

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: ESTATE OF: : ORPHANS' COURT DIVISION
BURDELL C. HOUSEKNECHT, :
Deceased : NO. 41-10-0622

OPINION AND ORDER

Burdell Houseknecht died on September 27, 2010 at the age of 92. His niece, Barbara A. Houseknecht was appointed the executrix of the estate pursuant to the decedent's Last Will and Testament dated July 19, 2002. The Will was probated and Letters of Testamentary were granted to Ms. Houseknecht on October 21, 2010.

On February 10, 2012, Ms. Houseknecht, as executor of the decedent's estate, filed an Account and Statement of Proposed Distribution. On March 2, 2012, Mary Russell, a testate beneficiary and the only child of decedent, filed Objections to the Account asserting that the attorney's fees and executrix commissions were excessive. As of the date of death, the gross value of the estate assets was \$361,625.92. The account called for an attorney's fee of \$18,003.66 and an executrix commission of \$18,003.66.

Hearings were held on Ms. Russell's objections on April 20, 2012 and May 31, 2012. James Malee, Esquire, attorney for the estate testified as did Ms. Houseknecht and Ms. Russell.

With respect to the attorney's fees of approximately \$18,000.00, Ms. Russell claims that it is excessive and unreasonable. In evaluating an objection to attorney's fees charged for an estate, the Court must determine what is fair and reasonable. In Re: LaRocca's Trust Estate, 246 A.2d 337, 339 (Pa. 1968); Estate of Bruner, 691 A.2d 530, 534 (Pa. Super. 1997). In determining what is fair and reasonable, the Court is instructed to consider numerous factors including the following:

The amount of work performed, the character of the services rendered, the difficulty of the problems involved, the importance of the litigation, the amount of money or value of the property in question, the degree of responsibility incurred, whether the funds involved were created by the attorney, the professional skill and standing of the attorney in his profession, the result he was able to obtain, the ability of the client pay a reasonable fee for the services rendered, and very importantly, the amount of money or value of the property in question. LaRocca Estate, at 339.

In addressing the amount of work performed, Mr. Malee testified generally that there is "a lot of work that goes into estates." (Transcript, p. 10). He testified that his firm found the auctioneer, entered into a contract with the auctioneer, defined the scope of the auction, dealt with the beneficiaries, provided access to the auctioneer in order that the auctioneer could get in and out of the property and dealt with "the auctioneer at the end." (Transcript, pp. 20-21). He specifically testified that his "firm had to deal with the identification and selection of an auctioneer."

(Transcript, p. 21). While not knowing how many hours his firm worked in connection with the selection of an auctioneer, he noted that “it could take many hours.”

(Transcript, p. 22). He described in detail how auctions are “funny animals” and the numerous concerns with the selection of an appropriate auctioneer. (Transcript, pp. 22, 23).

He further testified that the decedent’s real estate needed to be safeguarded and maintained during the term of the administration and that a buyer needed to be found. (Transcript, p. 25). He testified that his firm dealt with the title issues for the real estate and prepping the house by having “somebody else prep the house” or “contacting the people to prep the house.” (Transcript, p.26).

More specifically, he testified that this firm made “sure” the house was locked and secure, made sure the insurance was paid, made sure the taxes were paid, made arrangements for the utilities, submitted a change of address with respect to the mail and made sure that the bills got paid. (Transcript, p. 27).

Mr. Malee testified that “somebody” from his office “would have gone out to look at the house to walk through to get an idea of what is there” and “what the house looked like.” (Transcript, p. 28). He testified that “[they] like to see [the] place and go through it and see what is going on so that [they] have a picture of it and [they’re] not just talking about something that [they] don’t know what it is.” (Transcript, p. 29).

Mr. Malee also prepared the Final Account and Statement of Proposed

Distribution.

Mr. Malee's office did not keep track of the hours that were expended in connection with the services rendered to the estate (Transcript, pp. 23, 29, 46) but he did note that he was "required" to spend an ungodly amount of time." (Transcript, p. 47). He noted that he was "there and working it" and he put in "long nights" and "long days" and gave up other work opportunities. (Transcript, p. 48).

Ms. Houseknecht testified contrary to Mr. Malee. She testified that she notified "people" including the bank, the house insurance, the phone and the alert system. (May 31, 2012 Transcript, pp. 20, 21). As well, she notified all of the family members. (May 31, 2012 Transcript, pp. 22, 23).

