

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**IN RE: : ORPHANS' COURT DIVISION**  
**:  
ESTATE OF WELLARD R. GUFFY : 41-12-0298**

**OPINION AND ORDER**

This estate has been in litigation for many years. Wellard R. Guffy died on February 10, 2012. His Last Will and Testament was dated December 27, 2011. Following a plethora of proceedings regarding different issues, by an extensive Opinion and Order dated September 11, 2015, William Colyer, the substitute executor and decedent's nephew, was removed as executor of the estate as well as trustee of the Willard Raymond Guffy Living Trust ("Trust") which was also dated December 27, 2011. Margaret Stryker, decedent's former niece by marriage, and Dennis Stalker, were appointed co-trustees and co-executors.

Pursuant to Mr. Guffy's Will, he named his niece, Mozelle Snyder, to be executor. He noted that if she was unable or unwilling to serve, Mr. Colyer, would be the named executor. Ms. Snyder signed a document in 2012 renouncing her position as executor. Accordingly, Mr. Colyer petitioned for a Grant of Letters and was named executor on June 5, 2012. Pursuant to the Trust language, Ms. Snyder was named as a co-trustee along with decedent. Mr. Colyer was named as successor trustee if Ms. Snyder resigned. Although Ms. Snyder never formally resigned as Trustee, Mr. Colyer, previously testified that he took over as successor Trustee "at the same time he was appointed executor of the estate on June 5, 2012."

On November 3, 2015, Mr. Colyer filed a combined amended final account (accounting) as the former executor and trustee. On November 24, 2015, Ms. Stryker and Mr. Stalker filed Objections to the accounting. A hearing on said Objections was held on February 19, 2016.

Objectors assert a handful of deficiencies with respect to the accounting. First, objectors claim that the requested fee of \$12,919.50 is unreasonable under the circumstances. Objectors assert that Mr. Colyer is not entitled to any fee in light of his failure to properly administer the estate and trust.

Second, objectors claim that Mr. Colyer's requested reimbursement of expenses is unreasonable and not warranted. Specifically, objectors argue that the trips from North Carolina to Williamsport and back were not necessary for the administration of the estate.

Third, objectors claim that the distributions of the estate were in error in that the heirs of a beneficiary, who died during the estate administration, were entitled to that deceased beneficiary's share. In other words, the distribution should have been made to the family members of the deceased heir and not to the remaining heirs.

Mr. Colyer testified both previously and at the February 19, 2016 hearing. As noted above, he contended that he took over as a successor trustee at the same time he was appointed as the executor of Mr. Guffy's estate which occurred on June 5, 2012. He admitted that he was paid for certain expenses incurred while

assisting Ms. Snyder in the performance of her duties and that he submitted an accounting of the expenses and reimbursement checks that were signed by Ms. Snyder. He denied that his trips to the Williamsport area were for non-estate or non-trust business; he contended that he was assisting Mozelle Snyder at her request in the performance of her ongoing duties as the trustee of the trust and executor of the estate.

At the February 19, 2016 hearing, Mr. Colyer testified that following Mr. Guffy's death on February 10, 2012 upon the request of Ms. Snyder, he traveled to Williamsport. He was residing in North Carolina at the time and he traveled to Williamsport to handle the "final arrangements." Among other things, he made all of the funeral arrangements, set up a memorial service and planned the post memorial service luncheon. He inventoried the furniture and household goods and arranged for their auction, direct distribution to the beneficiaries or direct distribution to charities. He also assisted with the tax issues by purchasing a computer tax program and inputting the relevant information.

He returned to Williamsport in late February. He further went through the decedent's personal belongings such as clothing. Some personal belongings were offered to family members and others were donated to different charities. He also inventoried the decedent's Navy memorabilia and investigated options to dispose of such. He continued to collect the relevant paperwork, address tax issues, and administer the estate by contacting the beneficiaries with relevant information and having at least one contact with an attorney.

He returned to Williamsport in April to catalog, photograph and itemize the Navy memorabilia. He also transported the memorabilia to Baltimore in order that it could be given to the Navy.

