

NOTICE

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2015 IL App (4th) 141025-U

NO. 4-14-1025

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 28, 2015

Carla Bender

4th District Appellate

Court, IL

JUDITH DeWITT, Objector/Legatee/Trust)	Appeal from
Beneficiary for the Estate of Maurice O. Eldridge,)	Circuit Court of
Plaintiff-Appellant,)	Morgan County
v.)	No. 90P121
ROGER ELDRIDGE, Independent Executor of the)	
Estate of Maurice O. Eldridge,)	
Defendant-Appellee,)	
and)	
BONNIE ELDRIDGE, RICHARD HENRY,)	
DOLORES STAYTON, SHELBA PALMER,)	Honorable
LINDA BAKER, and PEOPLES BANK & TRUST,)	Christopher E. Reif,
Defendants.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the trial court's approval of the executor and attorney fees identified in defendant's final account, and remanded for further proceedings where the trial court's approval of the compensation and fees paid to the executor and the estate's attorneys was based on its mistaken belief that the law allowed such compensation to be based on a percentage of the value of the estate.

¶ 2 Following his August 1990 death, decedent, Maurice O. Eldridge's, will and codicil were admitted to probate. Defendant-executor (defendant), Roger Eldridge (decedent's son), was appointed executor of decedent's estate and letters of office were issued to him. In May 1991, defendant filed an inventory of decedent's estate. No further report or account was filed with the court until June 9, 2014, at which time defendant filed an accounting, requesting it be approved as filed and that he be discharged as executor and the estate be closed. Plaintiff,

Judith DeWitt (decendent's daughter), filed objections to the final account. Following an October 2014 hearing on plaintiff's objections, the trial court approved the final account, discharged defendant as executor, and closed the estate.

¶ 3 Plaintiff appeals, arguing the trial court erred when it overruled her objections, thereafter discharging him as executor and closing the estate. We reverse in part, affirm in part, and remand.

¶ 4 I. BACKGROUND

¶ 5 Decedent died testate on August 10, 1990. He was survived by his wife, Dorothea, and seven children, including plaintiff, defendant, Sharon Henry, Dolores Stayton, Linda Baker, Bonnie Stewart, and Rick Eldridge. On August 15, 1990, decedent's will and first codicil were admitted to probate, defendant was appointed executor, and letters of office were issued to him.

¶ 6 Pursuant to decedent's will and codicil, the executor was to sell all decedent's real property "as soon as possible after [his] death." Decedent's widow was to receive specific bequests of \$20,000, "any personal automobile owned by [decedent] at the time of his death," and the right to reside in decedent's home rent free for six months. Decedent's seven children were to "share and share alike" in "all of [his] personal effects, household goods and furnishings, and motor vehicles," which were to be divided among them as they agreed, or if they could not agree, as decided by the executor. Decedent's seven children were also to share in his residuary estate, per stirpes, with the exception that his son, Rick Eldridge's share, was to be reduced by \$14,000 to adjust for an advancement given to him during decedent's life. Decedent's residuary estate was "to be held, managed, controlled and distributed" by the trustee, Wemple State Bank, although the will also provided, "[m]y [e]xecutor may carry out the provisions of this trust without the intervention of a [t]rustee where practicable and no active trust duties are involved."

Upon reaching 25 years of age, a beneficiary could withdraw all or part of the principal of his or her share by submitting a written request.

¶ 7 On May 10, 1991, defendant filed an inventory claiming assets of \$722,759.23. The inventory further identified three parcels of real estate, the value of which was "undetermined."

¶ 8 On October 7, 1991, a personal injury suit against the estate was dismissed with prejudice. Thereafter, the record is silent until January 29, 1997, when the trial court set the matter for a status conference on March 3, 1997. At the March 3, 1997, status conference, defendant was ordered to file a current report within 21 days and the matter was set for a hearing on March 31, 1997. On March 14, 1997, defendant filed receipts of distributions made to, and acknowledged by, six of the beneficiaries, totaling \$390,000. On March 17, 1997, defendant filed a motion to continue in which he asserted he was "in the process of preparing the necessary documentation to file a proposed Final Account." The court continued the matter for a status conference on July 21, 1997. Neither defendant nor his attorney appeared at the July 21, 1997, status conference and the court noted that no current or final report was on file.

¶ 9 The next action in this matter occurred on September 14, 2000, when the trial court directed defendant to file a current or final report within 60 days and set the matter for a status hearing on December 4, 2000. The record does not reflect whether a status hearing proceeded on that date.

