

NOTICE

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2016 IL App (4th) 150721-U

NO. 4-15-0721

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 24, 2016
Carla Bender
4th District Appellate
Court, IL

In re: the Estate of JAMES D. LEVITT,)	Appeal from
Deceased,)	Circuit Court of
MEREDITH A. CARGILL,)	Sangamon County
Petitioner-Appellant,)	No. 09P104
v.)	
MARCIA J. FIDLER,)	Honorable
Respondent-Appellee.)	Leslie J. Graves,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in the disbursement of estate funds.

¶ 2 In February 2009, petitioner, Meredith A. Cargill, was appointed executor of the estate of James D. Levitt and trustee of a scholarship fund established by decedent's will. Edith Barnes was listed as a successor executrix and trustee. In November 2011, respondent, Marcia J. Fidler, filed a petition to show cause, alleging Meredith failed to account and to fund the trust. In May 2012, the trial court removed Meredith as executor/trustee and appointed Marcia as successor executrix/trustee. Meredith and Edith appealed, and this court affirmed in part, reversed in part, and remanded for further proceedings. In September 2012, the trial court entered an order authorizing the successor trustee to disburse the remaining estate funds. After Meredith and Edith appealed, this court vacated the trial court's judgment in the absence of a

final written order and dismissed the appeals. In April 2015, the trial court entered its written order on the disbursement of funds.

¶ 3 On appeal, Meredith argues the trial court erred in its disbursement of estate funds. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On February 6, 2009, James Levitt died, leaving no surviving spouse or descendants. On February 20, 2009, Meredith filed a petition for probate of will and for letters testamentary. On February 24, 2009, the trial court entered an order admitting the will to probate and issuing letters of office to Meredith as executor.

¶ 6 In his will, decedent stated all of his property, with certain limited exceptions, was to be sold by his executor. Decedent nominated Meredith, his nephew, to serve as executor, with Edith and Bank of Springfield to follow, respectively, if necessary. Decedent's will also established a scholarship trust "to provide scholarships for the undergraduate or graduate education of persons selected by the Trustee[,] including [decedent's] relatives and friends." Decedent nominated Meredith to serve as trustee, with Edith and Bank of Springfield to follow, if necessary.

¶ 7 In March 2009, Marcia, decedent's sister, filed a petition to require formal proof of the will. Marcia claimed the will was admitted to probate before notice in accordance with section 6-10(a) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/6-10(a) (West 2008)). In May 2009, the trial court heard testimony and admitted the will to probate.

¶ 8 In November 2011, Marcia filed a petition to show cause for failure to account and to fund the scholarship trust under decedent's will. Marcia claimed Meredith, the duly appointed executor, failed to account and fund the trust created under decedent's will. Marcia

also claimed Meredith would not have registered the trust as a charitable trust with the Illinois Attorney General's office absent her efforts. Marcia sought a hearing to show cause as to why Meredith should not be removed from the office of executor.

¶ 9 In March 2012, Meredith filed a petition to sell real estate. Therein, Meredith indicated decedent's will provided for the funding of the scholarship trust out of the net proceeds of the estate. The trial court entered an order approving of the sale.

¶ 10 In April 2012, Meredith filed claims for services as power of attorney and other services and expenses prior to decedent's death, for services contracted by the estate, and for services as executor of the estate and trustee of the scholarship trust. Meredith also filed a final account for the estate.

¶ 11 Also in April 2012, Meredith filed a document entitled "Recapitulation," indicating the current balance of the estate was \$34,269.68. He proposed to distribute the remaining assets as follows: \$745 for attorney fees; \$5,550 to Edith for services as power of attorney for health care; \$5,558.22 to Meredith for services as power of attorney prior to decedent's death; \$3,146.67 to Meredith for contracted services to the estate; \$6,292.74 to Meredith as executor and trustee; and the remaining balance to the scholarship trust.

¶ 12 In May 2012, Marcia filed an objection to the final account and proposed distribution of the executor. Marcia claimed Meredith did not attempt to liquidate the estate's assets until late 2011 and the first quarter of 2012. From the net estate of \$34,269.58, Meredith and decedent's sister, Edith, claimed fees as attorneys in fact and/or as executrix of \$17,400.96. Marcia stated her fear that if Meredith were allowed to continue as trustee, his claim for trustee fees would heavily impact what little remained to be used as funds in the educational trust. Marcia also objected to the claims for fees by Meredith and Edith, arguing they were not filed

within the applicable six-month period under section 18-3 of the Probate Act (755 ILCS 5/18-3 (West 2012)) and were barred two years after decedent's death (755 ILCS 5/18-12(b) (West 2012)).

¶ 13 Meredith filed an answer to the petition to show cause, stating removing him as executor would be of no benefit to the estate because few tasks remained to be undertaken.

