

IN THE COURT OF APPEALS OF IOWA

No. 8-1033 / 08-0370
Filed April 8, 2009

**IN THE MATTER OF THE CONSERVATORSHIP OF
BERNIECE M. GRAY,**

ROBERT PORTER,
Conservator-Appellant.

Appeal from the Iowa District Court for Clarke County, John D. Lloyd,
Judge.

A conservator appeals from the district court order setting attorney fees.

AFFIRMED.

Unes J. Booth of Booth Law Firm, Osceola, for appellant.

Stephen Hall of Hall & Schlenker, Indianola, for appellee.

Arnold Kenyon of Kenyon & Nielsen, P.C., Creston, for appellee-
intervenor.

Richard McConville, West Des Moines, for appellee-intervenor.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

SACKETT, C.J.

Robert J. Porter, as conservator of Bernice M. Gray, appeals an attorney fee order. He contends the district court abused its discretion in failing to order the entire amount of attorney fees requested by Unes J. Booth, who served as attorney for the conservatorship during Porter's term of service. We affirm.

Scope of Review. A hearing on allowance of attorney fees stands in equity and thus is reviewable de novo. *In re Estate of Simon*, 288 N.W.2d 549, 551 (Iowa 1980); *In re Estate of Bass v. Bass*, 196 N.W.2d 433, 435 (Iowa 1972); *In re Estate of Bolton*, 403 N.W.2d 40, 42 (Iowa Ct. App. 1987).

Background. Porter was appointed conservator on January 26, 2007, and on February 1 of that year he designated Booth attorney for the conservatorship. Bernice M. Gray died on September 20, 2007. Porter and Booth were still serving as conservator and attorney for the conservator at the time of her death. Bernice and her husband Marvin, who died in March of 2005, had three children. By the time the conservatorship was established two of the children were dead.¹

Sometime in the summer of 2005, Bernice had given her surviving child, Mary Lou Carter, a power of attorney. Then in the fall of 2005, as certificates of deposit that Bernice held in joint tenancy with Marvin came up for renewal, Bernice added Mary Lou's name as joint tenant.

On August 23, 2006, the wife of Bernice's deceased son Marvin, and Mary Lou's son, filed an application seeking the involuntary appointment of a

¹ Her daughter Pat died in 1993, and her son Gary died in July of 2005. The deceased children were survived by spouses and children.

conservator for Bernice. On September 21, 2006, Bernice filed an application for a voluntary appointment of a conservator and a guardian. An agreement was reached with Porter, and Mary Lou was appointed guardian. In June of 2007 an application was filed by the husband of Bernice's deceased daughter Pat, and the wife of Bernice's deceased son Gary, and after a hearing Mary Lou was removed as guardian and Pat's husband was appointed in her stead.

Obviously Mary Lou was unhappy with the change and she was less than cooperative with the conservator and his attorney's efforts to identify and inventory Bernice's assets. It took substantial legal work and Booth requested fees for the legal work he did in relation to these matters. The district court did not criticize this work or appear to have reduced the attorney fees requested for it. Consequently, a further discussion of problems between the conservator and Mary Lou during this time would serve no purpose other than to lengthen this opinion.

When Bernice died on September 29, 2007, her will named Mary Lou as her executor and sole beneficiary, and she qualified as executor of her mother's estate. On October 25, 2007, the district court made a calendar entry ordering the conservator to file a final report on or before November 9, 2007, and to immediately turn the real estate, personal property located on the real estate, and certificates of deposit he held as conservator over to Mary Lou, the executor of Bernice's estate. On November 29, 2007, the court made another calendar entry, directing the conservator to deliver the Series E bonds to Mary Lou as the executor of Bernice's estate. On November 8, 2007, the conservator filed a final

report together with an itemization of the conservatorship's receipts and disbursements. It also included an inventory of the assets the conservator held and reported that the total value of the assets held at the close of the report period was \$901,339.06. The report also asked that certain fees be allowed: namely conservator fees of \$2,422.62, attorney fees for the conservator's attorney of \$10,005.07, and fees for the guardian ad litem of the ward of \$2,968.93. Itemizations of the requested fees were filed as were affidavits regarding compensation.

The report asked that the conservatorship be terminated, that payment of court costs, administration expenses, and claims be approved, and that after payment of all court approved costs, administration expenses, and claims, the conservator be directed to distribute the specified assets to the executor and a receipt showing the distribution be filed.