¶ 10 The next entry in the record is on January 31, 2014—more than 13 years later—when the trial court entered an order stating as follows: "Attorney [Randall] Segatto was to have the necessary documentation to close the Estate in this matter done in 1997 and again by court order within 60 days of 9/14/00. This matter has never been closed and there has never been

appropriate action taken and filed to close this case." The court directed attorney Segatto to appear on March 2, 2014, with the necessary documentation to close the matter or to advise the court when the documentation would be available. On February 7, 2014, attorney Segatto filed a motion to withdraw, asserting the primary attorney for the estate had left the firm in 2008 and that no attorney currently associated with the firm had any contact with defendant since. On March 3, 2014, the court granted attorney Segatto's motion to withdraw.

¶ 11 On April 3, 2014, plaintiff filed a motion for an accounting. The trial court set the matter for a hearing on April 16, 2014. On April 22, 2014, the court entered an order finding that defendant failed to file an accounting as required by section 24-1 of the Illinois Probate Act of 1975 (Probate Act) (755 ILCS 5/24-1 (West 2012)). The court ordered defendant to file "a verified account of his administration of the [estate] from the time of the issuance of his Letters of Office to the current date, stating the receipts and disbursements of the representative and all real and personal estates which is on hand," and set the matter for a status hearing on June 16, 2014.

¶ 12 On June 9, 2014, defendant filed a 24-page verified account listing receipts and disbursements going back to August 15, 1990. The account showed a deficiency of \$278.39, but noted "[t]he deficiency was covered by [defendant]."

¶ 13 On August 5, 2014, plaintiff filed objections to defendant's verified account. She (1) asserted that various items were missing from the account; (2) sought further details and/or documentation for a number of items listed in the account, including documents related to the sale of decedent's house, the sale of a 40-acre farm on contract for deed, life insurance policies, the sale of stocks, farm income, and detailed statements of work performed by defendant and the attorneys for the estate; (3) requested defendant be required to "submit correct figures for the

total distributions to each beneficiary"; and (4) asked that defendant be required to produce any documents relating to the cost of preparing any tax documents after 1991. On October 27, 2014, defendant filed his response to plaintiff's objections, asserting, in part, that the final account fully complied with the requirements of the Probate Act (755 ILCS 5/1-1 to 5/30-3 (West 2012)).

¶ 14 At an October 29, 2014, hearing on plaintiffs' objections to defendant's final account, plaintiff complained, in part, that (1) decedent's assets were never put into a trust; (2) defendant's accounting lacked detail concerning the sale of certain stocks and farm expenses as well as \$10,000 in distributions to two individuals; and (3) defendant and the estate attorneys received an excessive amount of money from the estate. Plaintiff asked the court to deny defendant's final account and order him to submit additional information. Defendant responded that the assets were never put into a trust because all the beneficiaries were of age and their shares were distributed directly to them. According to defendant, the estate was left open due to the sale of certain farm land on contract for deed. Defendant further asserted that the accounting provided was "a traditional customary accounting" that reported "over 20 years' worth of receipts and disbursements." After hearing arguments, the trial court noted, in part, as follows:

"[H]ere's the real problem. They didn't complain. [Plaintiff] received a disbursement almost 20 some years ago. She's never done anything. In fact, we wouldn't be here today if it wasn't for me on January 31st of 2014 saying what's going on with this case, because I entered a docket entry—through no fault of your own. I noticed up the parties, and then all of a sudden now she wants to complain and she wants to say, well, now I want a detailed accounting back to 1990. That's going to be probably a physical

impossibility. It's not going to happen. *** I'm going to find that [defendant] ha[s] complied with the statute under my discretion. I believe [he has] done an admirable job of getting as close as [he] can and resolving this for me ***. *** Based upon that, I am going to find that the final account should be approved as filed, the [e]xecutor be discharged, and the estate finally closed."

In its October 29, 2014, written order, the court approved the final account as filed, discharged defendant as executor and closed the estate.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff asserts that the trial court erred when it overruled her objections to the "only and final accounting" filed by defendant, thereafter discharging him as executor and closing the estate. In her brief, plaintiff argues specifically that (1) defendant's neglect of his duty to account for the administration of the estate for 24 years raises an inference of wrongdoing; (2) the sale of certain assets was not properly accounted for; (3) defendant failed to provide legal justification for not placing the residuary estate into a trust; (4) the court erred in overruling her objections; and (5) defendant should be charged interest for dereliction of his duty, and he and the estate attorneys should be ordered to repay their fees to the estate.

¶ 18 At the outset, we note plaintiff raises certain issues on appeal that were not raised in the trial court, such as defendant's alleged neglect of his duty to account during the administration of the estate, including a claim for interest to be charged for such neglect, and his failure to place the residuary estate assets into a trust. See *In re Estate of Savio*, 388 Ill. App. 3d 242, 250, 902 N.E.2d 1113, 1121 (2009) (issues not presented in the trial court are forfeited).

