STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0967

In re: Estate of
John Alfred Meiners,
Deceased.

Filed June 10, 2008
Reversed and remanded
Crippen, Judge[*]

Crow Wing County District Court
File No. P4-03-2630

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Considered and decided by Peterson, Presiding Judge; Toussaint, Chief Judge; and Crippen, Judge.

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

Appellant John G. Berg, formerly the personal representative and attorney of the John Alfred Meiner's estate, challenges the district court's determination that he was entitled to an award for fees of $28,000 on his claim for $120,599. Because the court's order is inadequately explained and rests on errors of law and conclusions that are not

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

sustained by findings or the record, we reverse and remand for a redetermination of the fee claim.

FACTS

John Meiners was a real estate attorney, operating a solo practice from his Eden Prairie home. On December 29, 1997, Meiners executed a will leaving the whole of his estate to his former wife, respondent Lisa Tyson, and naming appellant, his friend, as his estate's personal representative. During December 2000, decedent orally renounced this will in a conversation with appellant, indicating that he would draft a new will; the old will was not destroyed.

Meiners died in January 2003. Shortly thereafter, on appellant's petition, appellant was appointed as special administrator of decedent's estate. Appellant stated that decedent's will had not been located. Uncontradicted testimony explains that appellant withheld the 1997 will because he believed, based on what decedent told him, that decedent had drafted another will.

Appellant then filed a petition for general administration in April 2003, naming respondent as an interested party. While this petition was pending, respondent petitioned for probate of the 1997 will. In June 2003 appellant was appointed general administrator of decedent's estate.

Respondent's probate petition was opposed by decedent's heirs and appellant. After the venue was changed from Hennepin County to Crow Wing County, the district court admitted the will to probate in March 2005, a decision affirmed by this court on

appeal. *In re Estate of Meiners*, No. A05-971 (Minn. App. May 23, 2006), *review denied* (Aug. 15, 2006).

During the will contest, respondent filed a petition requesting that appellant be removed as administrator. But because the will contest appeal was then pending before this court, the district court denied respondent's petition on July 1, 2005. On April 20, 2006, respondent filed a second petition to remove appellant. The district court granted her petition in September 2006 because of its concern that appellant's interests were not neutral to the interests of the sole beneficiary under the 1997 will.

From January 1, 2003 until his removal on September 19, 2006, appellant billed the estate for 1,157.5 attorney hours, 235.5 personal representative hours, and 351.5 legal assistant hours (fees totaling approximately $240,000). During the administration, appellant paid $108,600 in these fees from the estate's funds. At the time of removal, appellant petitioned for an additional $135,222.50 in fees. Pursuant to Minn. Stat. § 524.3-721 (2006), a trial was held in October 2006 to determine the reasonableness of appellant's fees. Appellant testified that the fees claimed were both reasonable and necessary based on the tasks required by this estate. He explained that this was a "unique" estate with a variety of complications, including winding up decedent's solo law practice, the will contest, and defending a $301,366 claim from Hennepin County related to the decedent's father's hospital bills.

Appellant and respondent each retained experts to testify regarding the reasonableness of appellant's fees. Both experts were attorneys with approximately 30 years of probate law experience. Respondent's expert testified that appellant's time

entries appeared exaggerated, that attorney fee billings included services as personal representative, and that appellant billed for time on issues irrelevant to his roles. Appellant's expert recommended, and appellant agrees, that the fee claim be reduced by $14,622.50, leaving a balance of $120,599 in allegedly reasonable fees. The district court, accepting respondent's proposed findings, awarded appellant $28,000[1] in fees.

D E C I S I O N

Allowance of personal representative and attorney fees is a matter largely within the discretion of the district court; the reasonable value of such services is a question of fact. *In re Estate of Baumgartner*, 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966). "When a district court has discretion, it will not be reversed unless it abused its discretion, exercised its discretion in an arbitrary or capricious manner, or based its ruling on an erroneous view of the law." *Posey v. Fossen*, 707 N.W.2d 712, 714 (Minn. App. 2006) (quotation omitted). The court's findings of fact will not be set aside unless clearly erroneous and this court defers to the district court's credibility determinations. Minn. R. Civ. P. 52.01. But "[t]he district court must make sufficient findings to permit meaningful appellate review." *Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002).

