

NOTICE
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2015 IL App (5th) 140431-U

NO. 5-14-0431

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> ESTATE OF PERRY MEYERS, Deceased)	Appeal from the
)	Circuit Court of
(Helen Erslev and Alex Meyers,)	Jefferson County.
)	
Petitioners-Appellants,)	
v.)	No. 12-P-39
)	
The Estate of Perry Meyers, Roscoe James Barnard,)	
as Executor,)	Honorable
)	David K. Overstreet,
Respondent-Appellee).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Schwarm and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's denial of the petitioners' petition to remove the executor was not against the manifest weight of the evidence. The court's decision to award the executor \$75 per hour for his fees in administrating the estate was not manifestly or palpably erroneous.

¶ 2 The petitioners, Helen Erslev and Alex Meyers, appeal from the order of the circuit court of Jefferson County denying the petition to remove the respondent, Roscoe James Barnard, as executor of the estate of Perry Meyers. For the reasons which follow, we affirm the decision of the circuit court.

¶ 3 On appeal, the petitioners advance the following grounds to support their petition for removal of the executor: (1) that the executor failed to properly invest the estate assets; (2) that the executor paid himself for work administering the estate and the estate attorney without prior authorization of the court after independent administration was terminated; (3) that the executor failed to file a written bond in the statutorily required amount; (4) that the executor failed to file timely inventories and an accounting; (5) that the executor failed to marshal the estate's assets; and (6) that the executor failed to investigate a potential tax liability that could adversely affect the legatees of the estate. The petitioners also argue that the trial court erred in awarding the executor \$75 per hour for his fees in administering the estate.

¶ 4 We will set forth only those facts relevant to the issues raised on appeal. Perry Meyers executed a will on February 26, 2009. He died on August 14, 2011. The decedent never married or had any children. His will devised and bequeathed his estate to his siblings, *per stirpes*. Helen, the decedent's niece, and Alex, the decedent's nephew, are each 1/18th legatees under the will, as they take in place of their predeceased father.

¶ 5 The decedent's sister, Martha Lubine Barnard, was named as executor of the will with the respondent as successor executor. On May 8, 2012, Martha disclaimed her right to any claim against the estate. Under the will, Martha was entitled to a 1/6th share of the decedent's estate. Martha also filed a declination of office, declining to serve as executor of the decedent's estate. The will was admitted to probate on May 8, 2012, and the respondent was appointed as independent executor. The decedent was a farmer and his assets included the following real estate: 171 acres, which was commonly referred to as

the "Hickory Hill 171 acres"; 120 acres, which was commonly referred to as the "Hickory Hill 120 acres"; real estate in Jackson County; and real estate in Jefferson County.

¶ 6 As part of his duties in administering the estate, the executor attempted to sell the Hickory Hills 171 acres to James R. Meyers, his uncle, for \$290,400, the date-of-death value of the real estate. According to the executor, there was a general understanding by most of the decedent's family that an oral agreement had been reached between the decedent and James R. Meyers with regard to the purchase. The general understanding was that James Meyers would purchase the property upon the decedent's death. Knowing the wishes of the decedent, the executor reached out to the various legatees to inquire as to whether they wanted to honor this oral agreement. The executor also obtained an appraisal of the property. He suggested to the legatees that the property be sold to James Meyers at the appraised date-of-death value of \$290,400. Most of the legatees consented to the transaction. Helen¹ opposed the sale because she did not believe that the price reflected the true value of the property. On July 27, 2012, she obtained an independent appraisal at her own expense. This appraisal valued the land at \$444,000. The executor thereafter agreed to sell the land for the higher price that was reflected in the later appraisal.

¶ 7 During the administration of the estate, Helen filed various pleadings seeking to terminate independent administration and remove the executor, objecting to any sale of the real estate without court approval, and requesting a court order requiring the executor

¹Alex was not a party in the underlying trial court proceedings.

to file a complete inventory. On March 21, 2013, the executor filed a petition to sell the decedent's real estate, requesting the trial court's permission to proceed with the transaction involving the Hickory Hill 171 acres at the higher price and permission to sell the remaining real estate at a public auction. As independent administration had not been terminated, the petition noted that the executor had authority to conduct the various transactions, but sought court approval given the various outstanding motions filed by Helen.