The only issue properly before this court is whether the trial court erred when it approved the final account submitted by defendant and thereafter discharged him as executor and closed the estate.

¶ 19 A trial court's interpretation of a provision of the Probate Act is a question of law which we review *de novo*. *In re Estate of Koester*, 2012 IL App (4th) 110879, ¶ 47, 975 N.E.2d 1115. However, a trial court's factual determinations and any inferences gleaned from those facts as they relate to a provision of the Probate Act are reviewed under the manifest weight of the evidence standard. *In re Estate of Vail*, 309 Ill. App. 3d 435, 438, 722 N.E.2d 248, 251 (1999).

¶ 20 Here, plaintiff contends that the final account submitted by defendant was insufficient. Specifically, plaintiff asserts defendant failed to (1) adequately account for the sale of certain assets, including (a) the 40-acre farm sold on contract for deed to Richard Stayton (the husband of one of the beneficiaries); (b) decedent's house; (c) a lot that sold for \$1,000 in May 1991; and (d) the sale of stock which sold for \$490,583.47 in 1991 (that had a date of death value of \$440,587.47); and (2) provide supporting documentation to account for (a) farm income received; (b) life insurance dividends; and (c) the work performed by defendant and the attorneys for the estate.

¶ 21 Section 24-1 of the Probate Act provides for an estate representative's duty to account as follows:

"(a) Except as provided in subsection (b), within 60 days after the expiration of 12 months after issuance of letters or within such further time as the court allows and thereafter whenever required by the court until the administration is completed, and if

the letters are revoked, within such time as the court directs, every representative of a decedent's estate shall prepare and present a verified account of his administration to the court which issued his letters. The account shall state the receipts and disbursements of the representative since his last accounting and all real and personal estate which is on hand and shall be accompanied by such evidence of the disbursements as the court may require.

(b) If written consents of all interested persons are filed in the court, the court may excuse the preparation and presentation of an account, subject to such conditions as the court deems appropriate." 755 ILCS 5/24-1 (West 2012).

Section 20-12 of the Probate Act provides, "[i]t is the duty of the representative to account for the proceeds of every sale or mortgage under this Article in his next current or final account filed in the court where the estate is being administered." 755 ILCS 5/20-12 (West 2012). As this court explained in *In re Estate of Thomson*, 139 Ill. App. 3d 930, 936, 487 N.E.2d 1193, 1197-98 (1986):

"The Probate Act of 1975 does not designate a particular format [to be used by executors in their accounts]. The Act simply requires a statement of all receipts and disbursements for the time-period in question and a list of all estate assets. This statement 'shall be accompanied by such evidence of the disbursements as the court may require.' [Citation.] Absent statutory requirements, no particular form of account is required. [Citation.] Keeping in

mind that the purpose of the account is to evidence the executors' compliance with their duties to heirs, beneficiaries and creditors [citation], we will limit our review to specific allegations of impropriety."

Although this court ultimately found that the accounts submitted in *Thomson* were deficient for other reasons, we concluded that the format of the accounts, which "contain[ed] a summary of transactions attributable to each property, a list of assets and liabilities, and a list of all checks paid out" was not "improper *per se*." *Id.* at 936, 487 N.E.2d at 1198.

¶ 22 The final account submitted by defendant in this case is similar in format to that submitted in *Thomson*. Here, the account lists receipts and disbursements by date (going back to August 15, 1990), provides a brief description of each receipt or disbursement, and includes the monetary amount of the receipt or disbursement. The account also provides a summary of all distributions made to the estate beneficiaries. Further, the trial court did not order any supporting documentation or other evidence pursuant to section 24-1 of the Probate Act.

¶ 23 Nonetheless, plaintiff argues, apparently in regard to the real property at issue, that defendant "has not provided any explanation to justify his failure to have the property appraised and there is no showing that it was not necessary." In support, she cites section 14-2 of the Probate Act which provides, "[i]f the representative believes that it is necessary for the proper administration of the estate to determine the value of any goods and chattels, the representative may appraise them or may employ one or more competent, disinterested appraisers for that purpose and pay each of them reasonable compensation for his services." 755 ILCS 5/14-2 (West 2012). We note, however, that section 14-2 does not *require* that an estate representative obtain appraisals of estate property prior to their sale or to provide any

justification for not obtaining an appraisal. Rather, section 14-2 merely *allows* an executor to obtain an appraisal prior to the sale *if* he believes one is necessary. Thus, plaintiff's argument pertaining to defendant's failure to provide copies of appraisals, or to show that appraisals were not necessary, lacks merit.

