

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

Filed May 28, 1985

IN THE MATTER OF THE ESTATE OF)
RUDOLPH J. HOFFMAN, Deceased

EDITH RIESSELMAN and)
IRENE BAUMHOVER,

Appellants.)

5-195
84-177 182

Appeal from the Iowa District Court for Carroll County - James C. Smith,
Judge.

Appellants appeal from the district court's allowance of extraordinary fees
and fees for a guardian ad litem. REVERSED AND REMANDED.

Appellants pro se.

Kent B. Willis, Lake City, attorney for Executor of Hoffman Estate.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

This is one of three separate appeals from orders entered in the estate of Rudolph J. Hoffman. Appellants Edith Riesselman and Irene Baumhover are two of the ten surviving children of the decedent.

Appellants were represented by legal counsel at the time of the filing of their briefs and requests for oral argument. At the time of oral argument, appellants did not have legal counsel but appeared and argued in their own behalf.

Certain issues were presented by the parties on oral argument that were not raised in their written briefs. Our review is limited to issues properly raised.

Riesselman and Baumhover appeal¹ from the trial court's order awarding extraordinary attorney and executor fees and fees of a guardian ad litem in the estate of Rudolph J. Hoffman. Appellants claim they had no notice of applications for extraordinary fees and for fees of a guardian ad litem. They further claim the court erred in granting fees because Iowa Rule of Probate Procedure 2, Iowa Code sections 633.197-.200 were not followed.

L. Extraordinary Fees.

Nowhere in the application to fix extraordinary fees is there a reference to the dollar amount claimed. Iowa Rule of Probate Procedure 2(c), provides:

When an allowance for extraordinary expenses or services is sought pursuant to section 633.199, The Code, 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. The request may be made in the final report or by separate application. It shall be set for hearing upon reasonable notice, specifying the amounts claimed, unless waivers of notice identifying the amounts claimed are filed by all interested persons. The applicant shall have the burden of proving such allowance should be made. (Emphasis added.)

¹ Riesselman and Baumhover petitioned for a writ of certiorari asserting the fee orders were illegal. The supreme court determined the fee order was appealable as a matter of right. We therefore treat this as an appeal from the fee order.

The wording of Rule 2(c) makes it clear that "the amounts claimed" must be specified either in filed waivers of notice or in the request itself when notice is not waived. The only reasonable meaning of "amounts claimed" in the context of "expenses or services" is the total dollar amounts which the applicants requested be granted to them by court order. Matter of Estate of Young, 333 N.W.2d 845, 846 (Iowa 1983). Not only interested parties, but also the court, which must determine what reasonable fees should be allowed, is entitled to know the specific amounts being sought by an application for extraordinary fees. Id. at 847.

The failure to list dollar amounts claimed requires that we remand the cause for further proceeding. We need not address the question of service of the application to fix extraordinary fees because the executor can on remand serve these appellants, other interested parties and their attorneys with notice in accordance with the applicable statutes.

II. Fees of Guardian Ad Litem

The application to set fees of the guardian ad litem, David E. Green, specifies the dollar amount of fees requested. Appellants contended they did not receive notice of the application to fix fees of the guardian ad litem. Appellants were represented, along with other heirs, in a will contest or construction case² by attorney Thomas H. Treinen. On November 17, 1983, Treinen filed a notice of appeal in said cause on behalf of the appellants.

An application to fix fees of the guardian ad litem had been filed on November 2, 1983. Also on November 2, 1983, the trial court entered an order setting the fees matter for hearing on November 28, 1983, and directing notice of the application to be served on the executor, his attorney and "Thomas H. Treinan, Box 367, Battle Creek, IA. 51006" as attorney for contestants.

² Matter of Estate of Hoffman, No. 83-1636.

On January 9, 1984, the fees were fixed. As a part of the order, the trial court determined notice had been served on Thomas H. Treinen.³ There was no proof of service of the notice of a hearing to fix the guardian ad litem fees at the time of the January 9 hearing and order. An affidavit showing that an attached order was mailed to Treinan on November 2, 1983, was filed February 3, 1984. There was, however, no order attached to the affidavit despite the fact the affidavit stated ". . . he personally mailed to the following named persons an Order (a true copy of which order is attached hereto and made a part hereof). . .". There is nothing else in the affidavit to indicate the content or subject of the order that was mailed.

Appellants contend they were not notified of the hearing. Appellees argue that Treinan was appellants' attorney and service on him was effective notice to appellants.

In Young the supreme court said, after remanding for failure to state dollar amounts in an application for extraordinary fees, "we need not and do not decide whether service on attorney Hall was effective to provide notice to appellants. . .". Young, 333 N.W.2d at 847. The court then went on to refer generally to Iowa Code sections 633.35-.47 and Perpetual Savings & Loan Ass'n v. Van Aften, 211 Iowa 435, 438, 233 N.W. 746, 747 (1930), as supporting notice to an attorney, in respect to a matter in which he is then acting for a client, is notice to the client.

All notifications under Iowa Code section 633.40(1) must meet constitutional muster, i.e., procedural due process. In Re Estate of Lemke, 216 N.W.2d 186, 189 (Iowa 1974). That precept mandates notice and hearing appropriate to the nature of the case. Id. Under all the circumstances, the notice must be reasonably designed to inform all interested parties and allow them opportunity to present

³ The order fixing fees only identifies Treinen and makes no finding that he received the notice as attorney or agent for any person or persons.

objections. Id. Satisfaction of the due process requirements will depend on the circumstances involved.

However, there is no proof in the file to show the notice served on Treinan was in fact the order filed on November 2, 1983, setting hearing on the fees and prescribing notice be served on the other parties. In making that determination, we consider the following:

1. No affidavit showing service was on file on January 9, 1984, the date of the entry of the order.
2. The order fixing hearing and prescribing notice filed on November 2, 1983, set the hearing for November 28, 1983. We find no order setting a hearing for January 9, 1984.⁴
3. The alleged affidavit of service was not filed until February 3, 1984, and was filed without attachment or sufficient information to identify what had actually been mailed.

We determine the order fixing fees of the guardian ad litem should be reversed and remanded to the trial court.

Because of our determination, we need not decide if notice on attorney Treinan was sufficient notice to these appellants. On remand the guardian ad litem can serve these appellants with proper notice.

Having set aside the orders setting fees, we need not and do not address appellants' contention that the trial court was without jurisdiction to set fees because of an appeal taken from an earlier probate order.

REVERSED AND REMANDED.

⁴ There was an order setting the hearing for extraordinary fees for attorney and executor for January 9, 1984, but that order did not refer to application of guardian ad litem.