¶ 8 On June 17, 2013, Helen filed an objection to the executor's petition, alleging that the executor had attempted to "sell the property to [James] Meyers, at a value of \$1,500 an acre, including by having all the beneficiaries gift back the difference between the appraised value and the oral agreement." The objection further alleged that the executor was showing a "partiality and bias, favoring certain beneficiaries over others, in direct breach of his duties as executor." The objection requested that the remaining real estate be reappraised and placed for sale by auction with the appropriate reserve, with all sales being subject to the court's approval.

¶ 9 On June 27, 2013, the trial court entered an order granting the executor's petition to sell the decedent's real estate pursuant to the following conditions: that the Hickory Hill 171 acres shall be sold to James Meyers for \$440,000; the remaining acreage be reappraised at the estate's expense by an appraiser chosen by the executor; the remaining acreage be sold at public auction with a 90% reserve of the newly appraised value; and the legatees retain any and all mineral rights which he or she may have in any of the estate lands in his or her respective shares.

¶ 10 On July 16, 2013, Helen filed a motion to vacate the trial court's order, which was thereafter withdrawn. On August 27, 2013, the trial court entered an order terminating independent administration as the executor had stipulated to supervised administration of the estate. The court then scheduled an "accounting/status conference" for November 25, 2013. The sale of the Hickory Hill 171 acres was finalized on September 6, 2013.

¶ 11 The executor had filed an inventory with the trial court, which included the above real estate, but did not identify any mineral interests owned by the estate, on April 13, 2013. Subsequently, on October 16, 2013, he filed a supplemental inventory, which disclosed the possibility of newly discovered assets in the form of mineral rights in some of the property located in Wayne County. Thereafter, the remaining parcels of land were reappraised and an auction was scheduled for December 7, 2013. On February 25, 2014, the executor filed the first accounting of the estate, covering August 3, 2011, through January 30, 2014.

¶ 12 On March 20, 2014, Helen filed a petition for citation to remove executor, alleging the following grounds, in pertinent parts, as a basis for removal: the executor had paid himself \$15,000 from estate assets for his work administering the estate without obtaining court authorization; he had also paid the estate attorneys \$3,742.78 without court authorization; he had failed to file a timely accounting with the court; he had failed to marshal the assets of the estate by investigating Helen's concern about tax liabilities that could have resulted from certain land transfers that were made from James H. Meyers, the decedent's father, to the decedent; he had failed to properly invest the estate's assets; he had created "distrust and disharmony" among the beneficiaries of the estate by

making "false accusations and defamatory statements against" Helen in response to her requests "for proper administration of the estate according to the Probate Act"; and he had failed and refused to obtain information about assets and mineral rights belonging to the estate.

¶ 13 Furthermore, the petition alleged that the executor had "wasted and mismanaged the estate" and had become "unsuitable to continue discharging his duties to the estate." Therefore, the petition sought an order for the executor to show cause as to why he should not be removed as the estate's executor. Thereafter, the court issued a citation ordering the executor to show cause why he should not be removed as executor.

¶ 14 A two-day hearing was held on Helen's petition for citation to remove executor. The following evidence was adduced at the hearing. The executor testified that he had never acted as an executor of any other estate and had no training as an executor. Although he acknowledged that he did minimal research into his duties as executor, he testified that he consulted with the estate's attorneys concerning what was expected of him. His understanding of his duties was to "execute the will." He explained that the decedent had a "very simple will" and that he was required to divide the assets among the family members. He acknowledged that he did not run any title searches on the mineral rights belonging to the estate, but explained that it was not practical as it would have "cost thousands of dollars to have done it, and if and when there is interest [in a lease]—and there was interest at this time—the oil companies are willing to do that for free." He agreed that there was no way for him to marshal all of the estate's assets without actively hiring someone to do the title work on the mineral rights at the expense of the estate.

¶ 15 The executor testified that Helen did not want the mineral rights leased on behalf of the estate. Therefore, he instructed counsel to sever the mineral rights to allow the legatees to act on their own behalf. Helen then filed a motion to block this action, but later changed her mind and demanded that the mineral rights be severed and she be given her fair share. He agreed to execute 24 mineral deeds at the expense of the estate. He explained that the trial court had not ordered him to do this as the court's order only indicated that the legatees would retain their share of the mineral rights. He further testified that Helen filed a petition for rule to show cause, asserting he had failed to transfer the 171 acres to James R. Meyers as ordered by the court. However, the transaction had taken place three months before the petition was filed.

