STATE OF MICHIGAN

COURT OF APPEALS

EDWARD BROWN, Personal Representative of the Estate of R. WILLIAM REID, Deceased,

Appellee,

v

SUSAN M. REID, ROBERT W. REID, CARMEN P. REID and JAMES T. REID,

Appellants.

UNPUBLISHED
December 16, 1997

No. 193165
Ingham Probate Court
LC No. 93-008099-SE

Before: O'Connell, P.J., and White and Bandstra, JJ.

PER CURIAM.

Appellants appeal as of right from an order of the probate court directing the final account and assigning the residue of the decedent's estate. The probate court awarded appellee $4,650.10 in fees and expenses and his attorney $7,066.40. We affirm.

Appellants argue on appeal that the probate court abused its discretion in awarding fees to appellee and his attorney. Appellants argue that in several instances the actions of appellee and his attorney did not benefit the estate. We disagree in every instance cited by appellants. A probate court has broad discretion in determining the reasonable amount of compensation due a personal representative and his attorney. *In re Kruger Estate*, 176 Mich App 241, 248; 438 NW2d 898 (1989). An award of compensation will not be reversed absent an abuse of that discretion. *Id.* at 250.

An estate's personal representative is his fiduciary. MCL 700.5(2)(d); MSA 27.5005(2)(d). Michigan statute provides that a fiduciary "shall be allowed the amount of his or her reasonable expenses incurred in the administration of the estate, and shall also have such compensation . . . both ordinary and extraordinary as the court . . . deems to be just and reasonable." MCL 700.541; MSA 27.5541. A personal representative may employ counsel to perform necessary services on behalf of the estate. MCL 700.543; MSA 27.5543. The attorney may receive reasonable compensation in an amount approved by the judge. MCR 8.303. To be chargeable against an estate, the fees of a

fiduciary and his attorney must be for services rendered on behalf of and benefiting the estate. *In re Pritchard Estate,* 164 Mich App 82, 86; 416 NW2d 331 (1987).

Appellants set forth a number of arguments on appeal regarding appellee's handling of the decedent's estate. We do not believe that any of these arguments have merit. First, appellants argue that appellee's failure to communicate with them during the course of probate unduly complicated the process. We observe that after initially awarding appellee fees and expenses on July 10, 1995, the probate court reduced that amount by $1,000; the court justified the decrease by pointing to the communication problem. Appellants do not offer any evidence suggesting that this reduction was insufficient and therefore an abuse of discretion. Similarly, we find that appellants' arguments regarding appellee's handling of matters such as the disposition of several paintings, the widow's dower interest, certain mineral rights, sale of a mobile home and van, and inventory of the decedent's home, are without merit. After reviewing the record, we conclude that appellee handled these matters reasonably, and that his actions were aimed at securing the best interests of all those who had an interest in the estate. Finally, we disagree with appellants' contention that appellee's hourly fee was excessive because his duties were purely ministerial in nature. The record shows that probate of the decedent's estate was complex, contentious and exceedingly litigious. Given these circumstances, we do not believe that the hourly rate was excessive.

Appellants also argue that appellee and his attorney should be held financially responsible for the loss of funds resulting from several specific actions. The findings of the probate court are reviewed for clear error. MCR 2.613(C). On appeal, we give broad deference to these findings because of the probate court's "unique vantage point, including witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). After reviewing the record, we see no error on the part of the probate court.

First, appellants argue that appellee and his attorney failed to preserve the right to file an amended inheritance tax, and that this failure resulted in a loss to the estate when the widow filed for her dower rights. However, the record establishes that the appellee acted in good faith when handling the tax returns. *In re Tolfree Estate,* 347 Mich 272, 282-283; 79 NW2d 629 (1956) (observing that "[g]ood faith is a defense, where a trustee, acting within the limits of his powers with proper prudence and diligence, commits mere mistakes or errors of judgment") (quoting *MacKenzie v Union Guardian Trust Co*, 262 Mich 563, 588; 247 NW 914 [1933]). Additionally, we believe that appellee's actions were prudent, given the fact that there was no indication that the decedent's live-in companion would relinquish her life estate in the farmhouse. A trustee is obligated to deal with trust assets as would a "prudent man dealing with the property of another." MCL 700.813; MSA 27.5813. Given the circumstances, we find that appellee's actions were reasonably prudent.

We further reject appellants' assertion that appellee mishandled the rental of the farmhouse and the leasing of certain mineral rights. We note that there were certain continuing uncertainties regarding the farmhouse; there was a question of whether the decedent's live-in companion would return, and whether the property might be sold to appellant Susan Reid. We further note that appellants rejected an offer to rent the property on a short-term basis in 1995. Finally, we reject as unsubstantiated appellants' claim that appellee failed to pursue the possible leasing of certain mineral rights. The record

show that appellants were informed of the potential offer nearly one year before it was apparently withdrawn.

Appellants' final claim of error concerns a painting that was transferred to appellee by Susan Reid. The record indicates that this issue was not raised before or addressed by the probate court. As such, this issue has not been properly preserved, *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994), and we decline to address it. See also *People v Stanaway*, 446 Mich 643, 694; 521 NW2d 557 (1994) (appellate courts are obligated to review only issues which are properly raised and preserved).

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Richard A. Bandstra