

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ALICE CASEY, Deceased.

MARIE CHAMBERLAIN, Personal Representative of
the Estate of ALICE CASEY, Deceased,

UNPUBLISHED
December 18, 1998

Petitioner-Appellant,

v

DALE CASEY,

No. 202557
Barry Probate Court
LC No. 91-020569 SE

Respondent-Appellee.

Before: Jansen, P.J., and Holbrook, Jr., and MacKenzie, JJ.

PER CURIAM.

Petitioner appeals as of right from the probate court's orders denying certain attorney fees and personal representative fees and refusing to sanction respondent and his attorney. We affirm.

First, the probate court did not abuse its discretion in refusing to award petitioner and her attorney fees for time expended in the defense of appellee's motion to disqualify the court. *In re Humphrey Estate*, 141 Mich App 412, 439; 367 NW2d 873 (1985). Legal services rendered on behalf of an estate are compensable where the services confer a benefit on the estate by either increasing or preserving the estate's assets. *In re Sloan Estate*, 212 Mich App 357, 362; 538 NW2d 47 (1995). We agree with the probate court that the actions taken by the personal representative and her attorney in defending the motion to disqualify were not beneficial to the estate. *In re Humphrey Estate, supra* at 439.

We further find that the probate court did not abuse its discretion in imposing a twenty-five percent reduction in allowable attorney fees and personal representative fees. The record reflects a continuous pattern of improper and wasteful conduct by the personal representative and her attorney. *McTaggart v Lindsey*, 202 Mich App 612, 617; 509 NW2d 881 (1993); MCL 700.341; MSA 27.5341; MCL 700.501; MSA 27.5501. Indeed, the probate court had sufficient grounds to remove

the personal representative and her attorney for breach of fiduciary duties, but apparently declined to do so in order to avoid further unnecessary expense to the estate. Under the circumstances, the probate court's decision does not constitute an abuse of discretion.

Finally, petitioner argues that the probate court erred in denying her motion for sanctions against respondent. We review the probate court's decision for an abuse of discretion. *Richardson v Ryder Truck*, 213 Mich App 447, 450; 540 NW2d 696 (1995). First, as the probate court observed, petitioner and her attorney did not themselves have clean hands to request sanctions. Second, the probate court had already sanctioned the removal of property by respondent by charging against his distributive share all property that he either removed or could not account for. Respondent ultimately owed the estate money. Thus, respondent's conduct did not deplete the assets of the estate beyond that to which he was entitled by statute. Third, the assets of the estate were "not being called upon directly to pay" for the time of respondent or his attorney. Fourth, unlike petitioner, respondent was not a fiduciary. Considering all of the circumstances, the probate court did not abuse its discretion in denying petitioner's request.

Affirmed.

/s/ Kathleen Jansen

/s/ Donald E. Holbrook, Jr.

/s/ Barbara B. MacKenzie