

IN THE COURT OF APPEALS OF IOWA

No. 0-383 / 09-1065

Filed July 28, 2010

**IN THE MATTER OF THE ESTATES OF
MICHAEL BENTLER and SANDRA BENTLER, Deceased.**

STEVEN J. WESTERCAMP,
Plaintiff-Appellant,

vs.

LISA FITZSIMMONS and BOB FITZSIMMONS,
Executors of Michael and Sandra Bentler's Estates;
**KASHA KITE, LEXIE WILSON a/k/a LEXIE
LESLIE-WILSON, DAVID BENTLER,
JULIE BENTLER, JAMES BENTLER, DAN BENTLER,
and GREGG BENTLER,**
Defendants-Appellees.

Appeal from the Iowa District Court for Van Buren County, Daniel P.
Wilson, Judge.

An attorney who served as guardian ad litem and attorney for two children
in a probate matter appeals the district court's award of attorney fees.

AFFIRMED.

Steven J. Westercamp of Westercamp Law Firm, Farmington, appellant
pro se.

Curtis Dial, Keokuk, for appellees Lisa Fitzsimmons and Bob Fitzsimmons.

George F. Davison, Des Moines, and Mark E. Weinhardt of Belin McCormick, P.C., Des Moines, for appellees David Bentler, Julie Bentler, James Bentler, Dan Bentler, and Gregg Bentler.

Steven Crowley, Burlington, for appellees Kasha Nicole Kite and Lexie Ann Leslie-Wilson.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

VAITHESWARAN, P.J.

An attorney who served as guardian ad litem and attorney for two children in a probate matter appeals the district court's award of attorney fees.

I. Background Facts and Proceedings

This litigation flows from the murders of Michael and Sandra Bentler by their son, Shawn Bentler.¹ The Bentlers' estate was valued at \$2.8 million. Michael's siblings, Sandra's parents, the mothers of Shawn's young children, and Shawn's children became embroiled in court battles to divide the large estate. Steven Westercamp was appointed guardian ad litem and attorney for Shawn's children. In that capacity, he argued that they should receive the entire estate.

The district court ruled that the children were entitled to the entire estate, notwithstanding a statutory provision characterized as the "Slayer Statute," which prevented their father from receiving any property by reason of the deaths he caused. See Iowa Code § 633.535(1) (2005). Meanwhile, the children's mothers attempted to negotiate a settlement of \$280,000 with other potential beneficiaries of the estate. The district court ruled that the mothers did not have authority to enter into such a settlement agreement. The district court also ruled that the settlement was not in the children's best interests.

Several parties sought to have Westercamp removed as the guardian ad litem on the ground that his representation of the minors had contributed to the increased expense of administering the estate as well as increased acrimony among counsel. The district court granted the request and appointed another

¹ Shawn Bentler was convicted of their murders as well as the murder of the Bentlers' teenage daughters. See *State v. Bentler*, 759 N.W.2d 802, 803 (Iowa Ct. App. 2008).

attorney as replacement guardian ad litem for the children. The court subsequently reconsidered and approved the settlement proposed by the mothers.

Westercamp applied for and received attorney fees in the amount \$65,738 for his work from the date of his appointment to April 30, 2008. Westercamp later sought additional attorney fees and expenses of \$85,337.07 for May 1, 2008, to May 8, 2009. The children's mothers as well as their conservators objected to this request. The district court awarded Westercamp \$47,553.57. Westercamp appealed.

II. Analysis

Iowa Code section 633.118 authorizes the district court to appoint counsel for any interested person. An attorney appointed pursuant to section 633.118 "shall be paid for services out of the estate, as part of the costs of administration, a fee to be fixed by the court." *Id.* § 633.120. Our review of an attorney fee award under this provision is de novo. *In re Estate of Martin*, 710 N.W.2d 536, 538 (Iowa 2006).²

The district court awarded Mr. Westercamp significantly less in fees and costs than he requested. The court recognized that Westercamp experienced some success in the litigation, stating:

The results obtained by Mr. Westercamp early on, and particularly resulting in the Court's ruling on the "Slayer Statute" in April of 2008 were very positive. The results obtained by Mr. Westercamp on other issues of significance were also positive and productive.

