

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of HAROLD H.
KNUBBE, Deceased.

JAMES E. MCCARTHY, as Personal Representative of
the Estate of Harold H. KNUBBE, Deceased,

Petitioner-Appellee,

v

SHELIA KNUBBE,

Respondent-Appellant.

In the Matter of the Estate of HAROLD H.
KNUBBE, Deceased.

JAMES E. MCCARTHY, as Personal Representative of
the Estate of HAROLD H. KNUBBE, Deceased,

Appellee,

and

JOHN D. MABLEY and CLARK HILL, P.L.C.,

Petitioner-Appellee,

v

SHELIA KNUBBE,

Respondent-Appellant.

UNPUBLISHED
December 18, 1998

No. 198865
Wayne Probate Court
LC No. 93-522838 SE

No. 199161
Wayne Probate Court
LC Nos. 93-522838 SE;
94-534471 TI

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Respondent, Shelia Knubbe, appeals as of right from orders granting attorney fees and temporary personal representative fees. We affirm.

This matter stems from the will and trust of Harold H. Knubbe, deceased. After two years of numerous motions filed by respondent, the probate court entered an order on March 6, 1996, entitled Order for Settlement of Will and Trust Contest and Related Issues. After setting forth the manner in which Knubbe's assets would be distributed, the order required McCarthy, the temporary personal representative, Mabley and his former law firm, Hill Lewis, who represented one of the personal representatives named in Knubbe's will, to submit a petition for compensation of services. McCarthy filed his summary of services rendered, which totaled \$35,136.50, and \$435.00 in expenses. Mabley filed a petition for fees on his behalf and on behalf of Clark Hill, P.L.C. Mabley requested fees and costs totaling \$41,788.03 for Clark Hill, and \$5,794.50 for himself. The probate court awarded attorneys fees in the amount of \$41,788.03 to Clark Hill, \$5,794.50 to Mabley, and \$22,874 to McCarthy. In the opinion awarding fees, the probate court explained that, although McCarthy originally sought \$35,136.50 in fees and \$435.00 in expenses, McCarthy reduced his claim to \$22,874 after an addition error was corrected.

Respondent first argues the probate court abused its discretion in granting McCarthy over \$23,000 in fees and expenses. We will not reverse a probate court's determination of a personal representative's compensation absent an abuse of discretion. *In re Baird Estate*, 137 Mich App 634, 637; 357 NW2d 912 (1984). The burden of proof is on the person claiming compensation. *Id.* The claimant must satisfy the court that the services rendered were necessary and that the charges therefore are reasonable. *Id.* A claimant's failure to present records concerning his services is usually weighed against him. *Id.* at 638. When considering the reasonableness of fees, some appropriate factors to consider include the amount of time spent, the amount of money involved, the character of the services rendered, the skill and experience required in performing the work, and the results obtained. *In re Krueger Estate*, 176 Mich App 241, 248; 438 NW2d 898 (1989); *In re Estate of Weaver*, 119 Mich App 796, 799; 327 NW2d 366 (1982).

Our review of McCarthy's summary of services demonstrates that he exhausted a great amount of time reading and responding to respondent's various pleadings and letters. The probate court determined that given the way respondent was litigating this case, it was necessary for McCarthy to devote a great amount of time to the case. The probate court also noted that it was well aware of McCarthy's experience and reputation, and that his hourly rates were quite reasonable. Respondent points out that McCarthy's fees are excessive when the amount involved is considered. The probate court was well aware that McCarthy's fees were high, considering the amount involved, as evidenced by its statement that "the time spent by Mr. McCarthy is much more than one would normally

anticipate.” However, the probate court felt that this factor was offset by the manner in which respondent litigated this matter. In regard to the other factors, such as the character of the services rendered, the skill and experience required in performing the work, and the results obtained, a review of McCarthy’s summary of services demonstrates that the services rendered were rather ordinary, and that little skill or experience was required to perform a vast amount of the work. As to the results obtained, McCarthy depleted a comparatively small estate by \$23,000. However, given the factual background of respondent’s litigation tactics, it cannot be said that the probate court abused its discretion in determining that McCarthy was entitled to over \$23,000 in fees and expenses.

