

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).

SIXTH DIVISION
September 26, 2014

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> ESTATE OF GERTRUDE PINON, Deceased)	Appeal from the
)	Circuit Court of
(Wayne Pinon, Ex'r, and Nancy Siedlecki,)	Cook County.
)	
Petitioners-Appellees,)	
)	
v.)	No. 08 P 791
)	
Gayle Borg,)	Honorable
)	James G. Riley,
Respondent-Appellant).)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶1 *Held:* The circuit court did not abuse its discretion in its rulings concerning the petitions for attorney and executor's fees and the division of the estate's jewelry among the two heirs.

¶2 Attorneys Nancy Siedlecki and Marc Blumenthal filed petitions for attorney fees and costs for work performed on behalf of Wayne Pinon, the independent executor of the estate of his deceased mother, Gertrude Pinon. Wayne also filed a petition for executor's fees. The circuit court awarded some but not all of the attorney and executor fees requested. The circuit court also

divided the estate jewelry among the two heirs, Wayne and his sister, Gayle Borg. Gayle moved the circuit court to reconsider those rulings, but the court denied her motion.

¶3 On appeal, Gayle contends: (1) the circuit court erred in awarding Siedlecki attorney fees for real estate closings because she failed to obtain court permission for payment taken from the proceeds of a real estate sale, was doubly compensated, and failed to properly itemize, describe and prove up her charges; (2) the circuit court erred in awarding executor's fees to Wayne and related attorney fees to Siedlecki and Blumenthal because Wayne breached his fiduciary duties to the estate and its heirs; and (3) the circuit court's division of estate jewelry was arbitrary and inequitable and should be reversed.

¶4 For the reasons that follow, we hold that the circuit court did not abuse its discretion in its rulings concerning the award of attorney and executor fees and the division of the estate jewelry.

¶5 I. BACKGROUND

¶6 In October 2007, Gertrude executed her will, which left half of her estate to each of her children, Wayne and Gayle, and named Wayne as executor. At the time, Gertrude owned three properties located in Chicago: 6601 64th Street; 4634 South Springfield Avenue; and 4636 South Springfield Avenue. Also in October 2007, the City of Chicago issued a complaint against the 64th Street property for various building code violations. Gertrude died in January 2008, and Wayne retained attorney Siedlecki to represent the estate in probate court. Wayne signed an agreement to pay Siedlecki her fee of \$225 an hour and to reimburse her for any services or disbursements she advanced to the estate.

¶7 The will was admitted to probate in March 2008, and the petition listed the approximate value of the real property as \$500,000, the personal property as \$0, and the annual income from the real estate as \$10,800. In April 2008, the 4636 South Springfield Street property was sold for

\$133,000 and provided a net to the estate of \$119,000. In July 2008, Gayle signed a general release for Wayne and attorney Siedlecki that released any and all claims regarding the estate administration prior to that date. In August 2008, attorney Siedlecki petitioned the court for an early distribution of \$1,000 on behalf of Gayle due to her financial need. At that time, the appraised value of the 4634 South Springfield Avenue property (the Springfield property) was \$207,000, and the 64th Street property was \$317,000. The court granted that petition.

¶8 The estate hired Nationwide Services Inc., which was the company of Wayne's brother-in-law Karl Lehtinen, to provide materials and make necessary repairs and improvements to the estate's properties. According to the executor's court filings, extensive repairs akin to total reconstruction of the 64th Street property were required by the city's administrative action and protection and preservation of the property. These repairs included, but were not limited to, re-plumbing to the curb, basement wall removal, electrical rewiring, re-siding, new walls, new kitchen, and new baths. Eventually, Nationwide Services Inc. filed a lien foreclosure suit asserting a claim for payment for the contracting services and materials supplied to the estate's multiple properties. Nationwide Services Inc. sought over \$67,000, plus attorney fees in excess of \$16,000. Consequently, the estate retained attorney Blumenthal to handle the lien litigation, which ultimately settled for approximately \$42,000.

¶9 In December 2009, Wayne as executor submitted the first account, which covered the time period since March 13, 2008. The first account indicated that the estate's outstanding attorney fees and construction bills exceeded its net available funds. The total receipts were \$127,096.43; the total disbursements were \$105,757.15; and the net available for distribution was \$21,339.28.

