for utilizing an apparently tampered photocopy of a certified true copy of the last will and testament of Henry Grant in support of their petition.

In his Compliance dated May 26, 1995, Atty. Ray M. Dorado denied any participation in tampering with the will, claiming that what he submitted were the very documents furnished by his client (p. 111, Rollo). Atty. Dorado likewise submitted the affidavit of Sotto together with a certified xerox copy of the last will and testament of Henry Grant dated January 23, 1995 and signed by respondent Escalante (p. 114, Rollo).

On the other hand, Sotto, in her motion for reconsideration suggested that a thorough investigation be made preferably by the NBI to determine who tampered with the documents, and at the same time to ascertain whether or not the signatures appearing in the last will and testament of Henry Grant submitted to the Court of Appeals were made after respondent Escalante had furnished her a copy

thereof (p. 123, Rollo).

In a Resolution dated July 11, 1995, the Court of appeals admonished Atty. Dorado and denied Sotto's motion for reconsideration (p. 129, Rollo).

In another Resolution promulgated on the same date, the Court of Appeals referred the case to the Office of the Court Administrator for investigation and proper action in view of the confusing situation cause by the certifications of different copies of the same will made by respondent Escalante. Said Resolution reads as follows:

In the instant case, we have been confronted with (4) varying copies of the alleged last will and testament of the deceased Henry Grant, to wit:

(1) A photo-copy of a Certified True Copy, certified to by Marcelo Escalante, Clerk of Court, attached as Annex "C" to the petition (pp. 19-23, Rollo), without marginal signatures of the testator and his attesting witnesses, but which signatures appear to have been covered when the document was photocopied;

(2) A Certified True Copy dated December 20, 1994, certified to by Tomas H. Moral for Marcelo E. Escalante, Clerk of Court, containing marginal signatures and exhibit markings (Exhibits "I" to "I-4" and submarkings) submitted by the respondents (pp. 67-71, Rollo);

(3) A carbon original of the said last will and testament, sent to us by Clerk of Court Marcelo E. Escalante, pursuant to our Resolution dated March 15, 1995, with marginal signatures but different exhibit markings (Exhs. "J" to "J-4" and submarkings) (pp. 100-104, Rollo); and

(4) A Certified Xerox Copy dated January 23, 1995, a Certified True Copy signed by Marcelo Escalante (pp. 117-121, Rollo) which appears to be the same as No. (1) above.

In view of this confusing situation which is apparently due to certifications of different copies of the same will by the Office of the Clerk of Court of the Regional Trial Court of Sorsogon, Branch 53, either out of malice or negligence, the Division Clerk is hereby ordered to refer the records of this case to the Office of the Court Administrator, for such investigation and action as it may deem proper to take.

(pp. 133-134, Rollo.)

In a Memorandum dated January 30, 1996, the Office of the Court administrator recommended that the resolutions of the Court of Appeals dated May 12 and July 11, 1995 be treated as an administrative complaint for alleged false certification against respondent Escalante and that the latter be ordered to show cause why he should not be administratively dealt with for making certifications on apparently different and conflicting copies of the last will and testament of deceased Henry Grant, within ten days from notice (p. 136, Rollo). A Resolution to such effect was issued by the Court on September 3, 1996 (p. 139, Rollo).

In his explanation dated September 30, 1996, respondent Escalante alleged that: