

IN THE COURT OF APPEALS OF IOWA

No. 0-170 / 09-0904
Filed May 26, 2010

**IN THE MATTER OF THE ESTATE OF
HILDA D. JANSSEN, Deceased,**

**LINCOLN SAVINGS BANK,
Executor for the Estate of Hilda
D. Janssen, Deceased,
Executor-Appellant.**

Appeal from the Iowa District Court for Grundy County, Richard D. Stochl,
Judge.

Law firm of the estate of Hilda Janssen appeals the district court's
extraordinary attorney fees award. **AFFIRMED.**

Corey R. Lorenzen of Dutton, Braun, Staack & Hellman, P.L.C., Waterloo,
for appellant.

Heard by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

This is an appeal by the law firm for the estate of Hilda Janssen from a ruling awarding it \$36,000 in extraordinary attorney fees. We affirm.

I. Background Facts and Proceedings.

Hilda D. Janssen died testate on February 18, 2006. Hilda's husband, Claus, and son, Donald, predeceased her. In March 2006, Hilda's daughter, Jean Anderson, was appointed executor of Hilda's estate. At the time of her death, Hilda's three surviving sons were William, Robert, and Charles Janssen. In August 2006, Dutton, Braun, Staack & Hellman, P.L.C., and specifically attorney Corey Lorenzen, started work as the attorneys for the Hilda estate.

On October 30, 2006, the Hilda estate sued Charles for alleged nonpayment of various loans. The Hilda estate also sought a declaratory judgment of Hilda's will terms and petitioned for the return of personal property. Charles answered and counterclaimed. In May 2007, Charles died and his estate was substituted as defendant/counterclaimant.

Charles's wife, Susan Miller Janssen, sought the removal of Jean as executor of the Hilda estate. In June 2007, Jean agreed to withdraw and Lincoln Savings Bank became the new executor. Jean's final report was filed in December 2007, and the Charles estate filed objections to it.

In June 2008, the Hilda estate sought summary judgment in its suit against the Charles estate. In July 2008, after a hearing, the court dismissed three of the Charles estate's counterclaims. The Charles estate's counterclaims for conversion of assets and trespass remained for trial. The Charles estate's

motion for amended and expanded findings was denied on August 8, 2008, and a notice of appeal was filed. In November 2009, we upheld the district court's summary judgment ruling.

Prior to the two-day trial in August 2008, the Hilda estate dismissed its claims without prejudice. Thus, the sole issues at trial stemming from the Hilda estate's October 2006 lawsuit were the Charles estate's counterclaims for conversion of assets and trespass. At the same trial, the court considered the objections by the Charles estate to Jean's December 2007 final report.

On November 3, 2008, the court filed its ruling. It found former executor Jean Anderson had trespassed by entering Charles's residence and damaging the residence while removing property without permission. Accordingly, the Charles estate was awarded \$200 for physical damage and \$500 in emotional distress damages. On its conversion claim, the court awarded the Charles estate: \$2690 in damages, possession of the 8N Ford Tractor, and one-half of the sale proceeds of the John Deere riding mower/trailer.

After considering the Charles estate's objections to Jean's final report, the court ordered the Hilda estate to pay \$12,240 in rent and \$20,000 in damages to the Charles estate.

Also on November 3, executor Lincoln Savings Bank and its law firm filed an application for ordinary and extraordinary fees. The probate inventory for the Hilda estate listed gross assets of \$1,705,009.32. In February 2009, the court approved Lincoln Savings Bank's claim for \$1,231.25. The court also approved the law firm's ordinary attorney fees of \$34,220.19, expenses of \$345.06, and

extraordinary expenses of \$2,228.60. This part of the court's order is not contested on appeal.

The law firm requested \$138,544.50 in extraordinary legal fees. The district court stated: "Although this matter was document intensive, the legal issues and facts were not complex." The court detailed numerous, specific concerns with the hours claimed and ruled the firm "failed to meet [its] burden to show that the services performed and the amount of time it took to perform those services was just and reasonable." Further, "the work necessary to defend this estate could have been performed in approximately one-fourth of the time [C]ounsel is therefore entitled to extraordinary fees in the amount of \$36,000." Accordingly, the law firm was awarded \$72,793.88 in fees and expenses.

In April 2009, the court denied the firm's subsequent motion for amended and expanded findings, stating:

Prior to hearing, the Court again reviewed Mr. Lorenzen's bill, and after further consideration decided to afford him an opportunity to present additional evidence as to the specific work he performed and the number of hours he spent on this file. The Court wanted to compare his work on this file with work performed on other files. The Court afforded him the opportunity to submit his daily billing records from his firm's billing system which would prove to the Court the actual hours spent on the Janssen matter in comparison to other clients billed that same day. Unfortunately for Mr. Lorenzen, his firm's computer system malfunctioned, and all of his daily posting memorandum dated before July 1, 2008 is unavailable for in-camera review. Because those documents are not available for this Court to review, the Court finds that Mr. Lorenzen has failed to produce any additional evidence that the number of hours he spent in representing the Hilda Janssen estate was fair and reasonable.

II. Standard of Review.

A hearing on allowance of attorney fees is in equity, and our review is de novo. *Bass v. Bass*, 196 N.W.2d 433, 435 (Iowa 1972). “To a considerable extent the compensation of an attorney rests in the discretion of the court. Yet, as stated, this must be a reasonable degree of discretion.” *In re Estate of Bruene*, 350 N.W.2d 209, 217 (Iowa Ct. App. 1984) (quoting *In re Estate of Simon*, 288 N.W.2d 549, 552 (Iowa 1980)).

III. Extraordinary Attorney Fees.

The law firm argues the nature, size and complexity of the estate justifies the extraordinary fees requested and its fees are necessary and reasonable.

“When fees for extraordinary services are claimed, the burden is on the claimant to show both the necessity and value of the services . . . rendered.” *Bass*, 196 N.W.2d at 435. An award of extraordinary attorney fees in probate cases is governed by Iowa Code section 633.199 (2005):

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.

It is undisputed the Hilda estate was involved in “litigated matters.” However, “the critical issue concerns the reasonable value of the services performed, as well as the compensation allowed for the ordinary services. In the end, the goal is to provide fair and reasonable compensation for all services performed.” *Estate of Randeris v. Randeris*, 523 N.W.2d 600, 606 n.1 (Iowa Ct. App. 1994). The law firm shoulders a heavy burden because “considerable

discretion is left to [the] trial court in the allowance or non-allowance of attorneys' fees." *Bass*, 196 N.W.2d at 435. After our de novo review of the record, we find no abuse of discretion and affirm the extraordinary fees awarded by the district court.

AFFIRMED.