¶ 16 In May 2012, the executor filed a bond of legal representative with no surety with the trial court in the amount of \$67,456. He had relied on counsel to determine the amount. He filed an accounting on February 25, 2014, which indicated that the value of the estate was over \$1 million. He acknowledged that he paid himself \$15,000 out of estate assets for his executor's fees in October 2013, after independent administration was terminated. He explained that he did not seek court approval for making this payment and that he had "made a mistake."

¶ 17 The executor testified as follows with regard to the oral agreement to sell the Hickory Hills 171 acres to James R. Meyers. He explained that the property joined some ground that James owned. The decedent had made an oral agreement with James to sell the land for \$1,500 an acre, but the transaction would not take place until after the decedent's death. The executor did not remember being present during this discussion,

but noted that it was "something that was discussed at different times throughout the family." After the decedent's death, most of the family members had agreed to honor the oral agreement.

¶ 18 There was an appraisal conducted for the value of the property as of the date of the decedent's death, August 2011. The land appraised at \$294,000 and most of the family agreed to sell the property to James at that price. However, Helen objected to the sale of the land at that price and obtained another appraisal at her own expense in August 2012. Her appraiser valued the property at \$440,000. Although the executor believed the second appraisal was high, he agreed to sell the property at that price in order to appease Helen. He agreed that Helen's actions had benefitted the estate by increasing its value, but explained that the beneficiaries would not see that increase as they intended to gift to James, outside of the estate action, the difference in the two prices in order to honor the decedent's promise.

¶ 19 The executor testified that he did not intend to invest any of the estate's money during his entire term as executor because, initially, there was not a large amount of money in the estate, approximately \$20,000 in liquid assets, and that he believed that administration of the estate would not take much time. He explained that he "did look into" the interest rates and decided that it was impractical to move the money into an account for a short period of time. He testified that he had attempted to administer the estate outside of probate in the beginning for the same reasons.

¶ 20 The executor testified that his mother was appointed as agent for the heirs of the James Harrison Meyers' estate in 1982, which was his grandfather. He did not know

what, if any, land was transferred from James H. Meyers' estate to the decedent or what land remained in James H. Meyers' name after his death. He agreed that it was possible that some of the land ended up in his uncle's estate, but he had never hired anyone to look into it as it was not part of his duties as executor of his uncle's estate. At the direction of counsel, he reviewed a 1984 plat book to determine what property was held in James H. Meyers' name and discovered that there was approximately 160 acres. He never researched whether a gift tax return or estate return was filed on any land transfers from the James H. Meyers' estate to the decedent. He had no intention of researching any further into the tax liability issue unless he was instructed to do so by counsel.

¶ 21 Helen Erslev testified that she had reservations about the executor being the executor of the decedent's will because he wanted to administer the estate outside of probate and was attempting to sell the Hickory Hill 171 acres under fair market value. She explained that she had received copies of the appraisals on the estate's farm land and noticed that the appraisal amounts "were fairly divergent." She observed that some of the ground was appraising at \$4,000 an acre, but the 171-acre tract appraised at \$1,600 or \$1,700 an acre. The executor informed her that a verbal agreement concerning the sale of the land had been reached between the decedent and James R. Meyers sometime before the decedent's death, and she was given paperwork to sign in order to proceed with the transaction. When she expressed concern about the appraisal to the executor, he responded that "land values vary." She was subsequently told that she could have the land appraised at her own expense. She had the land appraised because she wanted it to sell at fair market value.

¶ 22 Helen was also concerned when she learned that the executor wanted the estate to be handled outside of probate and that the executor planned to file a small estate affidavit. She requested that the estate be moved to probate because it was a million-dollar estate. The estate was moved to probate on June 7, 2012. Helen also expressed concern that the executor was sending emails to the other legatees making defamatory statements about her.

¶ 23 At some point, Helen requested an inventory of the estate, which was given to her. However, she was told that the inventory would not be filed with the trial court. Helen also requested that the executor marshal the estate's assets because she believed that there were potentially unknown mineral rights in the land, which, if discovered, should be included on the inventory. The executor refused to run a title search in order to locate any unknown mineral rights, claiming that it would be impractical and costly.

¶ 24 Helen explained that she had a title search conducted at her expense, which cost her \$1,000. There was no additional property found that was unaccounted for, but she was still concerned about the unknown mineral rights. She acknowledged that there were some mineral rights that were eventually included in the supplemental inventory, but explained that she did not believe that there was ever an accurate and full accounting of all of the mineral rights that were owned by the estate. She acknowledged that she had received a letter from the estate's counsel indicating that it was customary procedure in Illinois to not do a title search at the time of death to determine the exact percentage of minerals owned on a land where the deceased owned the surface. Instead, where there was not already oil production on the land, it was usually sold to a third party or

distributed to the heirs subject to any prior conveyances and reservation of the mineral rights.

¶ 25 With regard to the tax liability issue, Helen testified as follows. In the course of the title search, she learned that there were various conveyances of land and mineral rights by the decedent's father prior to and following his father's death in 1982 to his heirs, which included the decedent. She was concerned that there might be tax implications with regard to the transactions and that it might affect the decedent's estate as well as the legatees of the estate.

¶ 26 Helen testified that she made a demand on the estate in the amount of \$130,000 in order to resolve the dispute with the executor. She then made a demand of \$120,000. She explained that she sought a settlement because she was concerned with questions of fraud with regard to the administration of the estate. She acknowledged that she made the \$120,000 demand after the executor had already agreed to sell this land for \$440,000. She further explained that the value of her portion of the estate was approximately \$60,000, her attorneys had advised that the damages could be three times that value, and that she felt that it was best for everyone if she started negotiations at \$130,000 and "see what they're willing to do." She also demanded that she and her brother receive the \$150,000 increase in the value of the 171-acre tract because the other legatees were not concerned about the increase in the value to the estate.

¶ 27 Larry Linnell, who was employed as a senior staff land man with an oil and gas exploration company, testified that executed mineral deeds were required to lease mineral

rights. He also testified that it was not cost effective to run mineral titles before a lease was signed.

¶ 28 After hearing the testimony and receiving written arguments of counsel, the trial court entered an order by docket entry denying Helen's citation to remove the executor. In the order, the court found that the executor "has performed his duties in this estate under trying circumstances in light of the persistent and continual opposition" of Helen. The court found that although Helen raised the issue concerning the price of the real estate, which increased the value of the estate to the benefit of all heirs, "much of her conduct and the way she has sought answers to perhaps otherwise reasonable inquires, have cost the estate time and fees." The court also made the following findings: that the executor had taken reasonable steps to determine the mineral interests of the estate and to marshal the estate's assets; that the executor had timely filed a bond, the inventories, and an accounting when ordered in light of the protracted litigation; that the executor had acted in good faith throughout the tenure of his duties despite his admitted error in advancing executor fees and attorney fees without court order; and that the executor remained suitable for the discharge of the representative's duties.

¶ 29 Furthermore, the trial court found that the executor was entitled to a reasonable fee and set the fee at \$75 per hour after considering the factors set forth in Illinois case law and the fact that he had previously paid himself without court approval. On July 25, 2014, Helen filed a motion to reconsider the court's June 2014 order. In the motion, Helen argued that the court's denial of her petition to remove the executor was against the manifest weight of the evidence. Citing evidence not contained in the record, Helen

argued that the executor's failure to investigate the tax liability issue warranted his removal as executor of the estate. Further, she argued that the court erred by awarding the executor \$75 per hour for his fees as executor of the estate.

¶ 30 On August 7, 2014, the trial court entered an order by docket entry, denying Helen's motion to reconsider with regard to the issue concerning the removal of the executor. The court first noted that its previous findings that Helen had persistently and continually opposed the executor in his performance of his duties had cost the estate both time and money, and that in some instances, Helen had exhibited bad faith.

¶ 31 The trial court noted that these findings were "best summarized by [Helen's] pursuit of the sale of the 171 acres for \$440,000." The court noted that it took a motion to compel before Helen produced the appraisal which confirmed the increased value and that once the appraisal was produced, her demand was met. She then later objected to the sale of the real estate at the agreed-upon price and filed a motion to vacate the court's ruling on the issue before withdrawing this motion on the date of the hearing. In December 2013, after the property was sold, Helen then filed a petition for rule to show cause, alleging that the property was never transferred and that this was filed without "her attorney ever picking up the telephone to inquire of the executor's attorney if the property had been transferred." The court found that these actions were "typical of Helen's *** litigious nature throughout these proceedings even when her demands [were] met." The court noted that it could have easily sanctioned her for her actions, but exercised its discretion not to do so.