With respect to the auctioneer, her testimony differed dramatically from Mr. Malee's. The auctioneer was a family friend. (May 31, 2012 Transcript, pp. 30, 43). Ms. Houseknecht spoke with the auctioneer first after which Mr. Malee indicated it was okay to utilize the auctioneer. (May 31, 2012 Transcript, pp. 30, 43). According to Ms. Houseknecht, Mr. Malee's firm "didn't do anything" with respect to "locating an auctioneer." (May 31, 2012 Transcript, p. 43).

With respect to contracting with the auctioneer, "long before the auction" he came to the decedent's home, reviewed the contract with Ms. Houseknecht, who then signed it. (May 31, 2012 Transcript, pp. 33, 44). Mr. Malee never reviewed the contract with the auctioneer nor did he set the parameters or define the scope of the auction. (May 31, 2012 Transcript, pp. 44, 45).

Regarding the real estate issues, again Ms. Houseknecht's testimony differed dramatically from Mr. Malee's. She noted that it was always her decision that the house would be sold at an auction. She was not aware of Mr. Malee having any dealings with any realtor or preparing or selling the house. (May 31, 2012 Transcript, p. 45). On the date of the auction after the family members had previously taken out items that they wanted, the auctioneer went into the home, put the items of personal property into boxes and prepared them for auction. (May 31, 2012 Transcript p. 48). On the day of the auction, all of the items of personal property as well as the home were sold. The items that were not sold were taken by the auctioneer. (May 31, 2012 Transcript, pp. 47, 48). Contrary to what Mr. Malee testified, his firm had no involvement whatsoever with the auction, the home, the personal property or the sale of these items other than to okay the auctioneer and to then review the paperwork following the auction. (May 31, 2012 Transcript, pp. 47, 48, 49).

While Mr. Malee's office made sure that the auctioneer was paid, neither he nor anyone else from the office ever went out to the house, they never checked to see it, they never got access to it and never took care of anything with respect to the house. (May 31, 2012 Transcript, p. 50). Neither Mr. Malee or anyone from his office ever stepped foot in the house. (May 31, 2012 Transcript, p. 50). It was Ms. Houseknecht who made sure that the property was secure, that there was insurance on it, that the utilities were taken care of and that the home and personal items were auctioned off. (May 31, 2012 Transcript, pp. 50, 51). According to Ms.

Houseknecht, Mr. Malee's only role was to take care of the paperwork. (May 31, 2012 Transcript, p. 51).

The Court finds the testimony of Ms. Houseknecht to be credible. While not concluding that Mr. Malee misrepresented the amount of work he or his firm performed, he was clearly mistaken with respect to this particular estate. Indeed, Mr. Malee's testimony appeared to the Court to be general at best and not based on a specific recollection of the work that was done with respect to this estate.

With respect to the character of the services rendered by Mr. Malee's firm, it is clear that the services were of the highest professional quality. The matters were handled expeditiously, without incident and without any complaints whatsoever from Ms. Houseknecht. As Mr. Malee testified to, there were no objections filed with regard to the substance of the accounting or any type of estate administration issues. (Transcript, p. 16).

With respect to the difficulty of problems involved in the estate administration, Mr. Malee testified that difficulties were experienced throughout the entire estate administration process. (Transcript, p. 13).

While initially contending that the difficulty with the estate related to numerous problems such as auctioning the personal property, dealing with disgruntled beneficiaries, dealing with beneficiaries who went through the house and "trashed it," leaving it "looking like the house had been robbed," selling the real property, dealing with and liquidating investments and preparing on accounting (Transcript, pp. 15, 20,

23, 24), he conceded that the “unusual quality” for the estate “[had] to do principally with the beneficiary.” (Transcript, p. 31). He noted that the dealing with the real estate, auction and assets made the estate “normal to above normal.” (Transcript, p. 31). He further explained that the “unusualness” had to do “significantly with the beneficiary who required” the firm to spend “an ungodly amount of time and resources up in the front, in the front end and then created difficulties and extra time and complexities with regard to the estate administration process as we went through.” (Transcript, pp. 47, 48). He noted as well that the “real estate...needed to be administered and [they] had property that needed to be sold at auction.” (Transcript, p. 48). He summarized that the difficulties with respect to this estate, they did not have “in 90 % of [their] other estates. (Transcript, p. 20).

Again, however, Ms. Houseknecht’s testimony differed from Mr. Malee’s. Prior to the auction, family members and Ms. Houseknecht arranged for the family members to come through the home and to take items that they wanted. Nothing was broken and nothing was trashed. According to Ms. Houseknecht, the house was left “disorganized.” Following this, Ms. Houseknecht went back and reorganized everything. (May 31, 2012 Transcript, p. 46).

