

IN THE COURT OF APPEALS OF IOWA

No. 3-1183 / 13-1040
Filed January 9, 2014

DAN MEYER,
Appellant,

vs.

THE ESTATE OF PETER N. MEYER, Deceased,
Appellee.

Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, Judge.

A beneficiary of an estate appeals from an order setting attorney fees at the maximum allowed by statute for ordinary services performed by the attorney for the executor. **AFFIRMED.**

Dan Meyer, Wilmette, Illinois, appellant pro se.

Estate of Peter N. Meyer, Deceased, Julie A. Gates, Executor, Cedar Rapids, appellee pro se.

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

DOYLE, P.J.

Dan Meyer, a beneficiary of the Estate of Peter Meyer, appeals from an order setting attorney fees at the maximum allowed by statute for ordinary services performed by the attorney for the executor. The executor takes no position on the merits of Meyer's appeal.¹ We find the probate court did not abuse its discretion in awarding attorney fees.

I. Factual Background and Proceedings

The probate court found the following facts.

Dan Meyer is one of Peter Meyer's children and heirs. His sister, Julie Gates, is the executor of their father's estate. She hired Adrian Knuth to be the attorney for the estate for several reasons. Knuth drafted her father's will, represented him in his divorce, and was familiar with his finances. He also had represented other members of her father's family. When she hired him, she agreed he would be paid the maximum statutory fee for his services (which would include filing the estate's tax returns), and that if extra fees were incurred above the statutory maximum, he would not charge for those fees. The estate's gross value was \$401,063.50. At the time Julie hired Knuth, they thought there could be a problem with selling her father's house, as he held an undivided one-half interest in it with his ex-wife pursuant to the terms of their divorce decree. Fortunately for all, no difficulties arose with the sale of the house that required extraordinary fees or services. Knuth performed the usual and customary services for administering the estate and completed the estate's fiduciary tax returns. He charged the estate the "statutory fee" of \$8141.37. Dan Meyer asked for an accounting and Knuth provided one. It showed he worked 29.33 hours on the estate and advanced expenses of \$120.

In her Final Report to the court, the executor requested the court award Knuth attorney fees in the amount of \$8141.37, plus reimbursement for his out-of-pocket expenses. Meyer objected to the requested attorney fees and a

¹ The executor did not appear at the hearing on Meyer's objection to attorney fees, and neither the executor nor the attorney for the estate filed an appellate brief in this matter.

hearing was set. Meyer represented himself pro se. At the hearing, Meyer asserted Knuth's effective hourly rate was \$306.30.² He argued this was not reasonable, introducing evidence that Knuth was compensated \$150 per hour as city attorney for the City of Anamosa. Meyer claimed Knuth should be paid \$150 per hour for the hours he worked on the estate.

Knuth explained the reasons for the discounted rate he charged the city and testified that his hourly rate is between \$180 and \$200, depending on the client and the nature of the case.

The court ordered attorney fees in the amount of \$8141.37, plus \$120 for costs advanced on behalf of the estate. Meyer appeals.³

II. Standard of Review and Legal Basis for Fee Award

A proceeding concerning the award of attorney fees in a probate action is in equity, and our review is de novo. Iowa Code § 633.33 (2011); *In re Estate of Bockwoldt*, 814 N.W.2d 215, 221 (Iowa 2012). We give weight to the probate court's findings of fact, but we are not bound by them. *In re Estate of Simon*, 288 N.W.2d 549, 551 (Iowa 1980).

The probate court has considerable discretion in allowing fees for the attorney of an estate. *In re Estate of Rutter*, 633 N.W.2d 740, 751 (Iowa 2001).

² Meyer reached this conclusion by reducing Knuth's total time by 2.75 hours—from 29.33 hours to 26.58 hours. Meyer claimed Knuth should not be compensated for the 2.75 hours spent correcting an accounting error Meyer brought to Knuth's attention. Knuth testified the \$2.97 error occurred because the executor had given him incorrect figures from which the accounting was compiled. We agree that Knuth's time should not be reduced by 2.75 hours. So, using a total of 29.33 hours, the effective hourly rate is \$277.58.

³ We note violations of Iowa Rules of Appellate Procedure 6.903(2)(g)(1) & (2). Meyer's brief fails to set forth a statement addressing how the issue was preserved for appellate review and a statement addressing the scope and standard of review. Pro se or not, parties to an appeal are expected to follow applicable rules. See *Hays v. Hays*, 612 N.W.2d 817, 819 (Iowa Ct. App. 2000).

Unless the court's decision on compensation for probate services is induced by legal error, we will reverse only for an abuse of discretion. *In re Estate of Brady*, 308 N.W.2d 68, 74 (Iowa 1981).

Under section 633.198, an attorney for an estate is entitled to a reasonable fee that is "not in excess of the schedule of fees herein provided for personal representatives." For ordinary services a personal representative may receive an amount up to six percent of the first one thousand dollars of an estate, four percent of the overplus between one and five thousand dollars, and two percent of all sums over five thousand dollars. Iowa Code § 633.197. These statutory percentages are founded on the theory of quantum meruit and are the ceiling on fees for ordinary services only. *In re Estate of Bolton*, 403 N.W.2d 40, 43 (Iowa Ct. App. 1987). Although approval of the maximum ordinary fee allowed by statute is common, the law imposes a standard of reasonableness. *Estate of Randeris v. Randeris*, 523 N.W.2d 600, 606-07 (Iowa Ct. App. 1994). The reasonableness of attorney fees should be determined by applying all relevant factors such as the

competence and efficiency exercised in the estate, size of the estate, actual time devoted to the estate, nature and difficulty of the services performed, fee customarily charged for similar services, results obtained, and experience of the attorney or executor. The size of the estate is relevant because it technically defines the attorney's exposure to liability.

Id. at 607 (internal citations omitted).

III. Analysis

Upon our de novo review, we do not find the requested fee to be unreasonable. Knuth's regular rate was not \$150 per hour. He satisfactorily

explained the rationale behind the discounted rate he charged the city. It would be unfair to bind him to that rate for the time he devoted in handling this estate. He customarily charged his private clients between \$180 and \$200 per hour, depending on the nature and complexity of the matter. While the effective hourly rate approved by the probate court is higher than Knuth's highest customary hourly rate, the rate approved is not substantially higher, nor is it so high as to render it unreasonable. Although the record does not indicate the nature and difficulty of services performed by Knuth were anything but ordinary, the fact that the administration of the estate went smoothly reflects upon Knuth's experience and the competence and efficiency he exercised in handling the estate. We conclude the probate court did not abuse its considerable discretion in approving the attorney fees requested by the executor.

AFFIRMED.