

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of PAUL K. COUSINO,
Deceased.

JOHN B. KIEFER, as Personal Representative of the
Estate of PAUL K. COUSINO, Deceased,

UNPUBLISHED
March 2, 1999

Appellee,

v

PAUL W. COUSINO,

No. 203578
Macomb Probate Court
LC No. 86-096297 SE

Appellant.

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Appellant appeals as of right from orders entered on May 5, 1997, allowing the personal representative's fourth annual account, including an allowance of fiduciary fees and attorney fees, and confirming the sale of real property owned by the estate. We affirm the probate court, impose sanctions on appellant, and remand for a determination of the damages incurred by the personal representative in this appeal.

This case concerns the estate of appellant's father, Paul K. Cousino. Appellant and his sister are the two principal beneficiaries of the estate. The petition for commencement of probate proceedings was filed on July 7, 1986. However, because of appellant's constant objections and appeals, the case continues to this day. As noted in a previous opinion regarding this matter, "[appellant's] actions in this case have turned a straightforward matter into a proceeding which has lasted more than ten years." *In re Cousino*, unpublished opinion of the Court of Appeals, issued October 10, 1997 (docket nos. 194005 & 194118), slip op at 2.

In this appeal, appellant first argues that the probate court's allowance of attorney fees to the personal representative was improper. We disagree. This Court reviews the actions of the probate court for an abuse of discretion. *In re Rice Estate*, 138 Mich App 261, 270; 360 NW2d 587 (1984).

Specifically, appellant contends that the fees incurred by the personal representative were not incurred for the benefit of the estate. The fees allowed in the fourth annual account were incurred by the personal representative defending himself in separate litigation instituted by appellant. The probate court found that, "in the long run," the personal representative's skillful performance of services as the independent personal representative of the estate, in this relatively simple matter made tedious and complex by appellant's incessant objections and appeals, worked to the benefit of the estate. The probate court also found that the personal representative was embroiled in the separate litigation solely because of his status as personal representative. On the basis of these findings, the trial court reasoned that the fees incurred by the personal representative were for the benefit of the estate. After review of the record, we conclude that the probate court's reasoning was sound, and that its order did not constitute an abuse of discretion. Cf. *In re Svitojus*, 307 Mich 491, 492-493; 12 NW2d 324 (1943); *In re Hammond Estate*, 215 Mich App 379, 387; 547 NW2d 36 (1996).

Appellant next argues that the order confirming the sale of real property owned by the estate was improperly entered because on May 5, 1997, appellant's appeal of a prior order authorizing the sale of the real estate was still pending. In particular, appellant contends that the order was in violation of an automatic stay of the probate proceedings. See MCL 600.867; MSA 27A.867, MCL 700.35; MSA 27A.5035. However, because the order authorizing the sale of the real estate has since been affirmed by this Court, see *Cousino, supra*, slip op at 3, and leave has been denied by the Michigan Supreme Court, see *In re Cousino*, 459 Mich 884; 587 NW2d 498 (1998), this issue is moot. As a general rule, we will not entertain moot questions. *East Grand Rapids School Dist v Kent Co Tax Allocation Bd*, 415 Mich 381, 390; 330 NW2d 7 (1982).

We find this appeal to be vexatious on the ground that it was "taken for purposes of hindrance or delay without any reasonable basis for belief that there was a meritorious issue to be determined." MCR 7.216(C)(1)(a). Accordingly, we assess actual damages in an amount equal to the expenses incurred by the personal representative in this appeal, including reasonable attorney fees. In addition, we award punitive damages in the same amount. MCR 7.216(C)(2); see also *Richardson v Detroit Automobile Inter-Insurance Exchange*, 180 Mich App 704, 709; 447 NW2d 791 (1989).

The challenged orders of the probate court are affirmed. This matter is remanded for a determination of damages and for entry of an order assessing actual and punitive damages against appellant, Paul W. Cousino, personally. If the trial court is inclined to look to the estate for purposes of recovering the damages assessed, it may only look to appellant's interest in the estate. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Kathleen Jansen

/s/ Michael J. Talbot