¶ 32 The trial court concluded that Helen's arguments regarding the executor's alleged dereliction of duties were without merit and the issue of any alleged federal estate tax liability from an earlier estate was based entirely upon speculation. The court noted that there was nothing in the record or any offer of proof to support this issue, and that Helen's arguments were based on her attorney's assertions. The court noted that her attorney did not testify as an expert in this matter and therefore his arguments were not supported by the record. Helen appeals.

¶ 33 On appeal, Helen argues that the trial court's denial of the petition to remove the executor was against the manifest weight of the evidence. Helen also argues that the court erred in awarding executor fees in the amount of \$75 per hour.

¶ 34 The standard of review for removal of an executor under section 23-2 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/23-2 (West 2012)) is whether the trial court's decision was against the manifest weight of the evidence. *In re Estate of Debevec*, 195 Ill. App. 3d 891, 897 (1990). Section 23-2 of the Probate Act (755 ILCS 5/23-2 (West 2012)) sets forth the following, in pertinent parts, grounds by which the trial court may remove an executor: the representative wastes or mismanages the estate; the representative fails to give sufficient bond after being ordered by the court to do so; the representative fails to file an inventory or accounting after being ordered by the court to do so; the representative becomes unsuitable for the discharge of his duties to the estate; or there is other good cause. The power of the trial court to remove the executor may be exercised only for good cause reflected in the record. *In re Estate of Lucas*, 71 Ill. 2d 277, 281 (1978). The party seeking removal of the executor maintains the burden of

establishing a *prima facie* case for removal based on reasonable grounds. *Id.* at 281-82; *In re Estate of Kirk*, 242 Ill. App. 3d 68, 73 (1993). If the petitioner sustains her burden, the burden then shifts to the executor to prove his fitness to remain in the position. *Id.*; *Kirk*, 242 Ill. App. 3d at 73.

¶ 35 In this case, the petitioners argue that the executor should be removed for the following reasons: he has mismanaged the estate assets by not properly investing those assets; he paid the estate attorney and himself for his executor's fees without prior authorization of the court after independent administration was terminated; he has failed to file a timely bond in the required amount; he has failed to file timely inventories and an accounting of the estate; he has failed to marshal the estate's assets, specifically the unknown mineral rights in the land; and he has failed to investigate a possible tax liability that resulted from the transfers of land from the decedent's father and from that estate. We conclude that the petitioners have failed to maintain their burden of establishing a *prima facie* case for removal based on reasonable grounds as follows.

¶ 36 The first ground that the petitioners assert as a basis for removal is that the executor failed to properly invest the estate's assets in an interest-bearing account. At the hearing, the executor explained that he did not invest the estate's assets because the estate did not contain a large sum of liquid assets before the sale of the real property and he believed that the estate was fairly simple and the estate administration would be completed within a short period of time. He explained that for these reasons, it was not practical to put the money in an interest-bearing account as the interest rates were

between 1% and 2%. Following the removal hearing, the executor agreed to place the money in an interest-bearing account.

¶ 37 After hearing the testimony, the trial court concluded that the executor had acted in good faith throughout his tenure as executor and that he remained suitable for the discharge of the representative's duties. In determining whether the petitioner has presented a *prima facie* case, "the court must weigh the evidence, pass on the credibility of the witnesses, draw reasonable inferences and generally consider the weight and quality of the evidence." *Kirk*, 242 Ill. App. 3d at 73. After carefully reviewing the record, we cannot say that the trial court's refusal to remove the executor based on his failure to immediately invest the estate's assets was against the manifest weight of the evidence. Furthermore, we note that Helen offered no evidence or testimony as to the prevalent interest rates or what the estate would have gained had the executor immediately placed the money into an interest-bearing account.

¶ 38 The second ground advanced by the petitioners as a basis for removal is that the executor admittedly made payments to himself and the estate's attorneys after independent administration of the estate was terminated. The executor acknowledged that he made a mistake by making the payments after independent administration was terminated. However, despite this admitted mistake, the trial court concluded that he had acted in good faith throughout his administration of the estate. When determining the amount of fees to award the executor in compensation for acting as executor, the court considered the fact that the executor had paid himself \$15,000 out of estate assets without

court approval. We cannot say that the court's decision was against the manifest weight of the evidence.