¶10 During the probate proceeding, Gayle occupied the Springfield property, and Wayne alleged that she did not pay any rent or utility bills. Wayne also alleged that she failed to inform

the estate of damage to the property from flooding in July 2010, failed to make any repairs, and interfered with the estate's attempts to show and sell the Springfield property. On behalf of the estate, attorney Siedlecki obtained court orders that authorized the sale of the Springfield property and required Gayle to cooperate with the sale and vacate the property. In addition, Siedlecki represented the estate in the real estate closings. She also represented the estate in the administrative proceedings concerning the 64th Street property building code violations and the eviction proceedings for the tenant at that property.

¶11 In March 2011, Wayne submitted the second account, which covered the time period since November 6, 2009. The total receipts were \$21,376.87; total disbursements were \$21,198.11; and the net available for distribution was \$178.76.

¶12 In August 2011, Gayle filed an objection to the first account. She objected to several disbursements and alleged that Wayne breached his fiduciary duty by compensating his brother-in-law, through Nationwide Services Inc., to improve the 64th Street property and by over-improving that property given the area it was situated in.

¶13 In September 2011, the probate court granted possession of the Springfield property to Wayne as executor. It had been listed for sale since October 2010 and finally sold in February 2012 for \$102,000. The 64th Street property had been listed for sale since January 2010 and finally sold in August 2012 for \$150,000.

¶14 In October 2012, attorney Siedlecki filed her first amended petition for attorney fees incurred from February 2008 to January 2011 in the amount of \$32,152.41; second amended petition for attorney fees incurred from February 2011 to May 2012 in the amount of \$29,469.10; and third petition for attorney fees incurred since May 2012 in the amount of \$15,261.25.

Furthermore, Wayne filed an amended petition for executor's fees and expenses since January

2008 in the amount of \$7,851.87. In addition, attorney Blumenthal filed a petition for his attorney fees and costs in the amount of \$11,610.

¶15 Wayne also submitted in October 2012 the third and final account, which covered the time period from May 18, 2012 to the present. It listed total receipts of \$147,779.83; total disbursements of \$11,375.76; Siedlecki's attorney fees of \$76,882.76; tax consultant fees of \$1,300; Blumenthal's attorney fees of \$11,610; Wayne's executor fees and expenses of \$7,851.87; and a net available for distribution of \$38,759.44.

¶16 Gayle challenged on reasonableness grounds specific fees listed in Siedlecki's first amended, second amended, and third petitions for attorney fees. Gayle argued, *inter alia*, that much of the work could have been done by a paralegal to keep costs down, the billing statements lacked specificity, and some charges were duplicative. Gayle also challenged Wayne's petition for executor fees, contending that he had breached his fiduciary duty and his billing statement lacked specificity, was contradicted by attorney Blumenthal's petition for fees, and contained charges that occurred prior to the opening of the estate. In response to attorney Blumenthal's fee petition, Gayle argued that the estate should not be responsible for the legal services he rendered that were related to Wayne's breach of fiduciary duty. Gayle argued that any payments owed to Blumenthal should be deducted from any disbursements the estate owed to Wayne. Gayle objected to the third and final account, complaining, *inter alia*, that Siedlecki's attorney fees were excessive, failed to benefit the estate, and were unreasonable and duplicative. Gayle also argued that Wayne's executor fees and expenses were excessive, unreasonable, and failed to show benefit to the estate.

¶17 The cause was set for hearing in December 2012 on the issues of the attorney fees, executor fees and the accountings. According to the record, attorneys Siedlecki and Blumenthal were

cross-examined concerning their fee petitions by Gayle's counsel at hearing sessions on two separate dates. Although Gayle sought to require Wayne to travel from Florida for cross-examination concerning his fee petition, the court reviewed Wayne's medical affidavit and found him unable to travel due to his deteriorating health.

¶18 At the hearing on Gayle's objections to Siedlecki's fees, Siedlecki stood on her filed petitions with the exception of an erroneous double billing for a zoning application. When Gayle's counsel began to question Siedlecki about a specific item in her fee petition, the probate court sustained Siedlecki's objection on the grounds that Gayle had failed to challenge that specific item in her written objections and the general release she had signed released any and all claims pertaining to the estate administration prior to July 17, 2008. The court instructed Gayle's attorney that anything that occurred prior to July 17, 2008 would not be part of the hearing and counsel should limit his questioning to the specific written objections Gayle had filed in response to work Siedlecki performed for the estate after July 17, 2008.

