

FILED

MAY 31 1978

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

MARY REID KOSTIW,

)

Appellant,

)

vs.

)

Filed May 31, 1978

DOUGLAS McCOLLISTER, DARWIN

)

McCOLLISTER, EVELYN

)

McCOLLISTER HOLLINGSWORTH,

RAYMOND McCOLLISTER, JAMES

McCOLLISTER, THOMAS McCOLLISTER,)

CHRISTA McCOLLISTER MALOTT,

)

WILLIAM REID, BONNIE REID

and PATRICIA ANN REID,

)

Appellees.

501

2-60289

Appeal from Johnson District Court - Louis W. Schultz, Judge.

Appeal from trial court's determination of attorney fees and referee's
compensation in partition action. - Affirmed.

Robert C. Gross, Cedar Rapids, for Appellant.

David P. Poula, of Cahill, Johnston, Poula & Goetz, Iowa City, for Appellees.

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

PER CURIAM

This is an appeal regarding the fees awarded the attorney and referee for services performed in a partition action. Robert C. Gross represented the plaintiff and also represented the referee, Walter Houser. Three of the parties to the partition action filed objections to an ex parte order of allowance of plaintiff's attorney fees, attorney fees for the referee, and referee's compensation. Hearing was held and evidence submitted on the services performed and their value.

The trial court reduced the fees awarded as follows: plaintiff's attorney fees from \$6530 to \$4530, attorney fees for representing the referee from \$4152 to \$2620, and referee's compensation from \$750 to \$500. Appellant seeks to have the fees fixed by the ex parte order reinstated; appellee asks that the court order reducing fees be affirmed or a further reduction ordered.

Ordinarily a hearing on allowance of referee and attorney fees in a partition action is at law and our review is not de novo. *Gabel v. Gabel*, 254 Iowa 248, 250, 117 N.W.2d 501, 503 (1962). However, the trial court heard the matter with consent of the parties as a proceeding in equity. Accordingly, we consider the case as being in the same forum in which it was heard in the trial court and review the evidence de novo. *Mahon v. Mahon*, 257 Iowa 563, 568-9, 133 N.W.2d 697, 700 (1965).

Appellant argues rule 294, Rules of Civil Procedure, provides a fixed attorney fee for plaintiff's attorney. The rule states the court shall fix the fee "which cannot exceed the following amount", and thereafter sets out percentages based on sale price or appraisement. The maximum fee is thus established and lesser amounts are clearly contemplated to be within the rule. Appellant's argument has no merit.

We have examined the record and also find no merit in appellant's other arguments. We find the reduced fees fixed by the trial court after hearing the matter fairly compensate the attorney and referee.

AFFIRMED.