¶ 39 The third ground for removal advanced by the petitioners is the executor's failure to file a written bond in the statutorily required amount. Pursuant to section 12-2(a) of the Probate Act (755 ILCS 5/12-2(a) (West 2012)), before undertaking the representatives duties, every individual representative must take and file an oath or affirmation that the individual will faithfully discharge the duties of the office according to the law and shall file in and have approved by the court a bond binding the individual representative to do so. However, section 12-2(b) of the Probate Act (755 ILCS 5/12-2(b) (West 2012)) creates the following exception to the written bond requirement: where the bond is excused by the will, the bond of the representative in the amount from time to time required under this article shall be in full force and effect without writing, unless the court requires the filing of a written bond.

¶ 40 In this case, the decedent's will provides as follows with regard to the filing of a bond: "I direct that no surety or other security shall be required on any official bond required of [him] as executor." Pursuant to this language and section 12-2(b) of the Probate Act, the executor was not required to file a written bond unless ordered to do so by the trial court. After reviewing the record, we did not find a court order requiring the executor to file a written bond prior to the executor agreeing to increase the bond amount at the April hearing. The court found that the bond was timely filed. As for the amount of the bond that the executor did file, the executor explained that he obtained a bond in the amount of \$67,456, which was less than the value of the estate, based on advice of

counsel. Following the hearing, he agreed to increase the bond as appropriate under the law. Accordingly, we conclude that the court's refusal to remove the executor based on these actions was not against the manifest weight of the evidence.

¶ 41 The fourth ground the petitioners assert as a basis for removal is that the executor failed to file timely inventories and an accounting. As previously noted, the failure to file an inventory or accounting after being ordered by the court to do so is one ground for removal of the executor. 755 ILCS 5/23-2(7) (West 2012). The executor had no duty to file an inventory with the court when the estate was under independent administration. 755 ILCS 5/28-6(a), 28-8 (West 2012). However, pursuant to section 28-6 of the Probate Act (755 ILCS 5/28-6 (West 2012)), the executor is required to provide any interested person a copy of the inventory upon written request. Also, under supervised administration, the executor is required to file the inventory with the court within 60 days after the issuance of the letters. 755 ILCS 5/14-1 (West 2012).

¶ 42 Despite the petitioners' argument that independent supervision should have been terminated earlier in the proceedings, the administration of this estate was not converted to supervised administration until August 26, 2013. The record reflects that although the initial inventory was not filed with the court, the executor did provide Helen with an inventory after she had requested it. Thereafter, the executor voluntarily filed an inventory on April 13, 2013, and a supplemental inventory on October 16, 2013, which included the newly discovered mineral rights in the land. The court found that the executor timely filed an inventory when ordered to do so, and we cannot say that this finding was against the manifest weight of the evidence.

¶ 43 The accounting is due to be filed within 60 days after the expiration of 12 months after the issuance of letters or within such further time as the court allows and thereafter whenever required by the court until the administration is completed. 755 ILCS 5/24-1 (West 2012). The trial court issued letters in this estate on May 8, 2012. Therefore, the first accounting would have been due July 8, 2013. During the hearing, it was argued that there was an agreement reached between prior counsel for Helen, the executor, and the court that due to various pending real estate sales, the deadline for filing the first accounting would be delayed until the real estate transactions closed. The executor's appellate counsel argues that this agreement was reflected in the court's August 26, 2013, docket entry, which states that the accounting will take place within three months, and the court's August 27, 2013, written order, which states that "[a]n accounting/status conference shall be held on *** November 25, 2013."

¶ 44 On October 9, 2013, a motion to continue the hearing was filed by the estate's counsel, noting that the case was scheduled for a status conference and "first formal accounting" on November 25, 2013; that the auction for the remaining real estate was scheduled for December 7, 2013; and that the final closing would be within 30 days of the sale. Consequently, the motion requested that the hearing date be continued until after the real estate closing. Thereafter, the court granted this motion and the hearing was rescheduled to February 25, 2014. The executor filed the accounting on February 25, 2014. The petitioners argue that the executor was required to file the accounting by July 8, 2013. However, the court found that the executor had filed a timely accounting when

ordered by the court. Accordingly, based on this record, we cannot say that the court's decision was against the manifest weight of the evidence.