¶19 On December 19, 2012, the court granted Siedlecki attorney fees in the reduced amount of \$57,409. On January 17, 2013, the court granted Wayne executor fees in the reduced amount of \$3,880.04. Also on January 17, 2013, the court granted Blumenthal attorney fees and costs in the reduced amount of \$10,866. On February 26, 2013, the court approved, over the objection of Gayle's attorney, the amended first, second, and third and final accounts.

¶20 On March 20, 2013, the court approved the amended third and final account, which showed a balance of \$62,981.31 available for distribution. The court also addressed the estate's petition for reimbursement, found that Gayle had occupied the Springfield property, and ruled that the estate was entitled to reimbursement from Gayle of \$10,500 in partial costs for rent and utilities. The court also ruled that the \$2,000 advance distributions Gayle had already received would be

deducted from her 50% share of the estate's remaining balance. Moreover, if the parties did not agree to an in-kind 50/50 distribution of the estate jewelry before the next court date, then the entire jewelry lot would be produced in court for an in-kind distribution by the court. Finally, the court entered a finding, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), that there was no just cause to delay the enforcement or appeal of its March 20, 2013 order.

¶21 According to an inventory in the record, the estate's jewelry exceeded 100 items, and at one time a jeweler had made an offer to the estate to buy all the jewelry for \$13,894. Gayle, however, had objected to the sale of the jewelry. On April 9, 2013, the court divided the jewelry among the parties by placing into two bags an equal number of like items of jewelry and letting the winner of a coin toss select a bag first. On behalf of Wayne, Siedlecki won the coin toss and selected one of the two bags, and the remaining bag was given to counsel for Gayle. The court ordered the jewelry distributed to the parties as per the judge's division in court and without a receipt.

¶22 On April 11, 2013, Gayle filed a motion for reconsideration of the court's March 20, 2013 ruling. Thereafter, she received an extension of time to file a memorandum in support of her motion; however, the court stated that the estate was hemorrhaging money by responding to Gayle's motions and warned Gayle's counsel that the fees the estate would incur in responding to all of Gayle's filings would be charged against Gayle rather than the estate.

¶23 On July 26, 2013, the court denied Gayle's motion for reconsideration.

¶24 On July 31, 2013, Siedlecki filed a petition for supplemental attorney fees and costs from January to July of 2013 in the amount of \$9,953.65. Siedlecki argued that \$4,730.15 of that fee total should be deducted from Gayle's share as sanctions for her attorney's frivolous, untimely and meritless motions that delayed the estate administration.

¶25 On August 23, 2013, the trial court allowed the filing of the final report of the estate and granted Siedlecki supplemental fees of \$8,322.40, all of which would be deducted from Gayle's share. The court amended the third and final account on its face so that the net amount available for distribution was \$54,658.91, Gayle's share was reduced to \$10,668.25, Siedlecki's fees were increased to \$65,731.40, and Wayne's share was reduced to \$43,990.66.

¶26 On August 26, 2013, Gayle filed a notice of appeal of the July 26, 2013 order denying her motion for reconsideration. On appeal, Gayle challenges the attorney fees awarded to Siedlecki, the executor fees awarded to Wayne and the compensation awarded to his counsel, and the distribution of the estate jewelry.

¶27 II. ANALYSIS

¶28 A. Attorney Siedlecki's Fees

¶29 Gayle contends the probate court abused its discretion numerous times regarding Siedlecki's fees petitions. In general, the decision to award attorney fees is a matter within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *In re Estate of Callahan*, 144 Ill. 32, 43-44 (1991). The Probate Act of 1975 provides that executors and their attorneys are entitled to reasonable compensation for their administration of an estate. 755 ILCS 5/27-1, 27-2 (2008). What constitutes reasonable compensation in relation to the value of the services rendered must be determined on a case-by-case basis. *In re Estate of Thorp*, 282 Ill. App. 3d 612, 619 (1996). "The factors to be considered 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." *Id.* When the services rendered do not benefit the estate, the fees will be rejected. *In re Estate of Dyniewicz*, 271 Ill. App. 3d 616, 624 (1995). Ideally, the fee petitioners will present

contemporaneously made, detailed time records as evidence of the services performed, by whom the services were performed, the time expended thereon, and the hourly rate charged therefore. *In re Estate of Bitoy*, 395 Ill. App. 3d 262, 273 (2009).

