2018 IL App (1st) 180249-U

SIXTH DIVISION
December 14, 2018

No. 1-18-0249

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ESTATE OF H. ROSS WORKMAN and UNIVERSITY OF ILLINOIS FOUNDATION, Plaintiffs, and ILLINOIS ATTORNEY GENERAL, Intervenor, v. PATRICIA FLANARY and KIMBERLY FOLEY, Defendants. (Estate of H. Ross Workman, Plaintiff-Appellant, v. Patricia Flanary and Kimberly Foley, Defendants-Appellees.)	)	Appeal from the Circuit Court of Cook County. No. 2016 P005096 Honorable Daniel Malone, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: The judgment of the circuit court is affirmed where the court considered the relevant factors, and properly relied on its own knowledge and experience, in determining the amount of reasonable compensation owed to the executor of the estate, and to the attorneys hired by the executor.

¶ 1 Plaintiffs, the Estate of H. Ross Workman and University of Illinois Foundation (Foundation), appeal the order of the circuit court awarding attorney fees and executor fees for work performed on behalf of plaintiff in the probate case. On appeal, plaintiffs contend that (1) the evidence does not support the trial court's reduction of the hourly rate for both the attorneys and the executor; (2) the evidence does not support a reduction of time charges for the attorneys; and (3) the court erred in denying the executor compensation for tasks performed prior to his appointment. For the following reasons, we affirm.

¶ 2 JURISDICTION

¶ 3 The trial court entered its order on plaintiffs' second fee petition on January 24, 2018, and included a finding, pursuant to Illinois Supreme Court Rule 304(b) (eff. Mar. 8, 2016), that there was no just reason for delaying enforcement or appeal of the order. Plaintiffs filed a notice of appeal on January 26, 2018. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff, July 1, 2017), governing appeals from final judgments entered below.

¶ 4 BACKGROUND

¶ 5 Mr. Workman, who received his undergraduate and law degrees from the University of Illinois, was a generous supporter of his alma mater during his lifetime. He and his wife, Helen, had no children so they decided to donate the majority of their assets to the Foundation. In 2010, defendant caregivers Patricia Flanary and Kimberly Foley were assigned by North Shore

Companions, Inc., to care for the Workmans. Helen passed away in September of 2013, and the parties disagree on the nature of the relationship between Mr. Workman and his caregivers after Helen's death.

¶ 6 The caregivers allege that Mr. Workman became increasingly reliant on them and came to appreciate and value their companionship and care. Over the years, they developed "a real and loving relationship, so much so that he frequently described [Flanary and Foley] to the people around him as like 'his daughters' or 'his girls.'" Plaintiffs, however, contend that the caregivers "began to exert extreme undue influence over [Mr. Workman]" after Helen's death. As a result, they succeeded in "coercing" Mr. Workman into giving them cash during his lifetime, and to change his estate planning documents so that they would receive $1,400,000 in assets after his death. Plaintiffs argue that these monies should go to the Foundation instead.

¶ 7 Mr. Workman's estate planning documents gave $50,000 to George Bennett and stated that it was Mr. Workman's hope, "but not requirement, that George will also act as the executor of my will and trustee of this trust without compensation." Bennett was named successor trustee of the H. Ross Workman Trust when Mr. Workman "cease[s] to act as trustee." The documents provided that following Mr. Workman's death, the trustee shall make payments for "[a]ll expenses of my last illness, funeral, and burial; costs of safeguarding and delivering tangible personal property; and estate administration expenses." As trustee, Bennett "shall be entitled to reimbursement for expenses and to reasonable compensation."

¶ 8 Mr. Workman died on May 20, 2016, and Bennett was named executor of the estate on August 29, 2016. In the months following Mr. Workman's death, Bennett discovered that he had bequeathed significant assets to his caregivers and Bennett sought legal counsel. Bennett retained

the law firm of Handler Thayer LLP (Handler Thayer) to represent him in the administration and litigation of the estate.

¶ 9 Plaintiffs thereafter obtained a temporary restraining order to halt the transfer of assets to the caregivers, and the Illinois Attorney General intervened. Depositions were taken and during Bennett's deposition, he stated that he was receiving "normal executor fees" from the estate which amounted to $95,000 "so far." Concerned that Bennett and his counsel "may deplete the Estate entirely," the caregivers petitioned the court for an accounting and an inventory, and to remove Bennett as an independent executor. After an evidentiary hearing, the trial court changed Bennett's status to supervised executor and ordered him and his counsel to present an accounting, an inventory of the estate, and fee petitions for current and future payments.

¶ 10 In February 2017, plaintiffs filed their initial petition for rescission, alleging eight claims against the caregivers including undue influence due to fiduciary relationship, violation of the Presumptively Void Transfers Act, financial exploitation of an elderly person, civil conspiracy, tortious interference with expectancy, undue influence, fraud, and lack of capacity. Pursuant to the caregivers' motion, the court dismissed the first four claims, and the claim of tortious interference with respect to Bennett. Plaintiffs filed an amended complaint and second amended complaint, realleging these claims, and the trial court again dismissed those claims. The second amended complaint was dismissed with prejudice, and the court denied plaintiffs' request to file a third amended complaint.

¶ 11 On March 20, 2017, Bennett and Handler Thayer filed their first petitions for fees. Handler Thayer sought $190,836.67, which covered attorney's fees and costs from December 1, 2016 through February 28, 2017. The total amount consisted of $7,340.32 for estate administration, $4,621.81 for postmortem trust administration, and $178,724.54 for litigation

involving pursuit of assets from the caregivers. The petition alleged that the work performed on the contested litigation included investigation prior to the suit, attempts to resolve the conflict, presentation of a successful temporary restraining order, preparation and presentation of a preliminary injunction motion, conducting substantial discovery, preparation of a 36-page, 8 count petition to rescind asset transfers, appearing in court, and analyzing and responding to pleadings from other parties.

¶ 12 In his fee petition, executor Bennett sought $41,294.95 in executor and trustee fees covering the period from May 2016 to March 2017. He alleged that when he began to administer Mr. Workman's estate, he discovered that Mr. Workman "left significant assets to" the caregivers. He has "spent a significant amount of time analyzing documents and meeting with financial and legal professionals in order to unravel the web of deceit" by the caregivers. As executor, Bennett also performed tasks such as packing, moving, running errands, sorting mail and sending packages, fiduciary and nonfiduciary administrative duties, and reviewing estate documents and financial statements with legal advisers. However, from July 2016 through March 2017, the overwhelming majority of his time, 191 hours, was devoted to the pursuit of the action against the caregivers. Bennett's fee petition included compensation for duties he performed for the estate prior to being named executor on August 29, 2016.

¶ 13 At the hearing on the petitions, Bennett testified that he had known the Workmans for most of his life, and they asked him to be executor of their estate in 2000. He graduated from Northwestern University, had a law degree from Southern Methodist University and an MBA from the Kellogg Graduate School of Management. He testified that normally, Mr. Workman's specific grant of $50,000 to Bennett for serving as executor would be sufficient, but this case now involves contested litigation and the sum did not take into account "the tremendous amount

of hours and time that this has taken to get to this point." When he sought advice from attorneys on what rate he should charge, Mike Whitty from Handler Thayer informed him that the appropriate hourly rate for an executor is $250. Bennett chose to apply graduated hourly rates of $0 to $150, depending on the type of work he performed. He based the upper rate of $150 as the market rate of "what a paralegal charges." Bennett stated that he could have delegated the executor duties, but he had promised the Workmans that he would administer their estate. He testified that if he had delegated the work, it would have cost the estate an hourly rate ranging from $350 to $500.

¶ 14 On cross-examination, Bennett acknowledged that his experience with administering estates was limited to administration of his parents' estate. Bennett stated that he was not a practicing attorney and not a litigator. Also, although he was not related to Mr. Workman, he was related to Helen.

¶ 15 Wes Curtis testified that he is the General Counsel of the Foundation and supports the efforts of Bennett and his counsel to pursue litigation against the caregivers. In his role as counsel for the Foundation and the university, Curtis has retained outside counsel in the Chicago area and paid an hourly rate between $575 and $1,080. He retained Handler Thayer to represent the Foundation in this litigation and found both the attorney fees and executor fees reasonable.

¶ 16 Three attorneys from Handler Thayer who performed most of the work in this matter also testified. Michael Whitty testified that he received his law degree in 1988 from the University of Texas and prior to receiving his law degree, he worked as an accountant at Arthur Anderson. His practice concentrates on estate planning and estate and trust administration. His standard hourly rate is $625, but he discounted his rate to $500 for this case.

