FILED
JAN 29 1992
CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 1-570 / 91-777

**IN THE MATTER OF THE ESTATE OF ELEANOR M. DUFFY,** Deceased.

**DENNIS D. DUFFY,**

Objector-Appellant.

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Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Dennis Duffy, one of the heirs of the estate, appeals from a district court order overruling his objection to the final report and accounting of the estate. **AFFIRMED.**

Jack L. Brooks of Anderson & Nelson, Rock Island, Illinois, for appellant.

Seymore M. Raben, Davenport, for appellee estate.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

**SACKETT, J.**

This appeal is a challenge by one of three heirs to the executor and attorney fees awarded by the trial court. We affirm.

Eleanor M. Duffy died testate. Her will left her property in equal shares to her three children. Objector-appellant Dennis D. Duffy is one of these children. Eleanor's will named Father Conroy and Sister Benda as executors of her estate. Father Conroy is a Catholic Priest. Sister Benda is a Catholic nun. Sister Benda has taken a vow of poverty which, according to the dictates of her religious order, prevents her from taking property in her own name. After nominating the executors, Eleanor's will provided, "said Co-Executors are to receive by way of compensation for their services the statutory fees allowed by the laws of the State of Iowa."

The trial court fixed the fees of the executors at $9,504.79, and the fees of the attorney at $9,504.79. The figure of $9,504.79 represents two percent of the gross estate as determined for Iowa inheritance tax purposes plus $120, or the maximum fee provided for ordinary services for personal representatives under Iowa Code section 633.197[1] and for attorneys under Iowa Code section 633.198.[2]

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1. Iowa Code 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: For the first

A hearing on the allowance of attorney and executor fees stands in equity and is reviewable de novo. In re Estate of Simon, 288 N.W.2d 549, 551 (Iowa 1980); In re Estate of Bass, 196 N.W.2d 433, 435 (Iowa 1972); In re Estate of Bolton, 403 N.W.2d 40, 42 (Iowa App. 1987); In re Estate of Bruene, 350 N.W.2d 209, 211 (Iowa App. 1984).

Dennis first challenges the fee awarded the executors. The trial court found in using the words "statutory fee" in her will, the decedent intended the coexecutors receive roughly two percent of her estate as compensation for their services, and the decedent intended the coexecutors to use this money to travel to Ireland. In making this determination, the trial court considered the two other heirs believed it was their mother's intention the executors have the ordered fee, and a local attorney testified that was how the will should be interpreted.

Dennis contends the intent of a testator cannot override Iowa law concerning an executor's fees, interpreting the will in accordance with community usage is contrary to Iowa law, and the intent of the decedent is not relevant.

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

2. Iowa Code section 633.198 (1991) 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."

The trial court also found the fees awarded the coexecutors were reasonable for ordinary services when considering the nature and extent of the responsibilities assumed and services rendered.

We agree with the trial court the fee awarded the coexecutors was fair when considering the services performed and the responsibilities assumed. We, therefore, find it unnecessary to address Dennis's other arguments in regard to the fees awarded the coexecutors. The coexecutors collected income, kept records, and consulted with and cooperated with the attorney for the estate. They also paid bills and were able to get an accounting firm to reduce one bill by $2,000. They assumed considerable fiduciary exposure. Their accounting shows they collected $101,068.76 in income, and paid out $79,635.18 in expenses. Their duties were performed in a prompt and expedient manner.

Dennis also complains about paying a fee to Sister Benda because she has taken a vow of poverty and she asked that her fees go to Father. Dennis argues that he, and not Father, should benefit from Sister's vow of poverty. Sister is under no legal disability and under Iowa law she can be paid the money. We consider Sister's decision to give the fee to Father no more than an assignment of her fees to Father.

Dennis's last contention is the trial court should not have awarded the attorney fee that was awarded. We agree with Dennis's argument the statutory provision is a maximum rather than a set fee. See Bolton, 403 N.W.2d at 43. The attorney filed a listing of services performed and hours expended on the estate. The hourly rate charged by the attorney is not disputed. That rate applied to the hours the attorney itemized nearly equaled the maximum statutory fee. Dennis's argument is that twenty of the hours the attorney claimed should not have been considered because they represent work on the fee dispute. Dennis cites In re Estate of Roggentien, 445 N.W.2d 388, 390 (Iowa App. 1989), and contends the fees should not be allowed because the services were not for the benefit of the estate. Roggentien, is not applicable. In order to close the estate, it was necessary the fee matters with the coexecutors be resolved. The trial court properly considered these hours in fixing attorney fees. We affirm the trial court.

**AFFIRMED.**