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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-427 / 92-141

IN THE MATTER OF THE ESTATE OF GERALD R. RAISCH, Deceased,

ROGER W. RAISCH, Executor,

Appellant,

vs.

SHAUNA L. RAISCH, JASON RAISCH and **GINA McCARTHY,**

Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, Jon S. Scoles, Judge.

The executor appeals from a district court ruling on an application for extraordinary executor fees. **AFFIRMED.**

Mark A. Young of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellant.

J. Vance Jorgensen of Jorgensen Law Office, Mason City, for appellees Shauna and Jason Raisch.

Gina McCarthy, Mason City, pro se.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

Gerald Raisch died testate on February 28, 1990. Roger Raisch was appointed executor pursuant to the will. Under the will, Gerald's five children were to share equally in the estate.

During the administration of the estate, one of the daughters, Shauna Raisch, filed two adversary proceedings in the estate. The first arose in June 1990, when Shauna filed a claim for certain out-of-pocket expenses in caring for Gerald during his last illness and for outstanding payroll checks which she had earned as an employee for Gerald, but had not cashed prior to his death. In July 1990, Shauna filed a claim for the reasonable value of "services rendered" by her to Gerald prior to his death. Later, Shauna amended her claim to include a breach of a contract concerning the transfer of Gerald's homestead. A trial was held on Shauna's request.

The jury found in favor of the estate on the count dealing with an alleged oral contract between Shauna and Gerald for the transfer of the homestead. However, the jury found Shauna was entitled to $13,000 for her "services rendered," an amount midway between Shauna's demand and the executor's settlement offer.

Shauna's second action occurred in January 1991, when Shauna filed a petition for declaratory judgment alleging Roger had failed to pay certain expenses and had engaged in

self-dealing concerning Gerald's motorboat and trailer. In June 1991, Shauna dismissed this petition with prejudice.

In July 1991, Roger filed a petition against Shauna and others, alleging Shauna was in wrongful possession of personal property belonging to the estate. Following a hearing, the court entered an order prohibiting Shauna from removing property from storage until an inventory could be completed by counsel.

In March 1991, the district court awarded Roger $4,517.53 for ordinary executor fees pursuant to Iowa Code sections 633.197 and 633.198 (1991). In October 1991, Roger and counsel sought extraordinary fees pursuant to Iowa Code section 633.199 (1991). Roger sought extraordinary fees of $13,737.50 and expenses of $1,281.82. Following trial, the district court entered its ruling. The court awarded extraordinary attorney fees of $10,220 in addition to expenses of $1,478.89. The court awarded extraordinary executor fees of $128 plus expenses of $787.92. Roger now appeals.

Probate proceedings are in equity, and are review is de novo. In re Estate of Bruene, 350 N.W.2d 209, 211 (Iowa App. 1984). However, the trial court is allowed considerable discretion in the handling of estates, especially in the allowance of fees to administrators, executors, trustees and attorneys. In re Trust of Larkins, 243 Iowa 322, 326, 51 N.W.2d 396, 398 (Iowa 1952). This discretion must be reasonable. See In re Estate of

Roggentien, 445 N.W.2d 388, 389 (Iowa App. 1989). See also In re Estate of Olson, 479 N.W.2d 610, 614 (Iowa App. 1991) (citing In re Estate of Law, 253 Iowa 599, 605, 113 N.W.2d 233, 236 (1962)).

Iowa Code section 633.197 (1991) provides that personal representatives "shall be allowed such reasonable fees as may be determined by the court for services rendered," subject to a statutory cap of two percent of the gross assets plus $120. However, section 633.199 provides for additional compensation for extraordinary services:

> 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.

Iowa Code § 633.199 (1991).

The burden rests upon the person requesting compensation to show the services rendered and the value thereof. In re Estate of Bruene, 350 N.W.2d 209, 217 (Iowa App. 1984). When an allowance for extraordinary expenses or services is sought, the request shall include:

> . . . a written statement showing (1) the necessity for such expenses or services, (2) the responsibilities assumed, and (3) the amount of extra time or expense involved. In appropriate cases, the statement shall also explain the importance of the matter to the estate and describe the results obtained.

Iowa R. Prob. P. 2(c).

There are no definite rules as to when an executor can legally obligate an estate to pay fees connected with litigation. In re Estate of Roggentien, 445 N.W.2d 388, 390 (Iowa App. 1989) (citing In re Estate of Law, 253 Iowa 599, 602, 113 N.W.2d 233, 234 (1962)). On our review, the specific circumstances of this case must be assessed to determine if the fees are reasonably required or justified in the interest of the estate. Id.

I. **Extraordinary Executor Fees.** On appeal, Roger contends the district court erred in not awarding him extraordinary executor's fees for (1) marshaling the assets of the estate, (2) defending a declaratory judgment action, and (3) his work on Shauna's claim for services rendered which was filed against the estate.

A. **Roger's Efforts in Marshaling the Estate's Assets.** Roger first contends he should have received an extraordinary executor's fee for his efforts in marshaling the assets of the estate. Specifically, Roger claims this process required extraordinary effort on his part due to the lack of cooperation by his several of his siblings, including Shauna.