¶30 First, Gayle contends Siedlecki improperly obtained excessive fees of \$3,458.79 for the sale and closing of the 4636 South Springfield Avenue property on April 18, 2008, without obtaining prior court approval or providing a breakdown of the time she allegedly spent on that transaction. Siedlecki responds that any claims by Gayle against her prior to July 17, 2008 are barred because Gayle signed a clear and unambiguous general release of any and all claims against Siedlecki concerning the estate administration prior to July 17, 2008, and the 4636 South Springfield Avenue closing occurred on April 18, 2008. Siedlecki also argues that Gayle has forfeited review of this claim by failing to include any challenge to these fees in the written objections she filed in the probate court to Siedlecki's fee petitions.

¶31 Gayle has failed to address the issues of forfeiture and the 2008 release in this appeal or make any coherent argument concerning why she should not be bound by the forfeiture or the terms of the release. “ ‘A reviewing court is entitled to have issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented on appeal are waived.’ ” *McCarthy v. Denkovski*, 301 Ill. App. 3d 69, 70 (1998) (quoting *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991)). We find that Gayle's arguments concerning Siedlecki's fees from the April 2008 closing are inadequately presented on appeal and, thus, waived.

¶32 Second, Gayle contends Siedlecki erroneously received \$6,187.50 in fees for the real estate closings of the 64th Street and Springfield properties. According to Gayle, the probate court erroneously doubly compensated Siedlecki for those two transactions because Siedlecki actually received a \$450 flat fee for those transactions and then deceived the probate court by claiming the

\$450 fee covered only two hours for her attendance at each closing. As a result of Siedlecki's alleged deception, she received a total of \$3,600 in attorney fees for the Springfield property closing, and a total of \$3,037.50 in attorney fees for the 64th Street property closing. Gayle contends these fees were excessive because both the Springfield and 64th Street properties were "simple, single family home closing[s]" and there was no benefit to the estate for any attorney fees above the \$450 flat fee paid to Siedlecki for the closings.

¶33 Gayle's argument lacks merit. Wayne's letter engaging Siedlecki's services agreed to pay her a \$225 hourly fee for services and reimburse her for any advancements made to the estate. Siedlecki presented detailed time records to support her claims for fees. Moreover, she testified extensively to the work she performed. The probate court considered the relevant evidence and, although the court disallowed some fees and costs, concluded that her services benefitted the estate and were reasonable. The accounts filed in court clearly listed the current balances, and the first account filed in December 2009 indicated that attorney fees and construction bills exceeded the net available estate funds. Consequently, all parties were informed of the status of the estate and were aware of the work that was being performed, the disbursements made, who was performing work for the estate, and the estate's unpaid bills. Although Gayle asserts that the real estate closings for the 64th Street and Springfield properties were simple transactions and the application of a flat fee would have been an appropriate payment for Siedlecki, the record refutes Gayle's assertions.

¶34 According to the record, Gayle's counsel questioned Siedlecki extensively concerning her fee petitions and reviewed the sales of the 64th Street and Springfield properties. Throughout her testimony, Siedlecki explained the intricacies of the work performed, the time required, and the advantages to the estate throughout the almost five years of administration. Concerning the

Springfield property, she discussed the cleaning out process she had to oversee and coordinate in order to close on the property; the repairs that had to be made after the property flooded in July 2010 during Gayle's occupancy, the appliances that had to be replaced after Gayle was ordered to vacate the property; the advancement from Siedlecki for chimney repairs to protect the property; advanced preparation of closing documentation for the executor; advanced payment to obtain the zoning certificate; and preparation of the deed, judgment affidavits, and deceased joint tenancy affidavits for closing in addition to the normal closing packet document preparations. Moreover, Siedlecki's work was complicated by Gayle's actions and numerous motions and court filings, which required Siedlecki to file responses on behalf of the estate. Gayle's behavior even required Siedlecki to seek court intervention, including obtaining orders that Gayle cooperate with the sale and showing of the Springfield property, vacate the property and remove her personal belongings, and pay her share of expenses to the estate.

