FILED
MAR 29 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE ESTATE OF T. B. JOHNSON, DECEASED

ELO ORIL REYNOLDS,

Appellant,

v.

T. C. POSTON, Executor of the Estate of T. B. Johnson, Deceased,

Appellee.

Filed March 29, 1978

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2-60055

Appeal from Wayne District Court - John N. Hughes, Jr., Judge.

Plaintiff appeals from order granting a new trial after the jury returned a verdict in her favor for $30,000 for services rendered decedent. Affirmed.

Lad Grove, Ames, for appellant.

Kenneth L.Keith, of Dull, Keith & Beaver, Ottumwa, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Claimant, Elo Oril Reynolds, appeals from an order granting a new trial after the jury returned a verdict in her favor for $30,000. Her probate claims were based on the fact that she had cared for decedent, T.B. Johnson, during the last years of his life. She alleged that she was entitled to the reasonable value of her services, a quasi-contract theory upon which she prevailed, and, in the alternative, that decedent had breached an oral contract to make a will leaving his estate to claimant. The executor filed a counterclaim, asserting that claimant had converted $2240 of decedent's assets to her own use. Trial court's grant of a new trial was based on the excessive amount of the verdict and the failure of claimant's proof to rebut evidence of full payment in the form of notations on checks from decedent to claimant for his room and board.

I. In reviewing this grant of new trial, we must give attention to the principles set out in Householder v. Town of Clayton, 221 N.W.2d 488 (Iowa 1974), Moore v. Bailey, 163 N.W.2d 435 (Iowa 1968), Miller v. Town of Ankeny, 253 Iowa 1055, 1062-64, 114 N.W.2d 910 (1962), and rule 14(f)(3) and (4), Rules of Appellate Procedure. Rule 244(e), Rules of Civil Procedure, gives trial court discretion to grant a new trial where damages in a contract action are excessive. Trial court's grant of a new trial was, on that basis, a sound exercise of judicial discretion.

II. Claimant complains of several evidentiary problems. Because they may arise on retrial of this case, it is appropriate that we lend guidance on those issues.

The first of those questions which we consider is whether the testimony of certain of claimant's witnesses on the value of her services should have been excluded. The supreme court has on several occasions considered the necessary qualifications for witnesses to testify to the value of services rendered to elderly invalids. See In re Estate of Holta, 246 Iowa 527, 531, 68 N.W.2d 314 (1955); In re Estate of Dvorak, 213 Iowa 250, 253-54, 236 N.W. 66 (1931); Seddon v. Richardson, 200 Iowa 763, 766, 205 N.W. 307 (1925); Shafer v. Dean, 29 Iowa 144, 146-47 (1870). These authorities, particularly In re Estate of Holta, supra, indicate that it would have been the better exercise of discretion to allow at least Donna Van Dyne to testify as to the value of claimant's services.

Claimant also argues that she should not have been required to provide testimony as to the value of her services. She asserts that such value is within the experience of

jurors, so that testimony on the subject would be frivolous. The cases which she cites stand only for the proposition that in some situations expert testimony is not required. Those cases allow a layman to give an opinion. That rule is often applied to situations such as the present. See, e.g., In re Estate of Holta, supra; Landreth v. Morris, 214 N.C. 619, 622, 200 S.E. 378, 380-81 (1938); First Nat'l Bank v. Owen, 177 Miss. 339, 346, 171 So. 4, 6 (1936); Shrum v. Brill, 230 S.W. 367, 368 (Mo. Ct. App. 1921); see also McCormick, Opinion Evidence in Iowa, 19 Drake L. Rev. 245, 252-256 (1970). Ordinarily, value testimony is to be liberally received; its weight is for the jury.

Finally, claimant complains that it was error for trial court to rest the grant of new trial on her failure to rebut the presumption of payment which arose from the introduction of certain checks. The new trial order is, of course, supportable on the finding of excessiveness of the verdict alone. However, trial court did err in the respect now urged. The entire theory of plaintiff's case under division 1 was that the law would imply an obligation on the part of the estate to reimburse claimant for the reasonable value of her services to decedent. That she attempted to show the value of her services to be in excess of the amounts paid by check was, in and of itself, an attack on the presumption of full payment. No more was required to engender a jury question. See generally In re Estate of Gollobit, 231 Iowa 1074, 3 N.W.2d 191 (1942).

AFFIRMED.

OXBERGER, J., dissents.

OXBERGER, J. (dissenting)

I dissent. Elo Reynolds won a unanimous jury verdict that the services she rendered the decedent Tommy Johnson during his years of advancing senility were worth $30,000. The jury heard from several witnesses firsthand observations of the demanding and consuming duties Reynolds performed for the decedent. They heard and responded. I find no basis for ruling their response excessive, nor that the verdict arose from passion or prejudice. The granting of a new trial to the estate represents nothing more than a substitution of the trial court's view for that of the jurors. The jury performed its factfinding duty; neither the trial court nor this court is at liberty on this record to usurp this function. I would reinstate the judgment of the jury in favor of Elo Reynolds.