¶ 24 Based on our review of the record, we find that the verified account filed by defendant in this case specifically accounted for the proceeds from the sale of the (1) 40-acre farm sold on contract for deed; (2) decedent's house in 1990; and (3) the \$1,000 lot in 1991. Accordingly, defendant—who was not required by statute or court order to obtain appraisals or provide supporting documentation—sufficiently accounted for the proceeds from the sale of the above property. The final account also identified (1) the proceeds from the sale of decedent's stock; (2) dividends from Protective Life and Country Life in 1990 and 1991; and (3) farm income denoted as "Robert Johnson, crop," "Johnson Grain, crop," and Franklin Elevator, crop." We further note that plaintiff does not allege any impropriety in defendant's conduct as it pertains to the sale of these assets or the cash benefits or income derived from life insurance policies or farming operations. See *Thomson*, 139 Ill. App. 3d at 936, 487 N.E.2d at 1197-98 ("we will limit our review to specific allegations of impropriety"). Thus, we find the trial court committed no error by not requiring defendant to submit supporting documentation relating to the above items.

¶ 25 Plaintiff also argues that the trial court erred by not requiring defendant to submit itemized billing to support the payments he and the estate attorneys received for their services. According to plaintiff, the amounts paid to defendant (\$15,700) and the estate's attorneys (\$28,435) were unwarranted and excessive.

¶ 26 The Probate Act provides for the "reasonable compensation" of executors and their attorneys. 755 ILCS 5/27-1, 27-2 (West 2012). The factors to be considered in determining what is reasonable compensation include " 'the size of the estate, the work involved, the skill evidenced by the work, [the] time expended, the success of the efforts involved, and the good faith and efficiency with which the estate was administered.' " *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1109, 950 N.E.2d 280, 287 (2011) (quoting *In re Estate of Thorp*, 282 Ill. App. 3d 612, 619, 669 N.E.2d 359, 364 (1996)).

¶ 27 "In general, '[a] trial court has broad discretionary powers in awarding attorney fees and its decision will not be reversed on appeal unless the court abused its discretion.' *In re Estate of Callahan*, 144 Ill.2d 32, 43-44, 578 N.E.2d 985, 990 (1991). But *cf. In re Estate of Coleman*, 262 Ill. App. 3d 297, 299, 634 N.E.2d 314, 316 (1994) ('The trial court has broad discretion in determining what constitutes "reasonable" compensation. [Citation.] Because the probate court has the requisite skill and knowledge to decide what is fair and reasonable compensation [citation], a probate court's determination of such fees will not be overturned on appeal unless it is manifestly and palpably erroneous.' (Internal quotation marks omitted.)). Insofar as petitioners claim the trial court made an error of law, our review is *de novo*. See *Beehn v. Eppard*, 321 Ill. App. 3d 677, 680-81, 747 N.E.2d 1010, 1013 (2001) ('Where a trial court's exercise of

discretion relies on an erroneous conclusion of law, *** our review is *de novo*.')." *Id.*

¶ 28 In this case, the record contains no indication that the trial court considered any of the appropriate factors in determining whether the compensation and fees received by defendant and the estate's attorneys were reasonable. Rather, the record reveals the court based its decision regarding the payments made to defendant and the estate's attorneys on its belief that it was common practice to base an executor's compensation and an estate's attorneys' fees on a percentage of the value of the estate. In particular, the court noted for the record, "[the] [c]ourt will make a final finding that, again, I am familiar with estates, and the way estates were done back in the 1990s was a percentage basis, and that was common practice." As plaintiff points out, however, the practice of basing an executor's compensation or an attorney's fees on the value of an estate was not an acceptable standard in 1991.

¶ 29 In *In re Estate of Bonnett*, 52 Ill. App. 3d 393, 398, 367 N.E.2d 524, 528 (1977), the Second District noted, "[t]he statute covering executor's fees *** provides only that the executor be entitled to 'reasonable compensation for his services.' *** While in the past some sanction has been given by local custom to a percentage fee based on the gross amount of the estate, that has no legal basis, and since [*Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975)], it has not been an acceptable standard." Accordingly, the trial court's determination in this case that it was common practice in the 1990s to base an executor's compensation or an attorney's fees on the value of the estate was an error of law. However, the record contains no evidence which would assist this court in determining whether the compensation paid to defendant or the fees paid to the estate's attorneys were reasonable. Thus, we must reverse and remand the matter for reconsideration by the trial court. On remand, the trial court's consideration of compensation and

fees should be based on the time expended, hourly rate, and reasonableness of the compensation and fees in light of the services performed. The trial court's consideration of these remaining matters should be completed within 120 days of the issuance of the mandate in this case.

¶ 30

II. CONCLUSION

¶ 31 For the reasons stated, we reverse that portion of the trial court's order approving the final account as it pertains to the executor's compensation and attorney fees, and remand the matter for further proceedings on only those issues. We otherwise affirm.

¶ 32 Reversed in part, affirmed in part; cause remanded with directions.