Respondent next claims the probate court erred when it entered a proposed order on October 21, 1996, in violation of MCR 2.602(B). We disagree. This issue is raised by respondent for the first time on appeal, therefore, it was not addressed by the probate court and is not preserved for appeal. *Miller v Bock*, 223 Mich App 159, 168; 567 NW2d 253 (1997). However, because this is an issue of law, and all the necessary facts are before us, we will address the issue. *Id.* The issue of whether respondent complied with MCR 2.602(B) is a question of law. We review questions of law de novo. *Palo Group v Department of Social Services*, 228 Mich App 140, 145; 577 NW2d 200 (1998).

Respondent argues the probate court erred in entering the order granting Mabley and Clark Hill attorney fees on October 21, 1996. A proposed order was filed with the probate court by Mabley pursuant to MCR 2.602(B)(3) on October 11, 1996. This rule allows a party to serve a copy of a proposed judgment upon other parties with notice of the fact that it will be submitted to the court for signing if no written objections are filed with the clerk of the court within seven days of service of the notice. Respondent argues that she filed her objections to the proposed order within the seven-day period and that the time stamp on her objections is erroneous. In support of this argument, respondent attaches an affidavit from her attorney, a receipt from the Wayne County Probate Court, and a Proof of Service to her brief on appeal. However, our review of the time stamp on respondent’s objections and the items attached to her brief on appeal clearly demonstrate that respondent’s objections were filed on October 22, 1996, which is outside of the seven-day period for filing objections to the proposed order under MCR 2.602(B)(3), and one day after the probate court entered the order. Therefore, respondent’s claim is without merit.

Respondent next claims the probate court abused its discretion in determining that Mabley and Clark Hill were not representing Lynn Montross, one of the heirs to Knubbe’s estate. Respondent also claims the probate court abused its discretion in allowing Mabley to act as both an advocate and a witness in the proceedings before the probate court. Respondent has abandoned these issues on appeal by failing to file with this Court a transcript of the August 12, 1994 hearing on these issues. *Watkins v Manchester*, 220 Mich App 337, 341; 559 NW2d 81 (1996).

Next, respondent argues the probate court erred in not allowing her to charge her attorney fees to the estate. We decline to review this issue because respondent never requested below that her attorneys fees be charged against the estate. *Auto Club Ins Ass’n v Lozanis*, 215 Mich App 415, 421; 546 NW2d 648 (1996).

Finally, respondent argues the probate court erred when it used MCR 8.303 and *In re Saras*, 148 Mich App 171; 384 NW2d 119 (1986), to determine appropriate fees for Mabley and Clark Hill. We disagree. In its opinion, the probate court stated that “[t]he compensation of attorneys is controlled by MCR 8.303.” Respondent first claims that MCR 8.303 does not apply to Mabley and Clark Hill because MCR 8.303(I) has not been satisfied. MCR 8.303(I) states that MCR 8.303 only applies to the representation of fiduciaries. Respondent claims that Mabley and Clark Hill’s clients were never given fiduciary authority by the probate court. Respondent’s argument goes against the plain meaning of MCL 700.5(2)(d); MSA 27.5005(2)(d), which clearly states that a personal representative is a fiduciary. Mabley and Clark Hill represented the named personal representative in Knubbe’s April 14, 1992 will, and accordingly, their compensation is controlled by MCR 8.303.

Respondent also claims the probate court erroneously relied on *In re Saras, supra*. In *In re Saras, supra* at 182, this Court held:

Section 148 of the Revised Probate Code, MCL 700.148; MSA 27.5148, provides that if a will is contested, the personal representative or a proponent “may petition the court for authorization to retain counsel for the purpose of sustaining the will; and the reasonable expense of counsel and of procuring evidence to sustain the will shall be a proper charge against the estate.”

In this case, the named personal representative in Knubbe’s April 14, 1992 will had the right to retain counsel and charge his expenses to the estate. MCL 700.148; MSA 27.5148; *In re Saras, supra* at 182. The named personal representative in that will did just that -- he retained Mabley and his law firm, Clark Hill, for the purpose of sustaining the April 14, 1992 will. Furthermore, “[t]he allowance or disallowance of such expenses by a will proponent is not contingent upon whether or not that proponent is ultimately successful.” *Id.* at 182. Therefore, *In re Saras, supra*, is applicable to this case, and the named personal representative in the April 14, 1992 will had the right to retain counsel and charge their costs to the estate.

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Martin M. Doctoroff