¶ 14 At the hearing on these matters on May 4, 2012, Marcia appeared with counsel. Meredith appeared *pro se*. Meredith testified he had an auction sale of decedent's house in the spring of 2012. He did not sell it sooner because it was not ready to sell. Six grants out of the educational trust were made in 2012. He did not make any disbursements in the previous three years because he was using capital of the estate to improve the property to maximize its sale value. Meredith admitted he had proceeded "slowly and haphazardly" getting the property ready for sale. On examination by the trial court, Meredith stated he spent most of his time during the first year in which the house sat dormant cleaning out trash. He did the same "off and on" the next year. Meredith received funds from the estate for the work he performed.

¶ 15 After Marcia's counsel indicated he had nothing further, the trial court allowed Meredith time to respond to Marcia's petition. Meredith made a motion that Marcia had no legal standing as an interested person to bring the petition. The court denied the motion. Meredith then relied upon his written response.

¶ 16 The trial court granted Marcia's motion. The court found Meredith's work was "sloppy" and did not enhance the best interest of the estate. The court then asked the name of the successor as named in the will. Meredith interjected an objection to being removed as trustee of the trust, claiming he could continue as trustee even if not the executor of the estate. The court disagreed. The named successor in the will was Edith, but the court stated it would not appoint

her based on what the court saw "in the documentation that it would be better to have a person that has not been involved in the neglect of taking care of business." The court believed that since Edith's name appeared in several places as it related to being paid, naming her would not be in the best interest of the estate and the trust.

¶ 17 Meredith told the trial court that the second successor named in the will was Bank of Springfield. When the court asked counsel what the bank charged for its services, counsel stated the minimum fee would be \$1,500 plus the fee structure. Marcia did not think she would charge anything. In naming Marcia as successor, the court found it best for potential recipients of the scholarship trust that the money not be spent on lawyers and banking fees.

¶ 18 In its written order, the trial court made its finding that Meredith failed to show good cause for failing to account for more than three years since decedent's death until the sale of the real estate and the administration was not pursued with due diligence. Further, the charitable trust was not funded in a diligent manner. The court found it in the best interest of the estate that Meredith be removed as executor-trustee and that the successor executrix-trustee not be appointed because of her involvement with Meredith. The court also found the corporate successor "would be too great an expense for a trust of this size" such that a new successor executor-trustee should be appointed. The court appointed Marcia as successor executrix of the estate and successor trustee of the trust.

¶ 19 On May 31, 2012, the trial court held a settlement conference on any outstanding estate claims. The court found claims for fees by Meredith and Edith were barred by the statute of limitations. The docket entry indicates Marcia's attorney would prepare the written order.

¶ 20 In June 2012, Meredith and Edith filed a notice of appeal, asking this court to reverse the trial court's decision to remove Meredith as executor and trustee and/or the decision

to appoint Marcia as successor trustee. Meredith also filed a motion to stay the judgment requiring him to transfer all accounts to Marcia. Meredith feared Marcia could disburse funds to the scholarship recipients and deplete the estate to the point where it would be impossible to pay claims brought by Meredith and Edith.

¶ 21 In February 2013, this court found the trial court did not err in removing Meredith as executor but did err in passing over Edith as successor executrix. *In re Estate of Levitt*, 2013 IL App (4th) 120548-U, ¶¶ 25, 32. We also found the court did not err in removing Meredith as the scholarship trustee but did err in passing over Edith as successor trustee without a finding she could not serve. *Levitt*, 2013 IL App (4th) 120548-U, ¶¶ 36, 40. We remanded for a hearing on whether Edith could serve as a successor trustee. If she could not or refused to do so, the court was to appoint the Bank of Springfield as successor trustee. *Levitt*, 2013 IL App (4th) 120548-U, ¶ 40.

¶ 22 While the appeal was proceeding in this court, issues pertaining to the disbursement of scholarship funds arose. On August 3, 2012, Meredith filed an application for scholarship from the trust, seeking financial aid to reimburse for travel costs to Nevada to view a solar eclipse that took place in May 2012.

¶ 23 Also on August 3, 2012, the trial court held a hearing, where Marcia's counsel proposed that the trustee award scholarships from the money remaining to Noah Russell, Ian Russell, and Christopher Fidler. Neither Meredith nor Edith appeared at this hearing. Counsel raised the question of how much of the total remaining in the estate should be reserved to cover any of Meredith's fees as former executor and trustee. The court suggested, "to be on the safe side," counsel award \$9,000 to each individual and hold back \$3,000 until the matter is completed.

¶ 24 On September 24, 2012, the trial court held a hearing to consider whether to sign the order memorializing its decision from the previous hearing. Meredith appeared, and he raised the issue of the motion to stay the judgment filed on June 13, 2012. Meredith asked that the transfer of the accounts be stayed until the appeal was resolved. Meredith also filed a motion to amend the motion to stay the judgment, asking the court "to cancel the order that removed [him] as executor and as trustee. That would permit [him] to go ahead and pay some of those scholarship claims, including those that [Marcia] has received recently."