Exhibit 1 is Mr. Colyer's expense listing from December 19, 2011 through April 26, 2012. It includes a claim for mileage reimbursement for four different trips at the rate of \$0.51 ½ per mile. Exhibit 2 is a listing of Mr. Colyer's activities with respect to his duties as executor and trustee from February 10, 2012 to May 29, 2012. Exhibit 3 is a check that Mozelle Snyder paid to Mr. Colyer for his expenses as incurred in Exhibit No. 1. The check was paid on April 27, 2012.

Exhibit 4 is a summary of Mr. Colyer's expenses from May 19, 2012 to August 13, 2012. From June 5, 2012, after Ms. Snyder resigned her position as executor, Mr. Colyer testified that he was required to perform more "legal" work. In July, he traveled to Williamsport to file the inheritance tax return. He also transferred the Prius automobile. Exhibit 5 is a copy of an expense reimbursement check paid from Mozelle Snyder to Mr. Colyer for his expenses as set forth in Exhibit 4.

Exhibit 6 is a \$5,000.00 gift from decedent to Mozelle Snyder on November 29, 2007. An advanced distribution of approximately \$225,000.00 was made to the beneficiaries on or about July 18, 2012. Mr. Colyer received \$31,500.00 (Exhibit 8). Mozelle Snyder signed his check.

Exhibit 9 is a summary of Mr. Colyer's expenses from August 15, 2012 to December 19, 2012. Ms. Snyder paid these expenses by check dated March 13,

2013 (Exhibit 10). Exhibit 11 is another reimbursement check for expenses from Ms. Snyder to Mr. Colyer for \$230.33.

Exhibit 13 represents expenses that were incurred by Mr. Colyer but not reimbursed. Exhibit 15 represents his calculation of all of the hours that he worked on the estate or trust and what activities he performed for the estate and/or trust. He arrived at an executor fee of \$49.50 per hour. He arrived at that figure because it was his last hourly rate when he retired from retail management. Additionally, Mr. Colyer estimates that he spent probably “a hundred or more hours” administrating the estate between February and June that were not included in his written itemizations.

On cross, Mr. Colyer was asked probing questions about his reported time and expenses. With respect to travel for example, he was paid time and mileage. With respect to the inheritance tax return, he actually traveled from North Carolina to Williamsport to file it when in fact it simply could have been filed by mail. Numerous charges were questioned including those on December 15, 2012 for paying bills, two hours for reviewing a letter on March 5, 2012, three hours for setting up a new account on April 17, 2013, a trip from June 5, 2012 to June 8, 2012 when he stayed with his mother, a trip on July 11, 2012 when he visited with his mom, and the fact that he did not recall what he did on July 28, 2013 or August 11, 2013.

Mr. Colyer agreed that when he visited Williamsport he stayed with his mother and did not incur any expenses for food or lodging. He was also questioned about why he actually drove the Navy memorabilia to Baltimore and charged for both

mileage and time.

Objectors contend that Mr. Colyer's fee hours were inflated and unnecessary. They also contend that the paperwork verifying the fees and expenses is unreliable and inconsistent. With respect to reimbursement checks that were paid by Ms. Snyder, objectors contend that she simply rubberstamped such reimbursement claims.

To the contrary, Mr. Colyer claims that he "did a lot for the estate and trust." He claimed that if he didn't do it, nobody would have done it. "Somebody had to do it." He also argues that in light of the amount of the estate, the total fee and request for reimbursement is not unreasonable. He argues that it cannot be said that what he did had "no value whatsoever."

In Pennsylvania, the compensation of personal representatives, an executor in Mr. Colyer's case, is governed by statute. The Court shall allow such compensation as is 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, 734 (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, 110 (1975).

An executor is required to use such common skill, prudence and passion as a prudent man, under similar circumstances, would exercise in connection with the management of his own estate. *Estate of Lohm*, 440 Pa. 268, 269 A.2d 451,

454 (1970). As this Court noted in its September 11, 2015 Opinion and Order, removing Mr. Colyer as trustee and executor, he failed in this regard. “His failures have seriously impaired the administration of the trust and estate. His failures have resulted in needless litigation and the wasting of estate and/or trust assets.” (Opinion & Order, Sept. 11, 2015, at 45). He failed to marshal the assets and to liquidate and terminate the estate as soon as possible. (*Id.* at 45-46).

