

IN THE COURT OF APPEALS OF IOWA

No. 6-323 / 05-1452

Filed July 26, 2006

**IN THE MATTER OF THE ESTATE OF
DORIS E. HERRICK, Deceased,**

**GREGORY G. HERRICK and
KATHLEEN A. HERRICK,**
Appellants,

vs.

U.S. BANK, N.A., Executor
Appellee.

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

Beneficiaries appeal from a district court ruling approving the reasonable
fees of the executor's attorney for services rendered in the administration of an
estate. **AFFIRMED.**

Christine B. Long and Lynn M. Gaumer of Duncan, Green, Brown &
Langeness, P.C., Des Moines, for appellants.

J. Terrence Deneffe of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P.,
Ottumwa, for appellee.

Heard by Sackett, C.J., and Huitink and Miller, JJ.

HUITINK, J.

Gregory Herrick and Kathleen Herrick, beneficiaries of the estate of Doris E. Herrick, appeal from a district court ruling approving the reasonable fees of the executor's attorney for services rendered in the administration of the estate. We affirm.

I. Background Facts and Proceedings

Doris E. Herrick died on November 27, 2004. Her last will and testament was admitted to probate in December 2004. U.S. Bank was appointed executor of the estate and designated Jerome M. Beaver of Kiple, Denefe, Beaver, Gardner & Zingg, L.L.P., as its attorney (hereinafter Beaver or "executor's attorney").

Doris's assets consisted of stocks, bonds, mutual funds, real estate, personal property, and farm equipment. Her Iowa gross estate totaled \$1,704,139.11. Beaver prepared the standard letters and opening documents for the estate, and prepared and filed a report and inventory on February 23, 2005. He prepared and filed amended reports and inventory on March 4 and June 7.

On June 2 the executor filed an application for allowance of fees and expenses, seeking an order fixing and allowing compensation for the ordinary services and expenses of the executor's attorney in the amount of \$34,537.80.¹ On June 9, the executor's attorney filed an addendum to the fee application, along with an itemization of the attorney fees and expenses associated with the

¹ The total amount requested included \$34,161.14 for attorney fees for ordinary services and \$376.66 for other expenses. The \$34,161.14 figure is equal to two percent plus \$120 of \$1,702,057, the amount of the Iowa gross estate minus a \$2082 income tax refund.

administration of the estate. The amended application noted that “there is still [a] substantial amount of work and expense in the completion of the administration of this estate . . .” and that “legal counsel will handle all of these matters through the closing of the estate.”

On June 30, Gregory and Kathleen filed an objection to the application for allowance of fees and expenses. Following a hearing on the matter, the district court filed a ruling awarding the executor’s attorney ordinary fees and expenses of \$34,537.80. Gregory and Kathleen appeal the district court’s ruling, arguing (1) the executor’s attorney is entitled to a reasonable fee which is less than the statutory percentage and (2) the executor’s attorney is not entitled to recover “fees on fees.”

II. Standard of Review

Our review of this equitable proceeding is *de novo*. *In re Estate of Bolton*, 403 N.W.2d 40, 42 (Iowa Ct. App. 1987). “To a considerable extent the compensation of an attorney rests in the discretion of the court.” *Id.* at 44. However, this must be a reasonable degree of discretion. *Id.* A fee award ordered by the trial court must be reduced if clearly excessive. *Id.*

III. Discussion

Attorney fees for customary services in estate proceedings must be reasonable and must not exceed a fixed percentage of the value of certain assets in the estate. *In re Estate of Randeris*, 523 N.W.2d 600, 606 (Iowa Ct. App. 1994). In Iowa, the maximum fee for ordinary services in most estates is two percent of the gross estate assets, plus \$120. Iowa Code §§ 633.197-98 (2003).

The attorney and executor fees are customarily set by the court on application by the executor prior to the final report, usually following the submission of the probate inventory. *Randeris*, 523 N.W.2d at 606. “It is equally common for the maximum ordinary fee allowed by statute to be requested and approved by the court.” *Id.* “Despite the accepted protocol, and regardless when the fee request is made, the law imposes a standard of reasonableness in the determination of fees for ordinary services and burdens the court with the responsibility to resolve the question.” *Id.* at 607 (citing Iowa Code §§ 633.197-98).

In endeavoring to ascertain a reasonable legal fee, the court considers “a host of factors,” including:

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.

Randeris, 523 N.W.2d at 607; *see also In re Estate of Bruene*, 350 N.W.2d 209, 217 (Iowa Ct. App. 1984). The burden is on the person requesting compensation to show the services rendered and the value thereof. *Bruene*, 350 N.W.2d at 217.

In its ruling in this case, the district court noted Beaver or members of his office had spent seventy-one hours at \$240 per hour thus far in connection with administration of the estate, totaling \$17,040. It cited Beaver’s experience, including handling over 170 estates during his thirty-eight years in the practice of law, ranging from small estates to one over ten million dollars in value; and drafting approximately 450 wills and trusts. The court stated that approximately

seventy-five percent of Beaver's practice is in the area of probate and estate planning, and that Beaver reported he has never had a probate deficiency or delinquency. He customarily charges the "standard two percent fee" requested.

Finally, the court noted,

The responsibilities assumed by Mr. Beaver as attorney, and U.S. Bank as executor are at least commensurate with the 1.8 million dollar value of this estate. If there are mistakes made or problems incurred in connection with this estate, it will be U.S. Bank and Mr. Beaver that must reconcile the mistakes/problems and take whatever steps necessary to resolve them.

It is apparent from the record that this estate has been efficiently and competently administered by executor U.S. Bank and its attorney Jerome M. Beaver. There were no questions raised concerning the handling of this estate, only the fees requested are at issue.

The beneficiaries contend the fees awarded are unreasonable because the services rendered by the executor's attorney do not substantiate the fee award. Further, they argue part of the fee award is based upon services performed by the attorney in seeking to be paid, rather than a service performed on behalf of the estate and thus is an inappropriate award of "fees on fees." The executor's attorney contends there is no evidence in the record demonstrating the district court abused its considerable discretion in allowing compensation in the amount ordered.

The beneficiaries do not dispute Beaver is an experienced attorney and competent to handle the Herrick estate. Contrary to the beneficiaries' assertion, we conclude the award in this case was not an award of "fees on fees." Rather, the district court considered the executor's attorney's itemization of time spent on administration of the estate as one factor among many in determining reasonable attorney fees in this case. Given the size of the estate, the tasks performed prior

to filing the fee application, and the tasks yet to complete at the time the fee application was filed, we conclude the district court did not abuse its considerable discretion in awarding the executor's attorney fees in this case. In reaching this conclusion, we note that the executor's attorney did not seek compensation based upon a \$2082 income tax refund, or an \$184,000 individual retirement account, two items that arguably could have been included in the value of the gross assets of the estate. See Iowa Ct. R. 7.2(2). We also note the executor's attorney has chosen not to pursue extraordinary fees and appellate attorney fees in connection with the litigation over attorney fees.

AFFIRMED.