[1] Respondent argues that the $28,000 award was intended as a measure of all of appellant's fees, both those claimed now and previously paid, thus suggesting appellant may need to return excess fees. Appellant disagrees, arguing that this $28,000 figure represents the portion of the balance due that he was awarded. Although there is little in the order to suggest it deals with the topic of fees previously paid, it is not sufficiently clear which reading is consistent with the district court's intent.

To determine what amount reasonably compensates a personal representative, "the [district] court shall give consideration to . . . [t]he time and labor required; [t]he complexity and novelty of problems involved; and [t]he extent of the responsibilities assumed and the results obtained." Minn. Stat. § 524.3-719 (2006). Further, "[a]ny personal representative . . . who defends or prosecutes any proceeding in good faith, whether successful or not . . . is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred." Minn. Stat. § 524.3-720 (2006).

In all probate proceedings, "an attorney performing services for the estate at the instance of the personal representative . . . shall have such compensation therefor out of the estate as shall be just and reasonable." Minn. Stat. § 525.515(a) (2006). To determine a "reasonable" attorney-fee award a district court considers the same factors stated for personal representatives, plus the"experience and knowledge of the attorney" and the "sufficiency of assets properly available to pay for the services." Minn. Stat. § 525.515(b) (2006).

a. General Considerations

The district court's fee determination first suffers from the fact that the court chose a "reasonable sum" without any comment to explain how it was determined that $28,000 was an appropriate award and that the remaining claim of over $90,000 should be denied. In addition, the findings of fact recite criticisms of the personal representative, perhaps suggesting breach of his duties or reasons for his removal, but without any evidence or findings that these recitations bear upon the value of the services he gave or the

reasonable fees for those services. In the same light, the order is wholly silent as to the fruits of appellant's services and the resources at the estate's disposal to pay the fees.

In addition, it is evident that the district court's decision was shaped to some extent by what it expressed as its "dim view" of the dual role of personal representative and counsel, but without any showing as to why that dual role was inappropriate in the circumstances of this case or how this consideration related to the reasonableness of the fees charged.

Finally, the court's lengthy order includes numerous particular errors, addressed in the remainder of this opinion.

b. Appellant's Actions While the Petition to Remove Him was Pending

The district court stated that while the petition to remove appellant was pending, appellant "improperly refused to stop working as a general administrator" because he "should [have] refrain[ed] from all activities relating to the estate." Nothing in the order suggests whether or to what extent this topic relates to the reduction or denial of some of his fees. Insofar as this observation relates to fees, it is erroneous.

"[A]fter receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate." Minn. Stat. § 524.3-611(a) (2006). Appellant was not barred from all action during the pendency of a removal petition.[2]

[2] The district court stated "[appellant] improperly billed the [e]state for trying to sell real estate." The findings do not indicate the amount of fees attributable to those negotiations. And negotiating a sale of real estate is not per se inconsistent with preserving the estate. *See* Minn. Stat. § 524.3-611(a).

The district court order recited a conclusion that appellant improperly charged the estate for defending a successful removal motion. There are no findings supporting that conclusion, no findings indicating the amount of related fees, and no explanation for the determination that the fees were inappropriate. Appellant's task as personal representative was to defend the estate; he is the instrument for the preservation of the estate. *Cf. In re Estate of Kotowski*, 704 N.W.2d 522, 530-31 (Minn. App. 2005) (limiting "expenses of administration" to those of the personal representative; denying a claimant attorney fees following the claimant's successful petition to remove the personal representative), *review denied* (Minn. Dec. 21, 2005).

c. Appellant's Involvement in the Will Contest

Merely reciting the testimony of respondent's expert, without the district court's statement of fact on the subject, the court stated in its order that "[respondent's expert] was also critical of all the time [appellant] spent being an advocate against the 1997 [w]ill. [Respondent's expert] believed a personal representative should either be neutral, or be an advocate for the [w]ill, not actively contest the [l]ast [w]ill." There is no finding on the extent of the fee reduction chargeable to this criticism. *Cf. Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989) (stating that merely reciting a party's claims is not making a finding of fact). Insofar as this recitation relates to fees, it does not conform with governing law.