¶35 Concerning the 64th Street property, Siedlecki testified about the city building code violations that were inherited from the decedent; the necessary repairs and improvements that had to be made but could not be paid by the estate until the property was sold; the liens that were filed against the property restricting its alienability; the city fines that Siedlecki advanced to the estate; the chancery litigation that required retaining Blumenthal as additional specialty counsel; Siedlecki's assistance to Blumenthal regarding case knowledge and subpoenaed material; the additional title work required by the title company prior to closing, including lien releases, the review of multiple offers, and the preparation of extension requests; the redeemed unpaid real estate taxes; and Siedlecki's overseeing of the filing of all state and federal income taxes.

¶36 Third, Gayle contends Siedlecki failed to meet her burden to provide sufficient evidence from which the probate court could ascertain the reasonableness of her requested fees. According

to Gayle, Siedlecki's fee petitions lacked meaningful details concerning the nature of telephone calls made or time spent in hearings, and contained block-billed entries without a basis to determine how much time applied to each task in the entry.

¶37 It is clear from the record that Siedlecki's fee petitions were detailed, maintained contemporaneously as the work was conducted, and filed throughout the administration to advise the court and the parties of her work. Moreover, the fee petitions gave the court sufficient information to determine the reasonableness of the fees, and that information was further supplemented by Siedlecki's testimony at the hearings after Gayle challenged the fee petitions. The record also establishes the probate court did not merely rubberstamp Siedlecki's fee petitions. Specifically, the probate court reduced her fees by over \$20,000 when it disallowed her fees for travel time for her court appearances, her attendance at the deposition of Lehtinen of Nationwide Services Inc., and her appearances in chancery court.

¶38 We conclude that the probate court did not abuse its discretion in its award of attorney fees to Siedlecki.

¶39 B. Fees to Wayne as Executor and to his Attorneys

¶40 Gayle argues the probate court erred by approving the executor's first, second and third accounts and by awarding executor fees to Wayne and attorney fees to his counsel because Wayne breached his duty of care and was negligent in the administration of the estate. Gayle states that when the estate was opened in March 2008, its three land parcels had an estimated approximate value of \$500,000. Moreover, the sale of one of those land parcels in April 2008 brought the estate \$119,034.62 in sale proceeds. Gayle complains that by the time the first account was filed in December 2009, the estate had only \$21,339.28, primarily as a result of the money Wayne paid to his brother-in-law, Lehtinen, and Lehtinen's company, Nationwide Services, Inc. Gayle states

that by December 28, 2008, the estate had paid \$71,326.28 to Lehtinen, his company, and his chosen subcontractors. Gayle argues that “it is plainly clear” that Wayne breached his fiduciary duty to manage and invest the estate assets as a prudent person would do when managing his own affairs and to minimize any losses to the estate.

¶41 An executor is a fiduciary and owes a duty of good faith to the estate and its heirs. *In re Estate of Minsky*, 59 Ill. App. 3d 974, 979 (1978). The executor is directly accountable to the court and is not allowed compensation for neglect or dereliction of duty. *Id.* When the estate is sued, the executor’s employment of counsel is considered indispensable to the reasonable discharge of the executor’s duties, and the court may authorize reasonable attorney’s fees to be paid from the assets of the estate. *Id.* However, counsel fees should be rejected when the legal services rendered are not in the interest of or do not benefit the estate or when the executor involves the estate in unnecessary litigation. *Id.*

¶42 Specifically, Gayle complains that Wayne failed to obtain estimates from disinterested contractors, failed to determine what work was actually necessary, and failed to obtain a written estimate or contract from Lehtinen. Gayle argues that, at a time when the real estate market was at its worst point since the Great Depression, Wayne acted imprudently by investing approximately \$120,000 worth of repairs and improvements in property that ultimately sold for only \$150,000. Furthermore, a lien was placed on the 64th Street property and foreclosed in chancery court, and attorney Blumenthal was hired to defend the estate in the chancery litigation, raise affirmative defenses, and assert a counterclaim. Gayle argues that Wayne imprudently settled the matter for approximately \$43,500. Gayle also complains that the probate court arbitrarily arrived at the \$3,880.04 executor fee award figure.