Furthermore, it was clear that Ms. Houseknecht dealt with the sale of the decedent’s personal property and home through the auction. As referenced earlier, Mr. Malee’s involvement with the auction was minimal at best.

Ms. Houseknecht specifically testified that from her perspective there

was nothing at all unusual about the estate. (May 31, 2012 Transcript, p. 53).

Indeed, it is clear to the Court that there were no unusual aspects whatsoever with this estate. It was administered in less than five months. The decedent's assets consisted of the home and real estate which was sold on November 24, 2010 less than two months after the decedent had died, his personal property which was all sold at the November 24, 2010 auction or distributed in kind to family members prior thereto, his vehicle that had no value, his investments through Prudential and Wells Fargo and two accounts at Sovereign Bank.

There is no testimony whatsoever suggesting that Ms. Houseknecht or Mr. Malee ever attempted to negotiate a family settlement agreement in lieu of filing an account. The contention that the estate was unusual because of the beneficiaries lacks merit in light of the facts. Indeed, beneficiaries have every right to file objections which they deem meritorious. The estate argument that the contentious issues surrounding the power of appointment and the conduct of Ms. Houseknecht while acting as such are not related to the estate nor can they be utilized to argue that the estate is difficult.

The Court finds that the problems involved in this case were no more difficult than the typical estate.

With respect to the importance of litigation factor, the only litigation involved in this estate concerns Ms. Russell's Objections to the attorney's fees and the fees of the executrix. There was no other litigation involved with the Estate

Administration. In the Court's opinion given the facts of this case, this factor is of no significance whatsoever.

The next factor relates to the results that Mr. Malee and his firm were able to obtain for the estate. The Court finds that the results were significant. As referenced earlier, no objections were filed with regards to the substance of the accounting or any estate administration issues. (Transcript, p. 16). By making an advance payment of \$15,500.00, the estate received a discount on the Pennsylvania Inheritance Return of approximately \$815.00. (Transcript, p. 33). The Department of Revenue accepted the tax return and did not "question" the attorney's fees. (Transcript, p. 46).

As indicated earlier, the estate was administered in an expeditious and appropriate manner. Moreover, the executrix and all but one of the beneficiaries were satisfied with the services of Mr. Malee and his law firm.

With respect to the amount of money in question, it is significant that 5% of the gross estate is deemed allocated to legal fees. Utilizing Mr. Malee's hourly rate of \$250.00 at which he charges for all of the services rendered by his firm whether they are rendered by himself, an associate or even a paralegal (Transcript, pp. 36, 37), 72 total hours would need to have been expended.

As noted earlier, the estate value is approximately \$360,000.00. Mr. Malee testified that this was "an average estate size wise." (Transcript, p. 20).

With respect to the degree of responsibility incurred by Mr. Malee's

firm, it seems routine. It is no different than that degree of responsibility incurred by any attorney representing any estate. Ms. Houseknecht did the ground work while Mr. Malee and his associates did the paperwork. Mr. Malee and his associates advised Ms. Houseknecht on to how to proceed, made sure that the paperwork was in order and that the necessary filings were prompt and accurate.

The next factor concerns whether the fund involved was created by the attorney. At first glance, it appears not. All of the assets that were liquidated to constitute the value of the estate were in existence at the time of the decedent's death. On the other hand, Mr. Malee never billed Ms. Houseknecht for any legal fees associated with the services that were performed in connection with her power of attorney services on behalf of Mr. Houseknecht prior to his death. Mr. Malee's office spent a significant amount of time, energy and resources in dealing with the "fiduciary" matters prior to the decedent's death. A Petition to Confirm Accounting was filed, Objections to that Account were addressed and hearings were held.

Had a bill been submitted, it would have been a debt of the estate. By not charging the estate, more monies became available for distribution to the residual beneficiaries. While the Court has no further specifics to arrive at a figure for the services, it is clear that at least some additional monies were created for the estate by Mr. Malee.

Mr. Malee clearly has obtained professional skill and standing in the community as an elder law attorney. He has been practicing in Lycoming County

since 1990 exclusively in the elder law, estate planning and estate administration area. (Transcript, p. 8). He is a member of the Elder Law Section of the Bar, a member of the National Academy of the Elder Law Attorneys, an adjunct faculty member with Penn College where he teaches classes on trust and estate administration, and also an instructor with the Pennsylvania Bar Institute (Transcript, p. 9).

He characterizes his firm as a “boutique firm.” The firm focuses its practice on elder law, estate practice and estate administration. They stay current on the relevant legal issues, and attend the Continuing Legal Education seminars, symposium and conferences. (Transcript, pp. 18, 19).