> A personal representative is a fiduciary who shall observe the standards of care in dealing with the estate assets that would be observed by a prudent person dealing with the property of another . . . . A personal representative is under a duty to settle and distribute the estate of the decedent in accordance

> with the terms of any probated and effective will and applicable law, and as expeditiously and efficiently as is consistent with the best interests of the estate.

Minn. Stat. § 524.3-703(a) (2006).

"[A]n estate as an entity is benefited when genuine controversies as to the validity or construction of a will are litigated and finally determined." *In re Estate of Torgerson*, 711 N.W.2d 545, 555 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006). And, "as a fiduciary for the estate's successors, a . . . personal representative in a will that has not yet been probated is an interested person who may contest a will." *Id.* at 554. "[A] personal representative is under a duty to ensure that the estate's assets are not diverted from the course the testator prescribes." *Id.* at 555 (quotation omitted).

"Any personal representative . . . who defends or prosecutes any proceeding in good faith, whether successful or not . . . is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred." Minn. Stat. § 524.3-720 (2006). Respondent argues that appellant's actions must have benefited the estate to receive compensation under this statute. But Minn. Stat. § 524.3-720 only requires that the representative's role in the will contest be in good faith; it is not required that a benefit be conferred on the estate. *In re Estate of Evenson*, 505 N.W.2d 90, 92 (Minn. App. 1993).

Respondent cites law from foreign jurisdictions in support of her argument that a personal representative is prohibited from participating in a will contest. The cited cases are not binding. *See Mahowald v. Minnesota Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984). Moreover, they are unpersuasive. Respondent cites *In re Irvin's Estate* for the

proposition that a personal representative is not entitled to fees related to his involvement in a will contest. 198 N.Y.S.2d 904 (Sur. Ct. 1960). But the New York court relied on a state statute limiting fees to the personal representative who acts as a proponent of the will, and the personal representative opposed the will for his own personal benefit. *Id.* at 909-10. Respondent cites *In re Law's Estate* for the proposition that the contest should have been left to the will contestors because they had reached the age of majority and were represented by counsel. 113 N.W.2d 233 (Iowa 1962). But the Iowa court's decision turned on the statutory requirement that the personal representative have just cause for his involvement. *Id.* at 235 ("When any person designated as executor in a will . . . prosecutes any proceedings in good faith and with just cause for the purpose of having it admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements." (quoting Model Probate Code § 104) (emphasis omitted)). Minn. Stat. § 525.49, requiring just cause, was repealed in 1974. *Evenson*, 505 N.W.2d at 92 (explaining that after 1974 it is only required that a personal representative act in good faith).

Because it appears undisputed that appellant acted in good faith when he contested the will, the district court erred in denying appellant fees related to the will contest.[3]

[3] We note that the district court failed to address the concession of respondent's expert that, even given his poor opinion of appellant's role in the will contest, it would have been proper for appellant to bill for physically searching for a new will and responding to discovery, interrogatory, and less-formal requests.

D. Appellant's Winding up of Decedent's Law Practice

The district court found that "[appellant] misrepresented … that the [d]ecedent had an active law practice . . . [and] that this estate was not a normal estate due to the law practice." Recounting respondent's expert's testimony, the court stated that

> [respondent's expert] questioned the numerous hours [appellant] claimed he spent closing out the one active file of the [d]ecedent and in returning the other files to clients. [Respondent's expert] believed it would not take much time to write to former clients and simply ask for them to pick up their files.

There is no finding indicating the extent to which work in cleaning up the law practice is included in appellant's claim for fees and the extent of fees denied by the district court on that basis. Other than the recitation of the expert's opinion, which was not specific as to services or fees, the court did not address the question of whether these fees were appropriate. Finally, the evidence does not sustain the findings of fact insofar as they imply that any of appellant's services in connection with cleaning up the estate were not necessary or not valuable.

Appellant introduced into evidence photographs of decedent's home, taken three days after his death. The house was in "complete shambles." Legal files were in "every room," some of which were covered in dog urine. Papers were piled on top of and underneath clothes; there was no organizational system. Appellant testified that decedent did not maintain a client list, billing records, or a trust account.