We agree with the district court's finding that the marshaling of assets and payment of debts are functions generally assumed by the executor in the course of his "ordinary" services. Admittedly, Roger's efforts were affected by the animosity and enmity which existed within the family. However, as Roger has been awarded over $4,500

in executor's fees, we conclude Roger already has been adequately compensated for his efforts in this regard.

B. **Defense of the Declaratory Judgment Action.** Roger next argues the district court erred in finding that he was not entitled to extraordinary executor's fees for his defense of Shauna's declaratory judgment action.

In determining whether the estate should be legally obligated to pay an additional executor's fee, we examine whether the fees were reasonably required or justified in the interest of the estate. Roggentien, 445 N.W.2d at 390. Where no special interest to the estate is present, additional expense to the estate may not be justified. See In re Estate of Law, 253 Iowa 599, 602-03, 113 N.W.2d 233, 234-35 (1962).

Shauna's declaratory judgment action alleged both breach of duty for Roger's failure to pay an admitted claim for wages and self-dealing in relation to Roger's personal use of a motorboat and trailer belonging to the estate. Specifically, Shauna alleged Roger had kept a boat which belonged to the estate for a period of fifteen months. He never advertised the boat for sale during this period, yet he allegedly spent about $300 to $400 of estate funds in repairing the boat. At the same time, Roger had allegedly admitted Shauna's claim for the unpaid wages, but failed to pay the claim because the estate was "cash poor."

We find Roger was primarily defending his own conduct rather than the interest of the estate in this lawsuit.

Roger's efforts in this regard were made for the benefit of himself, and not for the benefit of the estate. Furthermore, we do not find In re Estate of Bruene, 350 N.W.2d 209 (Iowa App. 1984), to be controlling. In Bruene, our court allowed attorneys fees for the defense of a series of actions instituted by the objectors against the executor. 350 N.W.2d at 218. Here, we do not find a series of actions which have been brought against Roger in his capacity as executor. Rather, Shauna's action constituted only one, and it was brought against Roger in his individual capacity. The district court properly denied Roger's claim for extraordinary executor's fees in this regard.

C. Defense of Shauna's Claim for "Services Rendered" Against the Estate. Finally, Roger argues he was entitled to extraordinary executor's fees for his efforts in defending Shauna's claim against the estate for "services rendered" to Gerald prior to his death. The major portion of Roger's requests for extraordinary fees was related to this claim and its subsequent trial. Again, we must examine whether the fees requested by Roger in this regard were reasonably required or justified in the interest of the estate. In re Estate of Roggentien, 445 N.W.2d 388, 390 (Iowa App. 1989).

Here, the evidence established that, prior to his death, Gerald Raisch required six to eight hours of care everyday for approximately fourteen months between his

stroke and his death. During that period, Shauna provided the majority of that care. We agree with the district court's observation that, based on this evidence:

> . . . [I]it was apparent to the court that a jury would likely award Shauna some amount for her substantial efforts on Gerald's behalf prior to his death. . . .[I]t would be unfair for Roger to profit from the defense of Shauna's claims. If Roger had analyzed the claim realistically and attempted to resolve the issue at an early date, much of his efforts would have been unnecessary.

We note the amount awarded by the jury, $13,000, was midway between the amount offered by the estate, $6,000; and the amount demanded by Shauna, $20,000.

Also, it is questionable whether the services performed by Roger were "reasonably" required in the interest of the estate. For example, we note Roger spent some eighteen hours alone in drafting trial questions for Shauna and twenty hours in reviewing the correspondence generated during the course of these proceedings. We agree with the district court's finding that these actions did not substantially benefit the Raisch estate and were not "necessary" within the meaning of Iowa Code section 633.199 (1991). The district court exercised reasonable discretion in refusing to award Roger extraordinary executor's fees in this regard.

Noting that Roger has already received a $4,517.53 fee for ordinary services, we find the above services were functions generally assumed by the executor in the course of his ordinary services or otherwise did not justify an

extraordinary executor's fee in the interest of the estate. See In re Estate of Roggentien, 445 N.W.2d 388, 390 (Iowa App. 1989). Therefore, we find the district court exercised reasonable discretion in refusing to award Roger an extraordinary fee for these services.

II. **Roger's Hourly Compensation Rate as Executor.** Roger also argues the district court erred in not awarding him a higher hourly compensation rate. Specifically, Roger contends he should have been compensated at a rate of $35.00 per hour, instead of the $20.00 per hour used by the district court. The district court is allowed considerable discretion in the allowance of fees, but it must be a reasonable discretion. In re Estate of Roggentien, 445 N.W.2d 388, 389 (Iowa App. 1984); In re Trust of Larkins, 243 Iowa 322, 326, 51 N.W.2d 396, 398 (Iowa 1952). We find the district court exercised reasonable discretion in fixing the executor's rate of extraordinary compensation at $20.00 per hour. We affirm the district court on this issue.

The costs of this appeal are taxed to Roger.

For the reasons stated, we affirm the judgment of the district court.

AFFIRMED.