FILED
JAN 2 5 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-404 / 89-14 and 89-17

IN THE MATTER OF THE ESTATE OF FLOYD S. LUTTMAN, Deceased;

BRENTON NATIONAL BANK OF DES MOINES, Executor,

197

Appellant,

vs.

DENNIS HARRIS, DALE HARRIS, MIRIAM SIEHL KUJAC, DOROTHY SIEHL WOLVERTON and JOHN F. SIEHL II, Beneficiaries,

Appellees.

IN THE MATTER OF THE ESTATE OF ELMER L. LUTTMAN, Deceased;

BRENTON NATIONAL BANK OF DES MOINES, Executor,

Appellant,

vs.

DENNIS HARRIS, DALE HARRIS, MIRIAM SIEHL KUJAC, DOROTHY SIEHL WOLVERTON and JOHN F. SIEHL II, Beneficiaries,

Appellees.

Appeal from the Iowa District Court for Poweshiek County, James P. Rielly, Judge.

Bank appeals from a district court ruling setting extraordinary fees for the executor and its attorney concerning the sale of farmland owned by Elmer and Floyd Luttman. It contends the district court abused its discretion in setting the fees by failing to adequately compensate the executor and the attorney for services

rendered. The bank's appeals from the rulings setting fees for the estates of Floyd Luttman, No. 89-14, and Elmer Luttman, No. 89-17, have been ordered consolidated for the purpose of submission and decision by this court. The appellees contend this appeal is frivolous and sanctions under Rule 80(a) should be imposed against the Bank. **AFFIRMED.**

John F. Bierman III of Bierman, Bierman & Stewart, P.C., Grinnell, for appellant.

John G. Black of Black, Harvey & Goldman, P.C., Des Moines, for appellees Miriam Siehl Kujac, Dorothy Siehl Wolverton, and John F. Siehl II.

C. M. Manly of Manly Law Firm, Grinnell, for appellees Dennis Harris and Dale Harris.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ., but considered en banc.

PER CURIAM

Elmer Luttman and Floyd Luttman were brothers who owned approximately 480 acres of Poweshiek County farmland as tenants in common. Neither had ever married, and their wills directed that on the death of the last brother their land should be sold and the proceeds divided equally among fourteen cousins.

Elmer Luttman died in 1984 and the Poweshiek County National Bank served as executor for the estate. The firm of Bierman, Bierman & Stewart, P.C. acted as counsel for the executor. On July 12, 1985, the district court approved an award of $13,323.41 in reasonable attorney fees to compensate the Bierman firm for its rendering of ordinary services in conjunction with the administration of the estate. This amount reflected the maximum amount of reasonable attorney fees available for this estate for the performance of ordinary services allowed by law. Iowa Code § 633.198 (1987).

Floyd Luttman died in 1988. Elmer's estate had to be reopened at this time to facilitate the disposition of real estate in which his will had granted Floyd a life estate. The Brenton National Bank of Des Moines (Brenton Bank) served as executor for both the reopened estate of Elmer Luttman and the estate of Floyd Luttman. The Bierman firm provided legal counsel to Brenton regarding both estates.

Elmer and Floyd's land was auctioned in August 1988 for $465,659.98, or $232,829.99 for each estate. On October 31, 1988, the Brenton National Bank filed an application in the Floyd Luttman Estate for ordinary and extraordinary executor's and attorney's fees. It also filed an application in the Elmer Luttman Estate for extraordinary executor's and attorney's fees. Objections to the applications were filed on behalf of five of the fourteen beneficiaries. After an untranscribed hearing, the district court awarded the following amounts:

Elmer Luttman Estate (reopened)

Extraordinary Services, Executor	$ 862.50
Extraordinary Services, Attorney	1,368.50

Floyd Luttman Estate

Fee for Ordinary Services, Executor	$16,033.21
Fee for Ordinary Services, Attorney	16,033.21
Extraordinary Services, Executor	0
Extraordinary Services, Attorney	0

Brenton Bank has appealed the district court's decision with regard to the award of extraordinary attorney and executor's fees in both estates. The beneficiaries contend these appeals are frivolous and sanctions pursuant to Iowa Rule of Civil Procedure 80 should be imposed against the bank. The appeals have been consolidated for the purpose of submission and decision by this court.

I. Extraordinary Fees

A hearing on the allowance of attorney fees stands in equity and thus is reviewable de novo. In re Estate of

Bolton, 403 N.W.2d 40, 42 (Iowa App. 1987), vacated on other grounds, 444 N.W.2d 982 (Iowa 1989). The award of attorney fees in probate cases is governed by Iowa Code sections 633.197 to 633.199 (1987). These sections are founded on quantum meruit; personal representatives and their attorneys are entitled to the reasonable value of their ordinary services not exceeding the specified percentages of section 633.197, and to the reasonable value of their extraordinary services, if any. Id. at 43. To a considerable extent the compensation of an attorney rests in the discretion of the court, yet, this matter must be a reasonable degree of discretion. Id. at 44. The burden is on the attorney(s) to justify the fee claimed. Id.

