

FILED

AUG 26 1980

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF)
EDMUND F. TABOR, Deceased,)
EDMUND F. TABOR, II, Administrator)

Filed August 26, 1980

Appellant,)

vs.)

MERCHANT NATIONAL BANK,)

0-159
2-63735

Appellee.)

Appeal from Buchanan District Court - C. W. Antes, Judge.

The administrator appeals from a trial court order in probate proceedings allowing fees and expenses to a trustee and its attorney for services performed in connection with termination of a trust and will investigation. - AFFIRMED.

Robert J. Pattee, of Pattee & Pattee, Independence, for appellant.

James W. Hall, of Shuttleworth & Ingersoll, Cedar Rapids, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell and Johnson, JJ. Carter, J., takes no part.

PER CURIAM

Administrator, Edmund F. Tabor II, appeals a trial court order in probate proceedings allowing compensation to trustee, Merchant National Bank and trustee's attorney. We affirm.

The bank had been trustee of a revocable living trust which contained most of the assets of decedent, Edmund Tabor, for several years prior up until Tabor's death. The trust was to terminate at Tabor's death with assets then transferred to the estate. The bank had also been named executor in numerous wills of the decedent. Five days after Tabor's death, the bank made application for and was appointed temporary administrator of the estate. At that time, the bank was told the last known will of the decedent had been destroyed at decedent's request a few days prior to his death. The bank also learned of a possible claim against the estate by a beneficiary under that last known will. The bank was concerned the revocation of the will was invalid and so employed counsel to investigate. The bank subsequently determined no action would be taken by them concerning the validity of the will.

The administrator requested the bank to retain custody of the trust until it would be needed for taxes and distribution. Eventually, the trust securities were re-registered in the administrator's name and transferred to his custody. The bank retained a sum of money to cover their closing fee for the trust and for reimbursement of attorney fees incurred in the will investigation. The administrator challenged this payment and the bank filed application with the probate court for approval of the fees and expenses. The court approved the application and ordered the estate to make payment in the amount of \$4,601.54 as trustee's fees and \$1,841.25 for attorney's fees. The administrator appeals this order. Questions of allowances of administrative costs stand in equity, and thus our review is de novo. §§ 633.3(8), .33, The Code 1979.

The burden is on the claimant to show both the necessity and value of the service rendered to the estate. Bass v. Bass, 196 N.W.2d 433, 435 (Iowa 1972). Considerable discretion is left to the trial court in the allowance of fees. Id., at 434. With those concepts in mind, we consider the case before us.

I. Trustee's Fees.

The trial court allowed the bank to receive compensation for the services

rendered in the custody and closing of the trust after Tabor's death. The administrator argues the bank had no authority to continue as trustee since the trust "terminated" at Tabor's death. The administrator also argued the closing cost was excessive. The fees sought by the bank for the handling of the trust are in the nature of those covered by section 633.200, The Code 1979. This section authorizes the court to compensate fiduciaries, other than the personal representative, for services rendered for the estate.

The trial court found 1) an agreement between the parties that the bank continue as trustee for a time, 2) closing fees would have been a necessary expense of the estate no matter when termination was completed and, 3) the customary fee of one percent (1%) of total assets was the proper measure of compensation. We agree with those findings and affirm the allowance to the bank in trial court's order.

II. Attorney's Fees.

The trial court allowed the bank to be reimbursed for attorney's fees pertaining to the investigation of the will revocation. The administrator argues the attorney's services were not authorized or necessary to the estate.

A court in fixing fees of a fiduciary must find just cause for their services and participation in order to obligate an estate. In re Estate of Cory, 184 N.W.2d 693 (Iowa 1971). That determination depends upon the circumstance of each case. In re Estate of Law, 253 Iowa 599, 113 N.W.2d 233 (1962). In this case, the record reveals 1) evidence of prior wills naming the bank as executor, 2) confusion about the destruction or existence of a will, 3) possible claims of beneficiaries under prior wills; and, 4) the bank's continued custody of the trust. We find these circumstances analagous to the provisions of section 633.315, The Code 1979. This section provides for payment by the estate to designated executors for necessary expenses in the good faith defense of a will. We find the bank in the position of possible executor. The attorney fees were reasonable as they arose during the period of investigation of the bank's responsibility and were adequately reported to the court. See Matter of Estate of Myers, 269 N.W.2d 127 (Iowa 1978).

We have reviewed the administrator's challenge to the court's allowance and find the order should be affirmed.

AFFIRMED.