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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF ELSIE L. SIEVERS, Deceased;	Filed March 26, 1985
CHARLES E. MILLER, Appellant.	5-16 84-124

Appeal from the Iowa District Court for Pottawattamie County, Leo Connolly, Judge.

Charles Miller, who served as both the executor of decedent's estate and the attorney for the executor appeals from the district court's ruling on his fees. AFFIRMED.

Ronald W. Feilmeyer of Cambridge, Feilmeyer, Landsness, Chase & Wells, Atlantic, for appellant.

Robert Kohorst and Daniel J. Murtaugh of Louis, Moore, Kohorst, Louis, Murtaugh & Kohorst, , Harlan, for appellee.

Considered by Oxberger, C.J., Hayden, and Sackett, JJ.

OXBERGER, C.J.

This appeal is made by the executor and attorney for decedent's estate from the trial court's determination to lower fees awarded to him. We affirm.

Decedent Elsie L. Sievers died in 1981. The appellant, attorney Charles L. Miller, served as executor of her estate and attorney for executor. The will was contested and Miller hired attorney Ronald Feilmeyer to represent the estate in the matter. Miller applied for and was allowed ordinary executor fees of $4362.58, ordinary attorney fees of $5705.70, extraordinary executor fees of $3019.46, for managing decedent's farm while the estate was pending, and extraordinary attorney fees of $4261 for his work in a will contest. Feilmeyer applied for and was allowed extraordinary attorney fees of $9863 for his work in the will contest.

When Miller filed his final report, several parties filed objections to it; they asserted, among other things, that the fees allowed Miller were excessive. A hearing was held, and afterward the district court entered its ruling on the final report. The district court ordered Miller to repay to the estate $5948.74 of the fees he had received. The district court stated:

> [I] n light of the fact that the executor employed counsel to assist him in all phases of the estate litigation and afterwards which fee has been paid by the Court, . . . his fees should be limited to the statutory amount of executor and attorney, which excepting the computation of Mr. Feilmeyer, is no more than $11,400. . . . Charles Miller. . . shall forthwith return any fees. . . in excess of $11,400, which the Court determines to be in the amount of at least $5984.74.

Miller says he should have been allowed the fees originally awarded.

We have recently reiterated the proposition that the burden rests upon the individual requesting compensation as a fiduciary to show the value of services rendered. Matter of Estate of Bruene, 350 N.W.2d 209, 219 (Iowa Ct. App. 1984). The factors to consider in determining what is a reasonable attorneys fee include

the time spent by the attorney, the nature and extent of the service, the amount involved, the difficulty and importance of the issue involved, the responsibility assumed, results obtained, and experience of the attorney. Id. Awards of attorneys fees are within the sound discretion of the trial court, and if supported by substantial evidence, are binding upon this court. Id.; In re Hale's Estate, 231 Iowa 1018, 1024, 2 N.W.2d 775, 779 (1942). An order fixing fees will be increased on appeal only if "manifestly insufficient." In the Matter of Estate of Rorem, 245 Iowa 1125, 1131, 66 N.W.2d 292, 295 (1954).

In this case the court found that much of the time charged by appellant for contesting the will was time also charged by the attorney hired by appellant. Miller contends his presence was necessary throughout the time charged, and that he could not know in advance at what specific time his services would be needed. However, appellee points out, and the record reflects, that this time spent by Miller was while serving more as a client or witness than as an attorney. Feilmeyer was the attorney responsible for handling the will contest, and Miller's services were apparently only supplemental. In light of the burden imposed on appellant, we find there was substantial evidence to support the trial court's decision to reduce the extraordinary attorney fees.

In challenging the decrease in the amount of executor fees for managing the farm, Miller once again has the burden to show both the necessity and value of the services rendered and the court's decision will be reversed only if it abused its discretion. Matter of Estate of Brady, 308 N.W.2d 68, 73-74 (Iowa 1981); Estate of Bass v. Bass, 196 N.W.2d 433, 435 (Iowa 1972).

The statute provides for compensation of reasonable executor fees as follows:

> Personal representatives shall be allowed such reasonable fees as may be determined by the court for services rendered, but not in excess of the following commissions upon the gross assets of the estate listed in the probate inventory for Iowa inheritance tax purposes, which shall be received as full compensation for all ordinary services:

> For the first one thousand dollars, six percent; For the overplus between one and five thousand dollars, four percent; For all sums over five thousand dollars, two percent.

Iowa Code § 633.197 (1983). Miller's argument is that he is entitled to a fee of ten percent of the estate, pointing out the income generated by the farm during the time he managed it was $30,195.10. He further argues that it is common practice to allow ten percent payment of farm income for management.

The appellee responds by saying that appellant's "bare assertion of a right to ten percent of the farm income... without any specific showing as to the necessity or value of such services" is insufficient to meet the burden imposed on the attorney. The appellee further claims there was no testimony presented at the hearing on the final order to make a sufficient showing.

Based on the record presented to us, we agree that there was substantial evidence to support the conclusion that the burden of appellant was not met and we find the trial court did not abuse its discretion in reducing the fees.

AFFIRMED.