When an attorney seeks compensation for extraordinary services, he or she must comply with the requirements set forth in Iowa Rule of Probate Procedure 2(c). In re Estate of Mabie, 401 N.W.2d 29, 32 (Iowa 1987). "Extraordinary services" are those which in character and amount are beyond those usually required. Id. at 31. The applicant seeking compensation for extraordinary services has the burden of proving such an allowance should be made. Iowa R. Probate P. 2(c).

It appears appellant attempted to comply with the requirements of Iowa Rule of Probate Procedure 2(c). In the applications filed in both Floyd and Elmer's estates, the executor alleges it and its attorney expended extra

time to dispose of the Luttman real property as set out in the wills. "Extraordinary services" are to be construed to include services performed in connection with real estate. Iowa Code § 633.199 (1987). Attached to its applications for extraordinary executor and attorney fees, the executor attached an itemized listing of the extra amount of time spent by the executor and attorney in facilitating the sale of the Luttman property. These documents reflect that the executor's and the attorney's services provided in conjunction with the sale of the real estate consumed 34.5 and 32.2 hours respectively.

In its applications the executor specifically sought $6,984.90 in extraordinary executor fees and $6,984.90 in extraordinary attorney fees.[1] At a hearing on its application, the executor stated its specific request for $6,984.90 represented 3% of the real estate sale proceeds obtained for each estate. Similarly the request for $6,984.90 in extraordinary attorney fees represented 3% of the sale proceeds. When asked by the district court

---

1. This request for a total of $13,969.80 in extraordinary fees was filed in both Elmer and Floyd's estates. This court assumes appellant was seeking this amount as a total sum from both estates and was not in fact seeking a sum total of $27,939.60 in extraordinary fees from both estates. Such a request would be nothing short of excessive and would not be supported by appellant's documentation which indicates the extra services provided by the executor and attorney were performed concurrently for both estates.

whether any authority existed for awarding extraordinary fees on the basis of the percentage of a farm sale, the executor's attorney conceded he had no authority for such a position. A similar request for extraordinary fees based on a percentage of the proceeds from the sale of real estate was previously rejected by this court in another case. Bolton, 403 N.W.2d at 47-48.

In its decision, the district court found extraordinary fees were warranted with regard to the Elmer Luttman Estate because it had previously been closed on May 9, 1986, and the subsequent death of Floyd Luttman rendered it necessary to reopen the estate twenty months later and sell real estate in which Elmer had left Floyd a life estate. We recognize the services provided in conjunction with the reopening of Elmer's estate were in character and amount beyond those which are usually required in the administration of an estate.

The district court concluded one-half of the time spent concurrently on the Luttmans' estates in conjunction with the sale of the real estate, should be assessed as "extraordinary" services in Elmer's estate. The executor was awarded $862.50 for 17.25 hours of work ($50 per hour), and it awarded attorney fees of $1,368.50 for 16.1 hours of work ($85 per hour). We cannot find the district court's assessment of the time spent, nor the value thereof, to have been an abuse of the its discretion.

The application for fees filed in the Floyd Luttman Estate sought fees for ordinary and extraordinary services. After making an examination of the contents of the court's probate file, Iowa R. Probate P. 2(b), the district court concluded the executor and attorney should each be awarded $16,033.21 in ordinary fees. This amount reflects the statutory maximum allowed in this case. Iowa Code § 633.197 (1987). In a past decision, we have indicated a routine application of the statutory maximum is not an acceptable avenue for establishing ordinary attorney fees, Bolton, 403 N.W.2d at 43, 46, and likewise routine reliance on the contents of the court file may not be sufficient to assess attorney fees. Id. at 46. In some cases, an attorney may have to augment his request for fees with a more detailed statement of work performed and the status of the estate. Id. at 46-47. Since no challenge was raised in this case on appeal to the award of $32,066.42 in ordinary attorney and executor fees, we shall not address the propriety of that part of the district court's decision.

The district court declined to grant extraordinary attorney and executor fees in the Floyd Luttman Estate. The crux of the district court's decision appeared to rest on the fact that appellant had not submitted any itemization of the services rendered in conjunction with its application for ordinary fees. The court reasoned it

could not find any extraordinary time or expense had been expended in connection with the sale of the real estate if no itemization set forth the ordinary services performed for the estate.

Appellant relies on the literal language of Iowa Rule of Probate Procedure 2(c) and contends its right to extraordinary fees is contingent only upon its duty to submit a written statement detailing its performance of extraordinary services; at no point does rule 2(c) require an itemization of ordinary services performed for the estate. Appellant fails to recognize, however, that it bears the burden of proving its right to attorney fees, Iowa R. Probate P. 2(c), and it is responsible for demonstrating "why extraordinary compensation should be allowed and on what basis." Mabie, 401 N.W.2d at 32. When an appellant seeks extraordinary fees, it is its responsibility to delineate which of its services are extraordinary. Id. (when applicant submits itemization of services rendered and fails to distinguish which are extraordinary in nature, extraordinary fees are correctly denied). The objection to its application for fees filed by Dennis and Dale Harris indicated there was some concern as to whether Brenton Bank's listing of extraordinary services might overlap with the ordinary services it had performed. The second objection filed by three other beneficiaries also alluded to this failure in appellant's

request. Despite this objection, appellant did not present the district court with a breakdown of the ordinary, as opposed to extraordinary, services it had allegedly performed.