¶ 17 Eric Kalnins testified that he received his law degree from Thomas Cooley Law School as well as an LLM in taxation from DePaul University. Since 1998 he has practiced in the areas of business structuring, tax, estate planning, and litigation, and has experience in litigating undue influence cases. His standard hourly rate is between $400 and $500. He testified that he was responsible for billing in this matter, and he voluntarily provided approximately $39,000 in courtesy discounts that were not necessarily attributed to the fact that two attorneys attended depositions and court appearances.

¶ 18 Michael Ripani testified that he has a law degree from IIT Chicago-Kent College of Law and is a certified public accountant and certified fraud examiner. He worked as an auditor at Price Waterhouse from 1983 to 1987, and has been practicing law since 1990. He has experience as a tax attorney, and in complex commercial litigation including fraud and civil conspiracy actions. His standard hourly rate is $400.

¶ 19 Attorneys for the caregivers also testified at the hearing. David Dale stated that he graduated with a degree in journalism in 2003, worked in the professional sector, and then attended John Marshall Law School where he received his law degree in 2012. He has practiced in the areas of general commercial and business litigation although he has not had a case involving undue influence. His hourly rate in this matter is $250. Dale testified that he believed attorneys from Handler Thayer were double billing based in part on the fact that they were sending two attorneys to a deposition or court appearance.

¶ 20 Eric Anderson testified that he is the managing partner at Staub Anderson. He stated that he has different types of clients, and represents charitable clients at an hourly rate of $235 or $245. His hourly rate in this matter is $155. His standard hourly rate is $310. Anderson testified

that his firm "had to hire another associate [because] we've got more work than we know what to do with."

¶ 21 In ruling on the fee petition, the judge noted that he has been in the probate division since February of 2013, and in that time has "reviewed thousands of attorney fees in both a disabled guardian estate call and the decedent's call." The court set forth the factors to consider in determining a reasonable fee, and found that the fees submitted by Handler Thayer should be reduced. Specifically, the court reduced the hourly fee for Whitty to $310, and reduced the hourly fees for Kalnins and Ripani to $250. The court did not question where the attorneys went to law school, nor did it base a proper hourly rate "on what an opposing counsel's charging." Instead, the court looked "at the work that was done, the skill provided, the experience, the benefits" and applied "all the reasonableness factors." It further noted that "[t]he size of the estate and the time that [it] takes are very important to this Court." It allowed billing for one attorney at depositions, and made reductions where the documents indicated duplicative preparation time. The court noted "that there was a discount given, although it's not specified. [The court] believe[d] that that discount is considered," and would not "make any further reductions based on that discount for duplicative preparation or for the time that's spent between" the relevant time periods. The court characterized this fee petition as the "most excessive" petition it has ever reviewed and instead, found $98,290.75 in attorney's fees and costs reasonable.

¶ 22 Regarding a reasonable rate for Bennett, the court found that he was "not a professional executor." The court cited to cases in which the executor was paid from $25 to $75 per hour, and also relied on its experience in the probate division that $50 per hour was a "common rate that is used in this division." The court approved $6,912.50 "as an Executor and Trustee fee for the

period through February 2017, and direct[ed] the Supervised Executor to return to the Estate the surplus of fees he previously paid to himself for such services and for such period over said approved amount, although he may retain the portion that would constitute his bequest from the H. Ross Workman Trust in satisfaction of such bequest." It denied fees Bennett requested as compensation for executor work he performed prior to August 29, 2016.

¶ 23 Bennett and Handler Thayer filed motions to reconsider. At the hearing on the motions, the court explained that "there was no precedent for compensating an executor for services performed before the date of his appointment," and noted that the case cited by Bennett as support involved an attorney, not an executor. Although Bennett is an attorney, the court found that "he was not acting in his capacity as an attorney for the work that he requested." The court denied both motions.

¶ 24 On August 1, 2017, Bennett and Handler Thayer submitted their second petitions for fees, calculated at the reduced rates.[1] Handler Thayer sought $219,058.87 in attorney fees and costs, and Bennett sought $9,587.50 for executor fees. In its order, the court granted the attorney fee petition in part and denied it in part, allowing payment of $27,087.50 in attorney's fees. The order included an attachment that set forth the court's "disallowance of certain attorney's fees" in the second petition. In the attachment, the court reviewed each entry of work performed and time charged for the three Handler Thayer attorneys, three paralegals and an additional employee, as well as entries for investigator and consultant fees. For each entry, the court indicated the amount of time charged it allowed for purposes of the fee petition. The court also granted executor fees in the amount of $3,125 to Bennett. Plaintiffs filed this timely appeal.