¶ 25 The trial court's September 24, 2012, written order authorized the successor trustee to collect all remaining funds of the estate and trust and divide them equally between Noah Russell, Ian Russell, and Christopher Fidler. The court ordered that, upon the transfer of the funds by the successor trustee, a final account was to be filed and, upon approval, the successor executor and trustee would be discharged and the estate closed. The court also ordered Meredith to turn over all estate assets to Marcia. Upon the transfer of all the funds, Meredith would be discharged as trustee of the testamentary trust and as executor of the will when the court was satisfied the transfer of assets was complete.

¶ 26 In October 2012, Meredith and Edith filed motions to reconsider the trial court's decision on their estate claims and its September 24, 2012, order. In November 2012, the trial court held a hearing on the motions and denied them. Meredith and Edith appealed.

¶ 27 In the consolidated appeals, this court vacated the trial court's judgment and dismissed the appeals. *In re Estate of Levitt*, 2013 IL App (4th) 120707-U, ¶ 3. We found no final written order had been entered as to the denial of the claim for fees, and thus we had no jurisdiction to consider the propriety of the court's decision on the claims for services. *Levitt*, 2013 IL App (4th) 120707-U, ¶ 34. We also vacated the court's September 24, 2012, order

permitting the executor-trustee to award certain scholarships, finding it to be null and void.

Levitt, 2013 IL App (4th) 120707-U, ¶ 39.

¶ 28 In March 2013, Meredith filed a petition to reappoint himself as executor of the estate. Edith also filed a motion to appoint herself as executrix and trustee. In April 2013, the trial court denied Meredith's petition, granted Edith's motion, and appointed her as executrix and trustee.

¶ 29 In January 2014, Edith filed a motion to approve accounting. In February 2014, the trial court appointed Kevin McDermitt as special representative to review the claim by the parties and attorneys and advise the court.

¶ 30 In April 2014, McDermitt filed his review of the claims, including Meredith's claims for services as power of attorney, executor, and trustee; Edith's claims for services as power of attorney and executor; and attorney fees for representation of Edith. As to Meredith's claim of April 20, 2012, for \$5,558.22 for services and expenses as power of attorney, McDermitt stated Meredith filed his claim beyond the filing deadline of February 5, 2011. McDermitt also stated a payment of \$1,000 should be refunded or credited to the estate because Meredith was acting in a fiduciary capacity and paid himself out of the estate without court approval.

¶ 31 As to Meredith's claim for \$6,335.30 as executor and trustee, McDermitt stated Meredith spent approximately 3 years liquidating the estate's assets, when the process should have taken 12 to 18 months. McDermitt recommended Meredith be paid \$6,335.30, less the \$1,000 payment he received without authorization. As to Meredith's claim for \$3,146.67 for services contracted by the estate, McDermitt recommended it be allowed in the amount of \$2,072.52.

¶ 32 In April 2015, the trial court entered its written order on the disbursement of funds. The court found Meredith's claim for services as power of attorney was untimely. The court ordered Meredith to repay the estate the \$1,000 he paid to himself on August 29, 2009. As to Meredith's claim as executor and trustee, the court noted he initially claimed \$12,774.69, but he reduced that amount to \$6,335.30. The court disagreed with the suggested reductions, finding Meredith "not only failed to act as an ordinarily prudent and cautious person in handling the property of the decedent, but his actions throughout the entire pendency of this litigation have been damaging to the value of the Estate and contrary to the stated testamentary provisions of the will." The court found the "inordinate amount of time and money" Meredith spent relative to the size of the estate to be "baffling." After reviewing the itemized claims and noting Meredith "spent too much and wasted so much time that the people for whom the Trust was meant to benefit were left without," the court awarded Meredith 10% of his original claim, for a total of \$1,277.47. As to Meredith's third claim, the court also awarded him 10% of the original claim, for a total of \$314.67.

¶ 33 In May 2015, Meredith filed a motion to reconsider. In August 2015, the trial court denied the motion. This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 A. Executor Compensation

¶ 36 Meredith argues the trial court erred in its award of compensation as executor of the estate. We disagree.