While these conclusions are not determinative with respect to the fee and expense reimbursement issues, they cannot be ignored. In considering Mr. Colyer’s failures along with the evidence presented at the hearing, the Court cannot conclude that all of Mr. Colyer’s fees and expense reimbursements are fair and reasonable.

The objections with respect to expense reimbursements present a difficult issue. While the expenses were listed with appropriate detail, some were actually submitted to Ms. Snyder and paid by Ms. Snyder after she had formally resigned as executor and de facto resigned as trustee.

The Court will deal with each claim separately. The Court has no evidence to conclude that Ms. Snyder, as objectors claim, “rubber stamped” any of the expense reimbursement requests. Mr. Colyer’s request for reimbursement of expenses incurred from 12-19-11 to 4-26-12 in the amount of \$3,863.61 was approved and paid by Ms. Snyder on 4-27-12 while in her capacity as trustee. This reimbursement will not be disturbed by the Court.

Mr. Coyer next submitted a request for reimbursement of expenses incurred from 5-19-2012 to 8-13-2012. Ms. Snyder reimbursed these expenses by check dated 7-10-2012 from the estate account. She was not, however, the executor at that time and had no legal authority to approve or pay the request.

Unfortunately, neither party provided to the Court any legal authority for guidance with respect to reasonable expenses reimbursement. The Court has no issue with Mr. Coyer's out-of-pocket expenses. The mileage reimbursement, however, is concerning. The 2012 standard mileage reimbursement rate for the IRS was 55 ½ cents per mile for "business miles", 23 cents per mile for medical or moving, and 14 cents per mile driven in service of charitable organizations. Mr. Coyer claimed total mileage reimbursement of \$2,550.32. This is patently unreasonable. The necessity of the trips was questionable and the amount per mile excessive. The Court will approve two (2) trips at 20 cents per mile. This amounts to \$495.20. Accordingly, objectors objections will be sustained in the amount of \$2,055.12.

It appears that instead of charging the estate a percentage, Mr. Coyer arrived at his fee by submitting a claim for time and expenses. This was his choice. An argument with respect to a percentage would not be a valid comparison. One cannot compare apples with oranges.

As for his time, he chose a rate of \$49.50 per hour. He asserts that he expended 261 hours performing estate related work. The Court reviewed his



itemization of services. Many of the time calculations appear to be inflated and some of the services were clearly unnecessary and unreasonable. For example, expending 19 hours to file in person the inheritance tax return by traveling from North Carolina to Williamsport was foolish. Three hours to set up a new bank account seems absurd. Three hours to package and ship a Bible seems entirely not credible. The fact that all of the services allegedly rendered were in either half or full hour increments is also highly suspect. Moreover, the testimony in support of the services was vague and incomplete.

In the final analysis, the Court considers three major factors. First, the Court does not find credible Mr. Colyer's claim that he expended all of the hours that he claims he expended. Second, many of these hours allegedly expended were wasteful. Lastly, Mr. Colyer failed to properly execute his duties thus causing more waste to the estate assets.

However, it cannot be said that Mr. Colyer's efforts did not assist in at least some aspects of the administration of the estate. It would be entirely unreasonable not to award to him a fee for some of his services.

Unfortunately, the Court has little guidance on how to partially approve the fee. Taking into account all of the aforesaid factors, the Court concludes that it would be reasonable to award Mr. Colyer 50% of his claimed fee and nothing more. Accordingly, the Court will award to Mr. Colyer the fee of \$6,459.75 and conversely sustain objectors' objection as to his fee in the same amount.

Regarding objectors' claim that the distribution to the remaining heirs was improper after the one heir died, the Court will defer a decision at this time. Within thirty days of today's date, the objectors shall submit a Brief in support of their position, citing of course the relevant aspects of the Will and/or Trust documents and supporting legal authority. Within thirty days of receiving objectors' Brief, Mr. Colyer shall file his opposition Brief.

**ORDER**

**AND NOW**, this \_\_\_\_ day of April 2016, following a hearing and argument, the Court sustains in part the objections of Ms. Stryker and Mr. Stalker. The executor's fee permitted is limited to \$6,459.75. Expense reimbursement of \$2,055.12 is disallowed.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kristine Waltz, Esquire  
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