² The Appellees suggest that Westercamp's appeal may not be timely. We discern no problem with the timeliness of the appeal. Accordingly, we proceed to the merits.

The court noted, however, that “essentially one-third of the time Mr. Westercamp itemized on his May 13, 2009 fee application was unnecessary, ill-advised, or otherwise unproductive in connection with the representation of his clients in this case.” The court continued,

The results obtained by Mr. Westercamp on several procedural, discovery, and lawyer-relationship matters were less productive and, at times, counterproductive. Frequently, Mr. Westercamp’s position was overly technical and procedural. There was a hint of a lack of experience in major litigation shown by Mr. Westercamp’s approach to settlement overtures made during that litigation and while on appeal.

Westercamp takes issue with these findings. He contends the district court misapplied several factors for determining whether his requested attorney fees were reasonable. *See In re Estate of Bolton*, 403 N.W.2d 40, 43–44 (Iowa Ct. App. 1987) (considering the size of the estate, “the time necessarily spent by the attorney, the nature and extent of the service, the amount involved, the difficulty of handling and the importance of the issues, responsibility assumed, results obtained and the experience of the attorney”); *see also* Iowa Code § 633.199 (detailing factors to consider in awarding personal representatives of an estate and their attorneys fees and expenses in excess of those set by statute). While these factors have been applied to fee applications by personal representatives or their attorneys, all parties agree they also apply to Westercamp’s fee application for his services.

Applying these factors, it is undisputed that the estate was large and the amount involved was significant. There also appears to be little disagreement that Westercamp expended a significant number of hours as the children’s

guardian ad litem and attorney.³ Some, if not all, of the issues were complex, and Westercamp assumed responsibility to pursue these issues. While there is some disagreement about Westercamp's experience, the disagreement turns more on his judgment than his years of practice. This brings us to the key disputed factors: the importance of the issues raised by Westercamp and the results obtained.

There is no question that Westercamp's arguments in connection with the "Slayer Statute" were important and ultimately successful. But, as the court noted, these arguments were raised early in the litigation and Westercamp was fully compensated for that work. The more difficult question is whether Westercamp raised similarly important issues in the year for which he is now seeking full compensation.

Westercamp maintains he did. He notes that he objected to the mothers' proposed settlement on the ground they lacked authority to enter into that settlement, and he argued that the settlement was not in the children's best interests. We agree these were important issues. However, Westercamp also raised less important issues, such as a motion for sanctions against certain attorneys involved with the mothers' settlement proposal.

We recognize that some tactical decisions made in the heat of highly contentious litigation may have seemed necessary and reasonable at the time.

We believe the district court judge, who was specially assigned to oversee all the

³ At the hearing on Westercamp's fee application, an opposing attorney characterized the number of hours as excessive, but the focus was more on the types of issues raised by Westercamp than on the amount of time he expended. As for Westercamp's hourly rate, the district court settled on \$150 per hour rather than \$180. Its figure was at the low end of Westercamp's range, but was supported by the record.

probate litigation arising from the Bentler murders, was in the best position to gauge which issues were truly important and which were not. See *In re Estate of Liike*, 776 N.W.2d 662, 663 (Iowa Ct. App. 2009). Accordingly, we concur with the court's characterization of some of the issues as "overly technical and procedural."

Turning to the "results obtained," Westercamp initially prevailed on his contention that the mothers lacked authority to enter into a settlement on the children's behalf. He also obtained a favorable ruling stating the settlement was not in the children's best interests. However, after Westercamp was replaced as guardian ad litem for the children, the district court reversed course and approved a settlement. Therefore, these initial successes were largely in vain. On our de novo review, we conclude the district court's award of fees and expenses appropriately balanced Westercamp's successes on some of his motions with his lack of success on others.

We conclude the district court's award of fees and expenses was equitable. Accordingly, we affirm.

AFFIRMED.