The next factor concerns the client’s ability to pay. Clearly, the estate has more than sufficient assets to pay the fee for Mr. Malee’s services.

Finally, and although not specifically set forth as a factor to consider, in assessing whether the attorney’s fee is reasonable and fair, the Court must consider the agreement reached between the estate and Mr. Malee. Ms. Houseknecht as the executrix of the estate entered into a written fee agreement agreeing to pay legal fees of 5% of the gross estate as established on the PA Inheritance Tax Return. (Estate Exhibit “1”). This agreement was entered into on November 24, 2010.

Mr. Malee testified that the 5% fee is standard for any routine estate. (Transcript, p. 11). He testified further that his experience in Lycoming County is that most firms will charge anywhere from a low of 4% to a high of 7% for routine estate administration. (Transcript, p. 11). He also testified that 5% was “absolutely

customary for simple estates where there aren't issues." (Transcript, p. 30).

Ms. Houseknecht trusted Mr. Malee to take whatever fee he wanted. (May 31, 2012 Transcript, p. 41). She did not remember agreeing to a flat fee, percentage, hourly fee or any specific fee. (May 31, 2012 Transcript, p. 42). However, upon being advised that the fee was \$18,000.00, she did not at all question it. (May 31, 2012 Transcript, p. 42).

Taking all of the relevant factors into consideration, it is obvious to the Court that the legal services provided to the estate were routine and not at all complicated. Furthermore, the estate was an average size with assets that were quickly and easily liquidated. While Mr. Malee and his associates performed their services in an exemplary fashion, the Court is hard pressed to justify an \$18,000.00 fee given all of the relevant circumstances. On the other hand, the fee was agreed upon and the client was entirely satisfied. As well, the percentage was well within the custom in the Lycoming County area.

The Court finds a fee of \$14,404.93 (4% of the total gross assets of the estate as set forth in the Pennsylvania Inheritance Tax Return) to be fair and reasonable and will direct that the fee be awarded to Mr. Malee. Because this fee is different from the fee set forth in the relevant estate and tax documents, said documents will need to be appropriately amended.

The next issue concerns the 5% commission disbursed to Barbara Houseknecht. Petitioner claims that this executrix fee of \$18,003.66 is excessive, not

reasonably related to the work performed and arbitrary.

In Pennsylvania, the compensation of personal representatives is garnered by statute. The Court shall allow such compensation as shall in the circumstances be reasonable and just. 20 Pa. C.S.A. § 3537. As a general rule, a personal representative's fee of 3% of the estate is "prima facie fair and reasonable." Wallis Estate, 421 Pa. 104, 218 A.2d 732 (1966). This "rule of thumb" however, is just that. The true test is the worth of the actual services. In Re: Reed's Estate, 462 Pa. 336, 341 A.2d 108 (1975). If there is evidence that the services were actually worth more, such as through the performance of extraordinary duties, the amount may be increased.

While Ms. Houseknecht performed many duties in her role as executrix including, but not limited to, driving numerous times to Williamsport, collecting all of the relevant paperwork and bills, taking care of all of the funeral arrangements, securing and cleaning the home, handling all of the personal items, obtaining and hiring the auctioneer, assisting with the auction, notifying family member, and disposing of the car. (May 31, 2012 Transcript, pp. 11, 12, 13, 14, 15, 22, 24, 27, 30, 32, 48, 49, 50, 51, 60 and 63), the evidence fails to support a claim for more than the presumptive reasonable percentage.

Ms. Houseknecht could only guess as to the number of hours that she spent in her fiduciary capacity. (May 31, 2012 Transcript, pp. 16, 17). She admitted that her fee was only for the work she performed after her uncle had died. (May 31,

2012 Transcript, pp. 25, 85). While she insisted she put in many hours as well as caring and dedication, she claimed that she did not need to be given any money (May 31, 2012 Transcript, p. 85). She did it because she loved her aunt and uncle. (May 31, 2012 Transcript, pp. 85, 86).

While the Court appreciates her generosity and sincerity, she is entitled to and will be awarded a fee of 3% or \$10,803.69. As with the legal fee, the relevant estate and tax documents will need to be appropriately amended.

ORDER

AND NOW, this ____ day of July 2012, following a hearing and argument, Mary Russell's Objections to the Accounting are sustained. The legal fees and executrix fees shall be modified in accordance with this Opinion.

By The Court,

Marc F. Lovecchio, Judge

cc: Denise Dieter, Esquire
Andrea Pulizzi, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File