

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37
ESTATE OF ARTHUR M. PETERS, JR.,
DEC'D, IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

APPEAL OF: COMMONWEALTH OF
PENNSYLVANIA,

No. 1359 MDA 2014

Appeal from the Order July 17, 2014
In the Court of Common Pleas of Montour County
Civil Division at No(s): 39-2013

BEFORE: BOWES, DONOHUE AND ALLEN, JJ.

MEMORANDUM BY BOWES, J.:

FILED JUNE 17, 2015

The Office of Attorney General of Pennsylvania, on behalf of the charitable beneficiaries of the Estate of Arthur M. Peters, Jr., challenges on appeal the orphans' court's decision to approve the amount of fees charged by the executrixes of this estate. After careful review, we affirm.

Mr. Peters died testate on September 4, 2011. Mr. Peters, who was a probate and estate lawyer, practiced law for nearly fifty years and amassed a considerable fortune worth approximately \$8,000,000. Mr. Peters' wife predeceased him, and the couple had no children. The beneficiaries of Mr. Peters' estate were primarily various charities located in the area. In the will, the decedent instructed that Wendy S. Tripoli, Esquire, be hired as

estate attorney and that her compensation be limited to one percent of the value of the inventoried assets. The named executrixes under the will were Linda L. Weaver and Holly Greenly, and no limitation was placed on their compensation.

In the first and final account, the estate attorney charged, as mandated by the will, \$81,193, and each executrix claimed remuneration of \$123,289. Their compensation was calculated based upon a sliding percentage of the estate assets: 5% of the first \$100,000; 4% of the next \$100,000; and 3% of the remainder of the value of the estate. The orphans' court indicated that this method of calculating fees was almost invariably used by Mr. Peters while he was a practicing probate attorney.

Appellant, as *parens patriae* of the charitable beneficiaries, was notified of the account and objected to the fees charged by the co-executrixes. A hearing was conducted. Ms. Weaver and Ms. Greenly, who were longtime employees of Mr. Peters and worked with him in the estate area, did not keep a log of the amount of hours worked on the estate. They detailed the significant amount of work that they performed on behalf of the estate. The orphans' court exhaustively outlined the duties Ms. Weaver and Ms. Greenly performed on behalf of this estate, and we rely upon its recitation of their efforts in rendering our decision. Trial Court Opinion, 10/2/14, at 6-10, 14-17. After the hearing, the orphans' court denied

Appellant's exceptions and confirmed the first and final account. This appeal followed. Appellant raises the following contentions:

I. Whether the Orphans' Court erred in finding the co-executrices' combined fee of \$246,579 to be reasonable where they did not keep contemporaneous time records or provide other evidence to sufficiently support their fee?

II. Whether the Orphans Court erred by allowing the co-executrices to charge against the estate for legal work they performed where (a) the testator's former law partner Wendy Tripoli was separately being paid one percent of the value of the estate to perform legal work and (b) co-executrix Greenly was a paid employee of Attorney Tripoli?

Appellant's brief at 4.

Our standard of review of an orphans' court ruling is as follows:

When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and the court's factual findings are supported by the evidence. Because the Orphans' Court sits as the fact-finder, it determines the credibility of the witnesses and, on review, we will not reverse its credibility determinations absent an abuse of that discretion. However, we are not constrained to give the same deference to any resulting legal conclusions. Where the rules of law on which the court relied are palpably wrong or clearly inapplicable, we will reverse the court's decree.

In re Estate of Fuller, 87 A.3d 330, 333 (Pa.Super. 2014) (citation omitted).

In connection with fees charged by fiduciaries, the Probate, Estates, and Fiduciaries Code has a specific provision, which outlines: "The court shall allow such compensation to the personal representative as shall in the circumstances be reasonable and just, and may calculate such compensation

on a graduated percentage.” 20 Pa.C.S. § 3537. As we articulated in ***In re Padezanin***, 937 A.2d 475, 485 (Pa.Super. 2007) (citation omitted), “the basis for determining whether compensation is reasonable under section 3537 depends upon the value of the services actually rendered.” The personal representative who is requesting compensation has the “burden of establishing facts which show the reasonableness of their fees and entitlement to the compensation claimed.” ***Id.*** (citation omitted). However, “the determination of whether the executor's fees are reasonable is left to the sound discretion of the Orphans' Court, and we will not disturb its determination absent a clear error or an abuse of discretion.” ***Id.*** (citation omitted).

As outlined by § 3537, there is no requirement that a personal representative keep a time log of each hour spent on estate matters in order to justify his fees, and the personal representative of an estate can charge on a percentage basis. Hence, Appellant’s first position cannot be sustained. Additionally, we conclude that Ms. Weaver and Ms. Greenly satisfied their burden of proving that their fees were reasonable and that they actually rendered services to the estate equal to the amount charged.

As reported by the orphans’ court, the co-executrixes “detailed their extensive work and the high quality of their work in their testimony.” Trial Court Opinion, 10/2/14, at 7. The court also noted that the co-executrixes had a “wealth of knowledge about Attorney Peters’ assets and extraordinary

expertise in administering estates.” ***Id.*** The orphans’ court outlined that the “co-executrixes themselves did most of the actual legal work for the administration of the estate in addition to gathering, marshaling, and accounting for the assets and liquidating and distributing the assets and preparing legal documents and tax returns, as well as recording and collecting notes.” ***Id.*** at 6-7.

Significantly, Ms. Weaver and Ms. Greenly were able to sell the house at its appraised value without paying a broker’s fee. Additionally, they traveled to New York to sell his yacht, and conducted meetings with gun dealers to appraise and liquidate Mr. Peter’s firearms collection, with coin dealers to sell his coin collection, with antique dealers to sell his antique collection, and with art dealers to liquidate his art collection. Thus, the co-executrixes performed significant work in addition to the duties associated with administering a sizeable estate that included unique assets.

Since Mr. Peters had no children, they also attended to many duties that a family would undertake. They made funeral arrangements and cleaned and inventoried the house. Since the basement had flooded, a large amount of cleaning was required for three months, and Ms. Weaver and Ms. Greenly were helped by family members. The co-executrixes arranged for memorial plaques for Mr. Peters at the charities that benefitted from his largesse. Thus, contrary to Appellant’s position, the orphan’s court did not affirm the charged fees based solely upon the close personal relationship

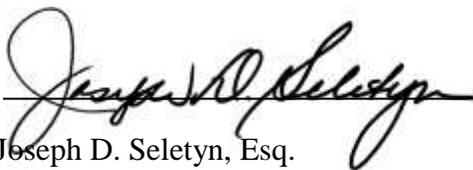
that Ms. Weaver and Ms. Greenly enjoyed with the decedent. Additionally, the orphans' court did not write a fee structure into the will, *i.e.*, the one used by Mr. Peters in his estate practice.

Appellant also claims that the orphans' court improperly relied upon the fact that the co-executrixes performed legal work because there was an estate attorney who charged fees. However, in this connection, the orphans' court relied upon the fact that the fee paid to the estate attorney was unusually low compared to the size of this estate.

In light of the evidence produced by the co-executrixes at the hearing, we conclude that the orphan's court committed no abuse of discretion in approving the requested fees. We affirm on the basis of the well-reasoned decision of the Honorable Thomas A. James, Jr. dated October 2, 2014.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/17/2015