

motion to compel accounting as Executor filed an accounting on August 29, 2016. The Court entered a stipulated order on September 1, 2016, whereby the Executor was ordered not to make any more distributions to himself or other legatees until further Order of Court. The Executor was also ordered not to sell or enter into an Agreement of Sale for the real estate identified at 902 McNett Rd. Montgomery, Pennsylvania. Petitioner's Objections to the Accounting were heard by the Court on December 9, 2016. There were facts adduced at hearing regarding the work Executor had done in settling the Estate. There were no facts presented regarding the attorney's work and any objections were withdrawn at the time of the hearing.

Factual Background

On the 29th day of July 2014, Decedent executed a will giving his nephew Donald H. Edwards a life estate in the property at 902 McNett Road provided he maintain the property, pay all taxes, maintain fire/hazard insurance and pay all utilities. The life estate expired 30 days from the death of Donald Edwards. If any beneficiary predeceased Decedent, his/her share of the Decedent's estate would go to the other named beneficiaries. None of the named beneficiaries predeceased Testator. It was the intention of Decedent to leave one-fifth of the rest, residue and remainder of his Estate to his brother Lehman, to his nephew Donald, to his niece Janice, to his niece Ellen and to his nephew William. Decedent also wished that any taxes on his Estate be paid out of the residuary. He nominated his nephew William Pysher as Executor and in the event that William could not serve, his alternate was Penny A. Pysher. Decedent gave the Executor [the]

fullest power and authority in all matters and questions, and to do all acts which I might or could do if living including without limitation, complete power and authority to

sell (at public and private sale, for cash or credit, with or without security), mortgage, lease, dispose of and distribute in kind all of property real and personal, at such times and upon such terms and conditions as they [sic] may determine without Court order.

Last Will and Testament of Edward Dewalt, 7/29/2014, 2-3.

Testimony of William K. Pysher

Pysher testified that he identified and wrote down the assets of Decedent and gave them to the law firm. He reviewed every paper belonging to his Uncle, and as a result he did not have any other paperwork to complete.

Pysher testified that he neither had the tractors appraised nor offer the seven (7) vehicles [five (5) tractors and two (2) trucks] for sale to the other beneficiaries. He did charge the repair of the vehicles to the Estate (see page 7 of Schedule C, Disbursements of Principal) as an Administration Expense. The repair was made to help sell the car. He tried to sell the car for \$5,500 but it did not sell and Hulsizer's told him it was only worth \$2,000. He spent two hours getting vehicles appraised. The tractors are not functional but he did not dispose of them.

He spent 1.5 hours closing out CDs at Turbotville Bank. He spent one hour at Jersey Shore State Bank and estimated that it took one hour at Watsontown (FNB Bank) to set up the Estate bank account. He wrote checks for the bills of the Estate from the Estate account.

Page six of the First and final Accounting outlines the Debts of the Decedent (\$5,656.95). Pysher testified that he personally wrote the checks to pay these debts, not the attorney for the Estate. He also spent two hours working with the attorneys to prepare the inheritance tax return. He responded to letters about the Estate. Pysher estimated he spent about 20 hours working with the attorneys for the estate. He spent

three hours cleaning out the refrigerator at Decedent's home. He spent two hours arranging for the demolition of the barn. He paid \$3,808 to Doolittle Construction to demolish the barn and charged this as an administrative expense to the Estate.

He also maintained the real estate of the Decedent stating that "anyone could come in there". The nephew with the life estate, Donny, was never around. Pyscher farmed the land and made hay bales after his Uncle died. He estimated that he made 100-200 bales and sold for \$10 per bale. Pyscher also had arrangement prior to his Uncle's death to mow the hay. If he had not maintained the field, it would have "all growed up".

He dismantled the chicken coop on his own. Pyscher gave himself a \$125,000 early inheritance and made no offers to give early inheritance to any other beneficiary. He did testify that Janice Snee and Ellen Lorson cashed in CDs worth \$5,000 each.

Pyscher felt that he benefited the Estate because he discovered that Donny Edwards had taken \$36,000 of cash out of the shed of the 902 McNett Road property. The property will be returned to the Estate through a reduction of \$36,000 in Donny Edward's inheritance. Additionally, Pyscher cleaned out the 902 McNett Road property after Donny Edwards died in January of 2016. He was appointed Executor of the Estate of Donald Edwards as well.

Pyscher also benefited the Estate by including the Pinchtown property in the corpus of the Estate, which was unknown to the other beneficiaries. This increased the value of the Estate by \$42,000. He was not aware of how the value of the Pinchtown property was assessed but the Department of Revenue accepted the evaluation. The tax return indicates both parcels of real estate comprised by the

Estate were valued, for the purposes of inheritance tax payment, by taking the assessed value and multiplying it by the common level ratio.

No testimony was elicited regarding the delay between the payment of inheritance taxes (May 2015) and the filing of a first and final accounting (August 2016).