¶ 37 Under section 27-1 of the Probate Act (755 ILCS 5/27-1 (West 2012)), an executor is entitled to reasonable compensation for his services. "The trial court has broad discretion in determining what constitutes 'reasonable' compensation." *In re Estate of Thorp*,

282 Ill. App. 3d 612, 619, 669 N.E.2d 359, 364 (1996). The court's determination of a reasonable fee must be based on the facts and circumstances of the particular case. *In re Estate of Coleman*, 262 Ill. App. 3d 297, 299, 634 N.E.2d 314, 316 (1994). "The factors to be considered include the size of the estate, the work involved, the skill evidenced by the work, time expended, the success of the efforts involved, and the good faith and efficiency with which the estate was administered." *Thorp*, 282 Ill. App. 3d at 619, 669 N.E.2d at 364. For a reviewing court to alter the trial court's award of fees, "the court must find that the trial court's determination was manifestly or palpably erroneous." *In re Estate of Marshall*, 167 Ill. App. 3d 549, 553, 521 N.E.2d 637, 640 (1988); see also *Thorp*, 282 Ill. App. 3d at 619, 669 N.E.2d at 364 (probate court's determination of reasonable fees will not be overturned on appeal unless it is manifestly erroneous).

¶ 38 In the case *sub judice*, Meredith originally sought \$12,774.69 in reimbursement for expenses incurred as executor and trustee. He later voluntarily reduced that amount to \$6,335.30. The trial court awarded him \$1,277.47. In doing so, the court found Meredith "failed to act as an ordinarily prudent and cautious person in handling the property of the decedent," mismanaged and damaged the value of the estate, and acted "contrary to the stated testamentary provisions of the will."

¶ 39 In determining the amount of reasonable compensation, "[t]he most important factor is the amount of time spent on the estate." *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1110, 950 N.E.2d 280, 287 (2011). The trial court found the "inordinate amount of time and money" Meredith spent relative to the estate's size was "baffling." In making its award, the court noted Meredith spent 36 months and almost \$20,000 to prepare a 940-square foot home for sale. The court found "[a] reasonable and prudent person could have repaired, cleaned out, cleaned up,

and put this house on the market by June 1, 2009." Further, \$2,322.90 of additional yard work was not reasonable. As an example of waste, the court pointed out Meredith spent \$7,615.65 to paint, prepare, and clean the house.

¶ 40 Decedent died in February 2009, and the administration of his estate, the litigation at the trial level, and the appeals to this court have extended into 2016. The trial court was in the best position to consider the evidence and the credibility of the parties involved. While the court did not believe Meredith intentionally depleted estate resources for personal gain, the evidence indicates Meredith's actions resulted in waste, inefficiency, and mismanagement. Given the small size of the estate and the large amount of time expended, the court found Meredith should be awarded only 10% of his original claim. We find the court's award of \$1,277.47 was not manifestly or palpably erroneous.

¶ 41 B. Power of Attorney

¶ 42 Meredith argues the trial court erred in finding his claim for services as power of attorney, including services and expenses before decedent's death, was not timely filed. We disagree.

¶ 43 According to section 18-8 of the Probate Act (755 ILCS 5/18-8 (West 2012)), "[i]f a representative or the representative's attorney has a claim against the estate, that person must file a claim as other persons." Section 18-12(b) of the Probate Act (755 ILCS 5/18-12(b) (West 2012)) provides that "all claims which could have been barred under this Section are, in any event, barred 2 years after decedent's death, whether or not letters of office are issued upon the estate of the decedent." "A failure to file a claim within the statutory period is a bar to the claim, even if the executor had personal knowledge of the claim." *In re Marriage of Epstein*, 339 Ill. App. 3d 586, 597, 791 N.E.2d 175, 185 (2003).

¶ 44 In this case, decedent died on February 6, 2009. Meredith did not file his claim for services as power of attorney and other expenses until April 20, 2012, which was well beyond the two-year statute of limitation. However, Meredith contended he possessed a document indicating a general nature of his claim in 2009 but did not file it because section 18-1(a) of the Probate Act (755 ILCS 5/18-1(a) (West 2012)) permits a claim to be filed with the executor and, since he was the executor, he fulfilled his obligation under the Probate Act. Meredith claimed the April 2012 claim merely formalized the 2009 writing and was therefore timely. The trial court disagreed with Meredith, finding the only document he produced was the April 20, 2012, claim. Thus, the court denied Meredith's claim as not timely filed.

¶ 45 We agree with the trial court. A representative with a claim against the estate must file a claim as other persons. 755 ILCS 5/18-8 (West 2012). While a claimant may file a claim with the representative, who is not required to file the claim with the trial court (755 ILCS 5/18-1 (West 2012)), Meredith presented nothing within the limitations period indicating he intended to pursue his claim. Thus, Meredith's April 20, 2012, claim was untimely, and the court did not err in denying it.

¶ 46 C. Contracted Services

¶ 47 Meredith also argues the trial court erred in awarding him only \$314.67 for services contracted with the estate when he requested \$3,146.67. Meredith now asks this court to allow the full value of the claim. However, Meredith's brief offers nothing that would lead us to conclude the court's decision was erroneous and we decline to alter the court's award.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm the trial court's judgment.

¶ 50 Affirmed.