Mary Lou as executor, and Mary Lou individually, made a number of objections to the report, including an objection to the requested fees. The matter came on for hearing on January 22, 2008. On that day the conservator filed an amended final report indicating that the value of the assets remaining in the conservatorship at the close of the report was now \$525,262.42. It would appear that the conservator had turned over all assets except some certificates of deposit and a bank account to the executor. The report included requests for increased compensation by both the conservator and the attorney for the conservator. The conservator requested that his fee award be increased to \$2,783.62, and the attorney requested his fee award be increased to \$13,064.21.

The hearing lasted about a day and a half. Following the hearing and before the record was closed, attorney Booth indicated he would file a supplemental request for fees for the conservator and himself because he had originally represented that the hearing on the conservator's final report would only take an hour. Adverse counsel extended the same objections to these fees that had been made earlier. On January 31, 2008, Booth filed an amended affidavit regarding compensation and increased his request for fees to \$15,664.12.

On February 19, 2008, the district court filed its order. The court carefully considered all of the objections by Mary Lou as executor and Mary Lou individually and rejected all of them except the objection made to the fees for Booth as attorney for the conservator.

The district court noted it considered Booth's request for fees and his detailed itemizations attached to the final and amended final report. The court also noted that once the ward died it was the conservator's obligation to transfer assets to the persons entitled to them and to pay costs of administration but it took at least two separate court orders, one entered October 25, 2007, and one entered November 29, 2007, to get most of the certificates of deposit and the Series E bonds, and some of the property was not turned over until the hearing, four months after Bernice's death.

The court also specifically found

that the conservator's attorney was dragging his feet in advising the conservator to turn over the assets . . . and the court could certainly speculate there may have been some concern that assets would get away before other family members could file and litigate their

will contest. . . . At the time the other family members were well-represented by competent counsel and the attorney for the conservator owed a duty of loyalty to the conservator, not to the family members. After carefully examining the attorney's itemized statement, and noting that the estimated time for the final hearing was one hour rather than one and one-half days, the court finds that the fees requested should be allowed after a reduction of ten hours or \$1600. The attorneys' fees were then set at \$11,024.21.

Analysis. The burden rests upon the person requesting compensation as a fiduciary's attorney to show the services rendered and the value thereof. *In re Estate of Myers*, 238 Iowa 1103, 1107, 29 N.W.2d 426, 428 (1947); *In re Estate of Bruene*, 350 N.W.2d 209, 217 (Iowa Ct. App. 1984). In endeavoring to ascertain a reasonable legal fee, relevant factors include 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, the responsibility assumed, the results obtained, and the experience of the attorney. *Simon*, 288 N.W.2d at 552. "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." *Glynn v. Cascade State Bank*, 227 Iowa 932, 939, 289 N.W. 722, 725 (1940).

The district court indicated it was reducing the attorney's request by \$1600 and fixing fees of \$11,024.21. This is the amount of fees that would result if \$1600 were cut from the second fee request of \$13,064.21, which included an estimated of one hour for a hearing that took a day and a half. The final fee request, which Booth indicated would be filed after the hearing to include additional fees for the hearing, totaled \$15,664.12. The difference between the fee awarded and the third fee request is \$4,639.91.

We were unclear whether the third amended fee request was considered by the district court. Therefore we remanded and requested the district court (1) to state if the last request was considered, and (2) if it were, what reasons the court had for rejecting it. If it were not considered, we requested that the district court do so. We asked that the district court enter the appropriate order and file same with the clerk of court.

The district court has now filed its order on remand. The district court indicated it did not consider the last amended fee request. The court further indicated the reduction of \$1600 would have been greater had the earlier statement not understated the actual hours consumed by the final hearing. The court found the understatement was cured by the third filing. It noted that while it initially disallowed ten hours of requested fees, which it still felt was appropriate, it went on to disallow three hours of time related to the final hearing sought in the third fee request. The court found that issues raised in the final hearing could have been avoided. The result of the district's court order on remand was to disallow thirteen hours of fees at \$160 an hour for a total of \$2,080.00 and amend the order to find a fee and expenses award of \$13,584.12 to be appropriate. The record is sufficient for us to review the amended fee award and no further briefing is necessary. The district court gave valid reasons for reducing the fee request by thirteen hours. The district court did not abuse its discretion in ordering \$13,584.12 in fees for attorney Booth, and we affirm the award in that amount. Costs on appeal are taxed to Unes J. Booth.

AFFIRMED.