From our review of the record, we conclude the district court did not err in declining to award extraordinary fees in the Floyd Luttman Estate. The principles of quantum meriut simply do not sustain any award of additional fees in this matter. The decision of the district court is affirmed.

II. Rule 80 Sanctions

The appellees contend the appeal by Brenton Bank and its attorney is frivolous, and sanctions, including attorney fees and costs, should be assessed against them pursuant to Iowa R. Civ. P. 80. At oral arguments, this court inquired as to whether we have jurisdiction pursuant to rule 80 to impose such sanctions.

Iowa Rule of Civil Procedure 80(a) was adopted in its present form in April 1986, borrowing the wording of the last sentence concerning sanctions from Federal Rule of Civil Procedure 11. Franzen v. Deere and Company, 409 N.W.2d 672, 673-74 (Iowa 1987). Where there is little case law regarding the interpretation of an Iowa Rule of Civil Procedure, we rely on the federal courts' interpretation of the analogous Federal Rule of Civil Procedure. See Darrah v. Des Moines General Hosp., 436 N.W.2d 53, 54-55 (Iowa

1989) (adopting federal court interpretation of timely rule 80(a) motions).

The Eighth Circuit Court of Appeals addressed the imposition of rule 11 sanctions for filing a frivolous appeal in In re Grand Jury Proceedings Relative to Perl, 838 F.2d 304 (8th Cir. 1988). The Eighth Circuit ruled rule 11 is not applicable to proceedings filed in the appellate court because "[r]ule 1 of the Federal Rules of Civil Procedure, in defining the scope of such rules, states, '[t]hese rules govern the procedure in the United States district courts in all suits of a civil nature.'" Perl, 838 F.2d at 309.

Iowa Rule of Civil Procedure 1 states:

> These rules shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise, or statutes not affected hereby provide different procedure in particular courts or cases. (Emphasis added.)

Does the fact that the federal rules of civil procedure specifically state they apply to only federal district courts justify a different interpretation of the Iowa rule patterned on federal rules, when the Iowa rules apply to "all courts in Iowa?" The common law did not authorize the sanctions permitted by rule 80(a). The Iowa Rules of Civil Procedure apply in "all courts in Iowa;" however, for all practical purposes they primarily apply to district court practice. The appellate court practice is controlled by the Iowa Rules of Appellate Procedure.

We find that the underlying reasoning of the federal court in Perl applies equally in this instance. If there is to be a change in the common law practice, the statute should be clear and direct. Since rule 80(a) does not in clear and direct language authorize sanctions in the appellate court, we do not find we have jurisdiction to impose sanctions in this matter.

AFFIRMED.

Oxberger, C.J., and Schlegel, J., concur; Sackett, Hayden, and Habhab, JJ., specially concur; and Donielson, J., concurs and dissents.

SACKETT, J. (specially concurring)

I concur specially. I concur only with the result reached in the majority opinion.

The sole issue in this appeal is whether the trial court ordered sufficient attorney fees for extraordinary services rendered by the attorney and executor in the Floyd and Elmer Luttman estates for service rendered in the sale of real estate.

I recognize there was a sale of a substantial amount of real estate, involving the expenditure of considerable time by the attorney and executor. I find the amount ordered by the trial court as fees for extraordinary services, while conservative, to be reasonable. I, therefore, would affirm the trial court.

Hayden J., and Habhab, J., join this special concurrence.

DONIELSON, P.J. (concurring in part and dissenting in part)

I respectfully dissent from the majority's conclusions with regard to the application of rule 80 to frivolous appeals. Iowa Rule of Civil Procedure 1 states:

> These rules shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise, or statutes not affected hereby provide different procedure in particular courts or cases. (Emphasis added.)

We do not have a rule analogous to Federal Rule of Appellate Procedure 38 under which circuit courts may impose sanctions.[1] Therefore, federal court interpretations of the application of rule 11 sanctions on appeal give us no guidance in this matter.

Iowa Rule of Civil Procedure 80(a) provides in part:

> Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation. . . . . If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The

---

1. We do have a withdrawal remedy for frivolous criminal appeals under Iowa Rules of Appellate Procedure 104 and 32.

> signature of a party who is not represented by counsel shall impose a similar obligation on such party.

Rule 80(a) governs the practice and procedure in all courts of this state except to the extent the rules of appellate procedure provide a different procedure. Since we have no appellate rule regarding sanctions for frivolous filings, I would find rule 80(a) applies to the filing of a notice of appeal to the supreme court, and I would address the merits of appellee's rule 80 claim in this case.