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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA 412

IN THE MATTER)
OF THE ESTATE OF)
ELIZABETH ARCHINAL,)
Deceased.)

Filed October 27, 1981

1-179
2-64893

Appeal from Greene District Court - R. K. Richardson, Judge.

Objectors to an executor's request for his fees and fees for his attorney appeal from probate court's order awarding the executor the statutory maximum amount for ordinary services and awarding his attorney fees for extraordinary services. MODIFIED AND REMANDED.

Robert C. Reimer and James D. Lohman of Reimer, Vipond & Lohman, Denison, Iowa, for objectors-appellants.

Michael Mumma and James L. Pauley, Jr. of Reading, Pauley, Horak & Mumma, Jefferson, Iowa, for appellee-executor.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Objectors to an executor's request for his and his attorney's fees appeal from probate court's order awarding each the statutory maximum amount for ordinary services and awarding the executor's attorney fees for extraordinary services. The objectors seek **de novo** review by this court and request that we determine the proper compensation anew. They further argue that the record does not support probate court's award because the executor and his attorney wholly failed to prove their entitlement. The executor cross-appeals for compensation for his extraordinary services and for an increase in the award for the attorney's extraordinary services. We modify probate court's judgment.

Decedent, Elizabeth Archinal, died on April 25, 1979. The executor was appointed to his position in accordance with the provisions of the decedent's will and he, in turn, employed an attorney to represent him and the estate. On December 10, 1979, the executor filed an application for order fixing fees for himself and his attorney at the statutory maximum amount of $10,938.25 (2% of the gross estate) each for ordinary services performed by them. The executor also claimed performance of extraordinary services in connection with the sale of real estate, including "advertising a public sale of property, interviewing prospective purchasers prior to sale, actual conduct of the sale itself, the preparation of all legal documents in connection therewith, and all necessary additional services to complete said sale." The executor sought $6,624 each for him and his attorney for these services. Several distributees objected to the claim for fees.[1] On March 14, 1980, an evidentiary hearing was held on the application. On March 25, 1980, probate court entered an order awarding the executor and his attorney each the statutory maximum fee for ordinary services in the amount of $10,938.25. The court awarded the executor no fee for extraordinary services and the attorney for the executor a $1,000 fee for such services. These appeals followed.

I. Scope of Review. "We review appeals of this nature **de novo**, section 633.33, the Code, but we give weight to the trial court's fact findings, especially on credibility, although we are not bound by them." Matter of Estate of Simon, 288 N.W.2d 549, 551 (Iowa 1980), citing Basic Chemicals, Inc. v. Benson, 251 N.W.2d 220, 226 (Iowa 1977).

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[1] The parties differ in their briefs as to the number of objecting distributees. Appellant states that there are fifteen. Appellee states that there are thirteen. Appellee accounts for this discrepancy by noting that two of the listed objectors are deceased. Since determination of the exact number of objectors is not at issue on appeal, we merely note the discrepancy.

II. Compensation for Ordinary Services. "To a considerable extent the compensation of an attorney rests in the discretion of the court." Id. at 552, quoting Glynn v. Cascade State Bank, 227 Iowa 932, 939, 289 N.W. 722, 725 (Iowa 1940). We believe this is equally true with regard to the compensation of a personal representative of an estate. "The exercise of a lower court's discretion is not reviewable; it is only the alleged abuse of that power which is reviewable on appeal. * * * [citing authority]. Generally, abuse of discretion will be found only where there is no support for the decision in the hearing evidence. * * * [citing authorities]." Grass v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972).

We begin our review with reference to section 633.197, The Code, which governs the compensation of personal representatives of estates for ordinary services rendered,[2] and section 633.198, which governs the compensation of the executor's attorney for ordinary services rendered.[3] "These sections are founded on quantum meruit; personal representatives and their attorneys are entitled to the reasonable value of their ordinary services not exceeding specified percentages. . . ." Estate of Simon, 288 N.W.2d at 550.

The court in Simon succinctly stated the considerations for determining a reasonable amount for legal fees as follows:

> In determining a "reasonable" amount for a legal fee, a probate court may of course consider as a factor among others the size of the estate. For one thing, the size of an attorney's own exposure to liability depends to a

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[2] Section 633.197 provides:

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

[3] Section 633.198 provides:

> There shall also be allowed and taxed as part of the costs of administration of estates as an attorney's fee for the personal representative's attorney, such reasonable fee as may be determined by the court, for services rendered, but not in excess of the schedule of fees herein provided for personal representatives.

> considerable extent upon the size of the matter he is handling. [citations.] In endeavoring to ascertain a reasonable legal fee, relevant factors include the time necessarily spent by the attorney, the nature and extent of the service, the amount involved, the difficulty of handling and the importance of the issues, responsibility assumed, results obtained, and the experience of the attorney. [citations].

Id. at 552. We believe that these considerations are equally applicable to deciding the reasonable fee for an executor's ordinary services. Section 633.199, The Code, governs the compensation for extraordinary services.[4] Since this section also is founded on quantum meruit, representatives and their attorneys are likewise entitled to compensation for extraordinary services only on the basis of the reasonable value of those services. Estate of Simon, 288 N.W.2d at 550.

Having reviewed the file of the probate proceedings and the transcript of the hearing, in light of the above principles, and having considered the arguments and the briefs, we believe probate court abused its discretion by awarding the executor the maximum allowable fee for ordinary services and by awarding the attorney a fee for extraordinary services. The duties the attorney and the executor were required to perform were not complicated; the decedent gave specific directions for sale of the real property (the bulk of his estate); and there was little if any work which required the exercise of independent judgment. Thus, the executor's services are shown to have been less extensive and as not involving any of the specialized skills rendered by the attorney. As a result, we conclude the fee for the executor's services should be less than the fee for ordinary attorney services fixed in this estate. We further conclude that, although the fee for extraordinary services rendered by the attorney is modest, it is unsupported in fact, since the service occasioned by the sale of land are included in the compensation for ordinary services.

We find that an equitable award for compensation of the executor's work is $6,500 and that no award for extraordinary services is justified for his attorney. We therefore modify probate court's judgment and remand this case with directions to enter an order in accord with our opinion.

MODIFIED AND REMANDED WITH DIRECTIONS.

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[4] Section 633.199 provides:

> Such further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.