[1] Although the record contains references to a third fee petition and corresponding court order, plaintiffs have not raised a challenge to that petition or order at this time.

¶ 25 ANALYSIS

¶ 26 The Probate Act of 1975 (Probate Act) allows representatives of the estate "reasonable compensation" for their services. 755 ILCS 5/27-1 (West 2016). Factors to consider in determining what is "reasonable compensation" include "the size of the estate, the work involved, the skill evidenced by the work, [the] time expended, the success of the efforts involved, and the good faith and efficiency with which the estate was administered." *In re Estate of Thorp*, 282 Ill. App. 3d 612, 619 (1996). These factors apply to the compensation for both attorneys and executors. *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1110 (2011).

¶ 27 Ideally, petitioners for fees should present as evidence detailed, contemporaneously made time records that set forth the work performed, by whom it was performed, the time expended thereon, and the hourly rate charged. *In re Estate of Bitoy*, 395 Ill. App. 3d 262, 273 (2009). The probate court, however, has the necessary skill and experience to determine a fair and reasonable compensation for legal services, and to approximate the time various tasks require. *Id*. at 272-73. Therefore, the court may accept or reject the opinion of expert witnesses as to what fees are reasonable, and the court is not bound by a petitioning attorney's opinion on the issue. *Estate of Healy*, 137 Ill. App. 3d 406, 411 (1985). The trial court has broad discretion to determine the reasonableness of fees, and a reviewing court will not overturn the court's determination unless it is manifestly erroneous. *In re Estate of Coleman*, 262 Ill. App. 3d 297, 299 (1994).

I. Attorney Fees

¶ 28 Plaintiffs argue that the trial court erred in reducing the hourly rates Handler Thayer could charge for its services because the underlying action involves complicated discovery that requires the expertise of highly skilled attorneys. Plaintiffs particularly take issue with the fact that the trial court did not allow its attorneys to charge an hourly rate more than the rate charged

by "the much less experienced Caregiver Defendant's attorneys." Plaintiffs argue that its attorneys "have over 70 years of legal experience" with "expertise in the areas of probate, trust and estate matters," and have experience in pursuing claims of undue influence, fraud and civil conspiracy. Attorneys for the caregivers, plaintiffs contend, "have no such experience."

¶ 29 After a hearing on the fee petitions, the trial court considered the parties' evidence and arguments, taking into account all of the reasonableness factors including "the work that was done, the skill provided, the experience, [and] the benefits." The court, well aware of the nature of the contested litigation, also considered the size of the estate and the time required to perform the work. The trial judge noted that he has "been in the probate division for over four years" and during that time "reviewed thousands of attorney fees in both a disabled guardian estate call and the decedent's call," and in disputed as well as undisputed cases. As a result, the court had the requisite skill and knowledge to determine "what is a fair and reasonable compensation for the services of an executor and its attorneys."

¶ 30 Although the court stated that the hourly rate allowed was "not based on what an opposing counsel's charging," it reduced the hourly fee for Whitty to $310, and reduced the hourly fee for Kalnins and Ripani to $250, which was in line with the rates typically charged by the defendant caregivers' attorneys. Based on the court's knowledge and experience with attorneys and work in the probate division, it concluded that these rates reflected the usual and customary charges in the community. Although the court denied that it based its rate on what the caregivers' attorneys charge, finding opposing counsel's rates reasonable is not necessarily an abuse of the trial court's discretion. See *Shoreline Towers Condominium Ass'n v. Gassman*, 404 Ill. App. 3d 1013, 1027 (2010) (affirming the trial court's finding that the hourly rates charged

by opposing counsel were "usual and customary" for lawyers in Cook County, and its use of those rates to determine a reasonable fee award). We find no abuse of discretion here.

¶ 31 Plaintiffs, however, contend that the trial court's determination was improper where it disregarded the complicated nature of the case and the greater experience of the Handler Thayer attorneys, and none of the parties specifically objected to their hourly rates. Plaintiffs cite to older cases where the court allowed attorney fees of $250 and $150 per hour for the administration of relatively uncomplicated estates, and argue that it is unbelievable that an hourly rate of $250 for this case involving undue influence is reasonable. See *Weeks*, 409 Ill. App. 3d at 1110 (finding that an hourly rate of $250 for work done in 2008 was not an abuse of discretion); *Coleman*, 262 Ill. App. 3d at 300 (finding that an hourly fee of $150 for work performed in 1991 on an $8 million estate was reasonable).