Discussion

I. *Whether Attorney's fees and Executor's commission are excessive, not reasonably related to the work performed, an arbitrary percentage of the gross estate.*

In Pennsylvania, Section 3537 of the Probate, Estates and Fiduciaries Code provides that "The court shall allow such compensation to the personal representative as shall in the circumstances be reasonable and just, and may calculate such compensation on a graduated percentage". The rule of thumb is that an Executor's Commission of 3% of the appraised value of the corpus at time of transfer to the fiduciary for administration is a *prima facie* fair and reasonable executor's fee, this amount maybe may be increased or decreased according to what the services are actually worth. IN RE ESTATE OF HARPER, 975 A.2D 1155, 1163 (PA. SUPER. 2009) (emphasis from original). The corpus of the Estate as indicated on the Rev-1500X, PA Inheritance Tax Return is \$1,400,723.97; however, the inventory indicates Total Personal Property and Real Property of \$872,005.37. Both were filed on the same date. If the Court followed the rule of thumb on the value of the Estate on the tax return, a 3% executor fee would be \$42,021.95. If the Court followed the rule of thumb using the value of the Estate according to the inventory, a 3% commission would be \$26,160.16. Pysher reports two different commissions paid: on the PA Inheritance

Tax Return he indicates a commission of \$33,000.00. On the First and Final Accounting he indicates a commission of \$32,000.00. The rule of thumb provides using the "value of the corpus on the date of transfer to fiduciary for administration, i.e. the date that letters were granted on March 17, 2015."⁶ In In Re Harper Estate, the Superior Court affirmed an orphans' court order reducing the Executor commission to 3% of the inventory. Id. The value of the Estate filed on that same date indicates a difference in value of \$528,718.60. The commission charged the Estate is between these two assessed values.

It is well-established that a fiduciary is entitled to deduct "all reasonable expenses of administration of the decedent's estate and of the assets includable in the decedent's taxable estate. Further, such deductions have always been held to include the "fair and just compensation for services rendered" by the fiduciary. Since that which is "fair and just" compensation depends upon the extent and character of the labor and the responsibilities involved, courts will normally assess the nature and quality of the fiduciary's performance before determining the appropriateness of compensation.

IN RE REED ESTATE, 462 PA. 336, 339, 341 A.2D 108, 109-10 (1975) (INTERNAL CITATIONS OMITTED).

In the present case, the Court finds no evidence compelling departure from the prima facie rule. The evidence presented was that Pysher worked diligently on the upkeep of the estate. He performed many of the duties expected of him as executor, including hiring competent counsel, filing inheritance taxes well within the 9 month filing deadline (which meant a 5% reduction in tax owed i.e. \$6,585.77) and ensured the property of the Estate was well kept, property taxes paid, etc. (See Schedule C, Disbursements of Principal).

⁶ A personal representative shall have the right to and shall take possession of, maintain and administer all the real and personal estate of the decedent, except real estate occupied at the time of death by an heir or devisee with the consent of the decedent. 20 Pa.C.S. § 3311 (possession of real and personal estate; exception).

Pysher performed many duties in his role as Executor: reading each of his Uncle's papers in his inventory of the Estate; opening an Estate account and seeing that other bank monies were deposited into such account; hiring competent counsel to advise him in his duties as Executor, and file the appropriate paperwork; maintaining the real property of the Estate during the life of the Life Estate tenant and afterwards; improving the real and personal property of the Estate; and purchasing a vehicle from the Estate. The Court finds that the commission he has already paid himself is appropriate, within the confines of the "rule of thumb", and will be the final commission paid to him in his service as Executor.

The Court cannot ignore that it appears that the reason an accounting was filed was because Pysher was compelled to do so by another beneficiary's attorney. The accounting was not filed until 17 months after the death of Edward Dewalt, without explanation for the delay. Moreover, the executor took early inheritance while the other beneficiaries received no distribution. It is an Executor's primary duty to marshal the assets and to liquidate and terminate as soon as possible. WALLIS ESTATE, 421 PA. 104, 112, 218 A.2D 732, 736 (1966).

II. Whether Executor giving himself the only distributions from the estate was unethical, unfair to other beneficiaries, and depleted interest income to the Estate.

The interest income on the Estate Account (Schedule G, Receipts of Income) totals \$903.95 for a one-year period. The amount of interest earned is *de minimus*, the interest that the Estate Account would have earned if the \$125,000 in distributions remained in the Estate account is negligible.

III. Explanation for Page 3, Line 1 “Cash in Donald H. Edwards possession”.

The Court finds Executor credible in his statement to the Court that the \$36,000 was money Edward Dewalt’s nephew took from Decedent prior to his death. Executor returned this cash to the principal of the Estate.

IV. Explanation for Pinchtown Property, valued at \$ 42,041.30 in First and Final Accounting.

The Court finds Pyscher credible in his assertion that his Uncle owned the Pinchtown Road property, discovered by Pyscher and confirmed by deed. Pyscher included this property in the Inventory he filed on December 1, 2015 so any questions regarding its ownership could have been raised at the filing of the inventory.

ORDER

AND NOW, this 2nd day of March, 2017, Petitioner's Objection to Executor's Fee as unreasonable is hereby DENIED. It is further ORDERED and DIRECTED that

1. William Pysher has received his commission for this services on the Estate of Edward Dewalt and no further fee will be authorized by the Court.

2. Executor is to file a second accounting, within 30 days of the date of this Order that complies with the requirements of Chapter II of the Orphans' Court Rules.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Denise Dieter, Esq. Petitioner's Counsel
Robin A. Read, Esq. Executor's Counsel
Gary Weber, Esq. Lycoming Law Reporter
Law Clerk (work file)