¶ 45 The next ground for removal argued by the petitioners is that the executor failed to marshal the estate's assets, specifically the mineral interests in the real estate. The executor testified that he did not run any title searches on any unknown mineral rights belonging to the estate because it would be costly and time consuming. This was supported by Larry Linvell, who testified that it was not cost effective to run mineral titles before leases are signed. After hearing the testimony, the trial court concluded as follows with regard to this issue: "While an heir may disagree with the extent and efforts that a representative employs to marshal the assets of an estate, the evidence in this case is that the executor has taken reasonable steps to determine the mineral interests of the estate and to so marshal the assets of this estate." Helen testified that she obtained a title search to locate additional mineral rights belonging to the estate. However, she testified that she did not locate any unaccounted-for property from the title search. The record contains no evidence as to what mineral interests the executor failed to include in the inventory. Accordingly, the trial court's finding was not against the manifest weight of the evidence.

¶ 46 The last ground for removal asserted by the petitioners is that the executor failed to investigate a possible tax liability that resulted from transfers of land from the decedent's father and that estate. During the removal hearing, the executor testified that he does not know what land, if any, was transferred from the decedent's father's estate to the decedent. He acknowledged that it was "possible" that there was some land

transferred to the decedent after his father's death. He was unaware of any tax liability arising from any such transfers. He acknowledged that he did not investigate the issue after Helen brought it to his attention, explaining that he was relying on advice of counsel and it was not certain that any transfers had occurred.

¶ 47 There was no further evidence presented at this hearing as to the potential tax liability. In her motion to reconsider, Helen alleged that certain transfers of land occurred from the decedent's father, James H. Meyers, to James' sons and additional land transfers were made after James' death. The motion alleged that no gift tax was ever paid on these transfers. The motion alleged that the legatees of the decedent's estate could potentially be liable for the payment of the outstanding gift and estate taxes owed following the administration of the James H. Meyers' estate and that the executor had taken no action to protect them.

¶ 48 After considering the motion to reconsider, the court concluded as follows: "the issue of any alleged federal estate tax issue from an earlier estate is based entirely upon speculation. There is nothing in the record nor any offer of proof to support this issue other than [counsel's] assertions. [Helen's counsel] did not testify as an expert and thus his arguments are not supported by the record." After carefully reviewing the record, we agree with the trial court. There was no evidence introduced at the removal hearing to support counsel's assertions. Instead, in the motion to reconsider, there were allegations concerning informal discussions in chambers during the hearing, but there is nothing contained in the record concerning the content of these discussions. There is no offer of proof from the petitioners' counsel in the record pertaining to these discussions.

Accordingly, we conclude that the court's decision was not against the manifest weight of the evidence.

¶ 49 Last, Helen argues that the trial court erred in awarding the executor \$75 per hour for his fees for the administration of the estate. Executors are entitled to "reasonable compensation" for their services. 755 ILCS 5/27-1 (West 2012). A trial court has broad discretion to determine what constitutes "reasonable" compensation, and a reviewing court will overturn the award only where the court's determination is manifestly or palpably erroneous. *In re Estate of Coleman*, 262 Ill. App. 3d 297, 299 (1994). This decision of what constitutes "reasonable compensation" is determined on a case-by-case basis. *In the Estate of Weeks*, 409 Ill. App. 3d 1101, 1109 (2011). The court will consider the following factors when making its determination: the size of the estate; the work completed; the skill evidenced by the work; the time expended; the success of the efforts involved; good faith; and the efficiency with which the estate was administered. *In re Estate of Elias*, 408 Ill. App. 3d 301, 322 (2011).

¶ 50 In this case, the trial court stated as follows regarding the executor's fee: "The executor is entitled to a reasonable fee which the court determines in this case to be at \$75 per hour after considering the factors set forth in Illinois case law and that the executor previously paid himself without court approval." Helen argues that the fee was unreasonable because the executor had no experience or training as an executor, had done minimal research as to what his duties as an executor would be, and could not state anything that his attorneys had told him with regard to his duties as an executor. The court heard these arguments and was in the best position to set an executor fee that was

customary to those in the community. See *Weeks*, 409 Ill. App. 3d at 1109 (the probate court has the requisite skill and knowledge to decide what is fair and reasonable compensation). Therefore, we cannot find that the trial court's award of \$75 per hour was manifestly or palpably erroneous.

¶ 51 In conclusion, a review of the trial court's findings and the record leads us to conclude that the decision to deny Helen's citation to remove the executor was not against the manifest weight of the evidence. Furthermore, the court's decision to award the executor \$75 per hour for his fees in administering the estate was not manifestly or palpably erroneous. Thus, the trial court's judgment is affirmed.

¶ 52 For the foregoing reasons the judgment of the circuit court of Jefferson County is hereby affirmed.

¶ 53 Affirmed.