¶ 32 We note that the trial court did not rely on the rates in these cases when making its determination. The court specifically stated that it was taking into account "the work that was done, the skill provided, [and] the experience" of the attorneys, as well as its own experience with fee petitions in the probate division. Plaintiffs essentially disagree with how the trial court weighed these factors, and asks this court to give more significance to the combined experience of Handler Thayer's attorneys, and to their expertise in pursuing undue influence cases. The trial court, however, has broad discretion to award attorney fees and a reviewing court may not disturb the trial court's determination merely because it may have weighed the factors differently. *Healy*, 137 Ill. App. 3d at 411.

¶ 33 Plaintiffs further contend that the court's order reducing the hourly rates improperly altered plaintiffs' unambiguous engagement agreement with Handler Thayer. In *Bitoy*, this court addressed the relevance of a written retainer agreement when determining the reasonableness of

attorney fees and costs. The court found that section 27-2 of the Probate Act, which states the factors the court may consider, makes no reference to retainer agreements. *Bitoy*, 395 Ill. App. 3d at 277. Instead, the statute is concerned with "reasonable compensation," taking into account the list of factors. 755 ILCS 5/27-1, 2 (West 2016). Therefore, the court concluded that "the retainer agreement was not relevant to the determination of a reasonable fee ***." *Bitoy*, 395 Ill. App. 3d at 278. We agree that the hourly rates stated in an agreement between the parties are not relevant to the court's determination of reasonable fees under the Probate Act. The court need not accept the opinion of a petitioning attorney on what fees are reasonable, and instead may rely on its own knowledge and experience. It follows that the court is likewise not bound by the hourly rates and costs contained in an agreement between Handler Thayer and plaintiffs.

¶ 34 Plaintiffs also challenge the trial court's reliance on its own experience and knowledge, arguing that the court should have been cross-examined on this issue. Plaintiffs, however, cite no authority in support of this contention and thus, have forfeited review of the issue pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018), which requires that argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on***"). See *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010) (finding that contentions supported by some argument but without citations to authority do not meet the requirements of Rule 341(h)(7)).

¶ 35 Finally, plaintiffs contend that the trial court erred in reducing time charges in the second fee petition. The record shows that the trial court carefully reviewed each entry in the second petition and, relying on its knowledge and experience as it may do, the court noted the number of hours it found reasonable for each one. The court did not discount every time charge. The court also stated that the matter "does not require two attorneys to be present" although they "had the

prerogative" to choose to be present. However, the court would only allow billing for one attorney. The court stated that it did not make any further reductions based on duplicative preparation time, in consideration of the courtesy discount given by the attorneys.

¶ 36 Without citation to authority, plaintiffs generally contend that the time reductions "did not have any consistent methodology" and the court merely relied on its own experiences in reviewing the fee petitions. Plaintiffs do not point to any specific entries in which the court erred, nor do they provide detail as to how the court's time determinations constituted error. "In actions to recover compensation for legal services, the burden of proof rests with the attorney to establish his case." *Coleman*, 262 Ill. App. 3d at 299-300. We find no manifest error in the trial court's determination to reduce the attorneys' time charges.

II. Executor Fees

¶ 37 Plaintiffs argue that the trial court similarly erred in reducing the executor's fees where Bennett, who has graduate degrees in law and business, properly performed his tasks in the administration of the estate. Bennett alleges that he has spent "extraordinary amounts of time *** in pursuing recovery of funds diverted to" the caregivers. He complains that the court only allowed an hourly fee of $50 for the executor, even though Bennett testified that Whitty advised him that $250 per hour was an appropriate rate under the circumstances. As is the case in determining reasonable attorney fees, however, the trial court is not bound by the opinion of expert witnesses as to the reasonableness of executor fees, and may rely on its own knowledge and experience. *Coleman*, 262 Ill. App. 3d at 299. The trial court stated that it considered all of the reasonableness factors, including the executor's education and experience. The court found that Bennett was not a professional executor and although he has a law degree, he has not

practiced law. Relying on its experience and knowledge of what constitutes a "common rate" for executors "used in this division," the court found $50 per hour to be a reasonable rate.