¶43 We conclude that Gayle's challenges to Wayne's executor fees and the fees of his counsel lack merit. The testimony at the fee petition hearings established that the inherited estate properties were plagued with city building code violations, disrepair, and lack of maintenance. At the fee petition hearings, Siedlecki testified that the repairs were necessary and mandated by the city after the administrative hearings concerning the building code violations. Clearly, this was not a situation created by Wayne but, rather, a poor situation that was remedied through his management despite the real estate market crash in 2008. Although Gayle complains that Wayne over-improved the 64th Street property, the improvements made the property marketable and it sold for a \$30,000 profit. Furthermore, Gayle's conduct hindered the efficiency of the real estate sales, and the estate had to obtain relief from the probate court on several occasions to order her compliance with possession of the property, selling procedures and cooperation with the estate agents. Gayle left the Springfield property in a state of disrepair and appliances were missing from the home, but Wayne, despite the difficult real estate market in 2011, created a profit from the sale. Although Gayle now complains about Wayne's management of the estate, she did not file any civil action against Wayne for damages and never sought supervised estate administration or a citation to remove him as executor.

¶44 We find no error in the probate court's award of executor fees to Wayne and attorney fees to his counsel. When the probate court reduced Wayne's requested \$7,851.87 executor fee to \$3,880.04, the court allowed mostly reimbursement for his total of \$3,149.37 in out-of-pocket expenses. We note that the court did not allow reimbursement for the outstanding estate expenses of Gertrude's ambulance bill, cemetery charges, and safety deposit box rental. Furthermore, the court's award to Wayne left him less than \$150 a year in compensation for his five years of service in the administration of this estate.

¶45 Blumenthal, an attorney with over thirty year's experience, testified to the work he performed when Wayne hired him after Nationwide Services Inc. sued the estate to recover its fees for contracting services and materials. Blumenthal's work resulted in the dismissal of the first complaint and—after a lengthy discovery process, two depositions, and a lengthy pretrial conference—the reduction of the demand from \$75,000 to \$42,000. The probate court recognized this benefit to the estate, noting that Blumenthal's ability to settle the matter saved the estate money and additional attorney fees. Furthermore, the probate court did not simply rubberstamp Blumenthal's fee petition, but reduced his hours of compensation from 37.48 to 35. After a review of the record, we find that the legal services rendered by Wayne's counsel were in the interest of the estate and did benefit the estate. The probate judge did not err in granting the attorney fees.

¶46 Finally, Gayle makes no coherent argument to support her assertion that the probate court erred in approving the first, second, and third and final accountings and, thus, has waived review of that issue. *McCarthy*, 301 Ill. App. 3d at 75. We conclude that the probate court acted within its discretion and affirm the orders approving the estate accountings, Wayne's executor fees, and Blumenthal's attorney fees.

¶47 C. The Estate Jewelry

¶48 Gayle argues the probate court erred in the distribution of Gertrude's jewelry between Wayne and Gayle. She complains that the probate court arbitrarily divided the jewelry into two bags without ascertaining the value of the individual pieces and without any input from the parties. Gayle argues that the coin toss used to determine the ownership of the bags would have been less arbitrary if the court had utilized appraisals when dividing the jewelry into two lots. Gayle cites

no legal authority to support her argument and asserts no facts to show that the bag of jewelry she received at random was less valuable than the bag Wayne received.

¶49 Our review of the record establishes that the probate court exercised its best discretion in making an impartial and equal distribution of the jewelry between Wayne and Gayle in accordance with Gertrude's wishes. There was no mention in the will that the executor should determine the value of each piece of jewelry or present the bequest in cash value as opposed to the actual jewelry itself. Moreover, the probate court encouraged the parties to settle the matter privately and gave them ample opportunity to do so. In February 2013, Wayne proposed to take 18 pieces of the estate jewelry and leave the remainder to Gayle, but Gayle rejected that proposal. Gayle did not attend the hearing to divide the jewelry, and her attorney declined the offer by the executor's counsel to continue the matter so that Gayle could be present to participate in the negotiations. In dividing like pieces of jewelry in equal amounts into two bags, the probate judge and his clerk could not take into account sentimental value and did not take into account the market value of each individual piece because, as the judge explained, "we're not jewelers." We affirm the division of the jewelry by the probate court.

¶50 III. CONCLUSION

¶51 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶52 Affirmed.