Moreover, the district court fails to note that respondent's expert admitted that (1) "it would be very difficult for me to judge what is reasonable, having not been

involved in looking underneath the dirty sheets on the floor to see if there was a file or not"; (2) if there was a potential that the decedent had an active law practice, and potential liability for the estate,[4] it would protect the estate to determine the contents of decedent's files; and (3) given the state of the house, appellant could not have known how many active files decedent had and "with the benefit of hindsight" we now know decedent had few active files. As this testimony suggests, the district court erred even in its limited finding on appellant's characterization of the law practice problem; only in hindsight, and only because of appellant's work, it could be determined that decedent's files were on matters outside of the statutory period for filing malpractice claims.

e. Appellant's Time Spent Regarding the Change-of-Venue Issue

The district court recited the testimony of respondent's expert who "felt excessive time was spent researching the venue issue and that issue should have been left up to the litigants to research and brief as the issue was immaterial to the [e]state."

But appellant testified that the district court referee "asked that [he] perform an investigation and render a report to the Court on the issue of [decedent's] contacts with each of the counties." Thus, the record does not support a reduction for fees claimed on services related to the change of venue.

[4] *See* Minn. R. Prof. Conduct 1.16(d) (requiring a lawyer to "take steps … to protect a client's interests" following the termination of representation).

f. Appellant's Rate

With no findings, only recitation of testimony, the district court stated that "[respondent's expert] felt the hourly rate of $75.00 for a personal representative was too high and that $40.00 was the highest rate he had ever seen charged."

The court order fails to note that respondent's expert admitted he had no knowledge of personal representative fees in Hennepin County. And, if $75 per hour is a reasonable rate in Hennepin County, respondent's expert would not have expected appellant to lower his rate after the venue was transferred to Crow Wing County. Insofar as appellant's overall award was reduced due to the compensation rate, this reduction was not supported by the record.

g. Respondent's Expert on Short-Term Sale (Estate Sale)

Reciting testimony, without additional related findings, the district court stated:

> [Respondent's expert] was concerned that [appellant] improperly held an [e]state sale … without notifying or seeking permission from Tyson, the sole devisee of the [l]ast [w]ill. [Respondent's expert] stated that a [s]pecial [a]dministration was only for emergency actions necessary to preserve the [e]state and that in any event, the sole devisee should be consulted to prevent problems if that person wanted to keep any of the items sold.

The court order fails to note that respondent's expert also conceded that appellant as special administrator had the authority to sell any assets of the estate except real property.

A special administrator has the same powers of a general personal representative. Minn. Stat. § 524.3-617 (2006). A personal representative "shall take possession or control of . . . the decedent's property . . . The personal representative shall pay taxes on,

and take all steps reasonably necessary for the management, protection and preservation of, the estate." Minn. Stat. § 524.3-709 (2006). "Until termination of the appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." Minn. Stat. § 524.3-711 (2006).

Thus, it was not improper to conduct a sale. In determining appellant's fees the district court should consider the "results obtained," but there appears to be no evidence that the property was sold at a loss to the estate. On this record, appellant would be entitled to reasonable fees related to the estate sale.

h. Appellant's Time Spent Regarding the Hennepin County Claim

The district court relied upon respondent's expert to conclude that "[appellant] should have just denied the claim which looked frivolous and misplaced against the Meiners' Estate and waited for Hennepin County to take action." There is no clear error in the district court's finding insofar as it goes, but the record includes no finding quantifying the extent to which charges were premised on that activity or fees were denied.

i. Characterization of Appellant's Expert's Opinion

The district court characterized the testimony of appellant's expert as "agree[ing] that many time entries submitted by [appellant] were either unnecessary or were very exaggerated." This consideration is muted in its importance because the same witness quantified his observations as limited to a reduction of $14,622.50, which is conceded by appellant. Likewise, as stated earlier, respondent's expert is cited on the notion that

appellant's fees were excessive. But without specification or explanation, this statement has limited importance.

The district court's determination of reasonableness is insufficiently and erroneously explained to such an extent that the matter must be reversed and remanded for a redetermination of the fee claim. Our decision does not preclude the reopening of the record if the district court deems this appropriate.

Reversed and remanded.