¶ 38 We find no abuse of discretion here, especially when we consider that in addition to the more than $10,000 in executor fees allowed by the trial court, Bennett was granted $50,000 from the estate which reflected Mr. Workman's hope that Bennett would "act as the executor of [his] will and trustee of this trust without compensation." Furthermore, Bennett testified that the hours in his petitions overwhelmingly represent the time he had to spend pursuing the action against the caregivers. However, Bennett also hired outside counsel (Handler Thayer) to investigate and challenge the caregivers' stake in the estate, and the court has thus far allowed over $125,000 in attorney fees, in addition to the executor fees, to pursue this claim. The evidence supports the trial court's finding that the executor fees it allowed was reasonable given the circumstances.

¶ 39 Plaintiffs also seek compensation for work Bennett performed prior to his appointment as executor. Plaintiffs argue that the Probate Act provides for executor compensation, and failure to compensate for "these routine but necessary and urgent tasks performed by Bennett in the months following [Mr. Workman's] death" goes against the purposes of the Probate Act. Although plaintiffs cite three cases as support, *Ashmore v. Newman*, 350 Ill. 64, 81 (1932), *In re Estate of Breault*, 63 Ill. App. 2d 246 (1965), and *Phelps v. Elgin Joliet and Eastern Railway*, 37 Ill. App. 2d 46 (1962), these cases did not involve compensation for work performed by an executor prior to his appointment. Instead, they represent the general rule that letters testamentary relate back to the date of death so as to validate acts done by the executor before his appointment.

¶ 40 Furthermore, the record indicates that the trial court may have accounted for this work in granting fees to Bennett. Bennett acted as trustee of the trust as well as executor of the estate.

Here, plaintiffs request compensation for the "necessary and urgent tasks" executors typically perform soon after a person's death, "such as arranging for a funeral and internment, cleaning out residences, paying bills and distributing personal items." Mr. Workman's estate documents, however, specifically provided that the trustee shall make payments for "[a]ll expenses of my last illness, funeral, and burial; costs of safeguarding and delivering tangible personal property; and estate administration expenses." Bennett's first fee petition requested compensation for performing these duties and in its order, the trial court approved $6,912.50 "as an Executor and Trustee fee for the period through February 2017 ***." Although plaintiffs also make a brief, one-sentence argument that Bennett is entitled to compensation for unspecified work he performed as trustee, plaintiffs do not set forth the basis of this argument or provide any further facts or analysis. This court is not a repository into which plaintiffs may "dump the burden of argument and research," nor is this court obliged "to act as an advocate or seek error in the record." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (2009). We therefore find that the trial court did not err in denying this request.

III. "Chilling Effect"

¶ 41 Plaintiffs argue that legislation to protect the elderly from financial abuse has become increasingly prevalent in Illinois and other states, and affirming the trial court's determination will hinder this underlying public policy. They contend that when the trial court drastically reduces attorney fees, as it did here, there is a "chilling effect" on the pursuit of undue influence claims because experienced attorneys and executors will not offer their services if they know they will be paid less than the agreed amount. Plaintiffs cite to *Matter of Morgan Washington Home*, 108 Ill. App. 3d 245 (1982), as support. In that case, however, the Attorney General argued that the attorney fees awarded, based on the usual charge for the work performed, was

excessive because the attorneys were working on behalf of a charitable entity and thus, fees should be "moderate." *Id*. at 246. This court disagreed, finding no authority for the position that attorney fees for representing a charity "should be anything less than what a reasonable fee would be ***." *Id*. at 247. In contrast, no party here is arguing that the attorneys and executor should be paid less than a reasonable fee.

¶ 42 Also, while it makes sense that attorneys with more experience should be compensated at a greater rate than attorneys with less experience, an attorney's experience is only one factor the trial court considers in determining a reasonable fee under the Probate Act. No clear rules exist and a reasonable fee determination "must be based on the facts and circumstances of the particular case." *Coleman*, 262 Ill. App. 3d at 299; see also *Black v. Iovino*, 219 Ill. App. 3d 378, 396 (1991) (finding that "[a] reasonable fee in any given case is determined by the weight of the evidence [in that case]"). The court below took into account the specific circumstances of the underlying case and the experience and skills of the attorneys and executor involved. Relying on its own experience and knowledge in probate cases, the trial court determined an hourly rate that it found was a reasonable and customary charge for the work being performed in the case. The court did not find that an attorney's experience is irrelevant in determining a reasonable fee, and in a different case with different facts, the court may decide to give more weight to an attorney's experience. Accordingly, we do not believe that the trial court's determination of a reasonable attorney fee here will dissuade capable attorneys and executors from working on other probate cases involving undue influence or fraud.

¶ 43 CONCLUSION

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

¶ 45 Affirmed.