

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of MELVA R. BAUER, a/k/a MELVA
BAUER LOCKHART, a protected person.

JIM W. ALBRIGHT, Successor Conservator,

Petitioner-Appellee,

v

ROGER E. WINKELMAN, Personal Representative,

Respondent-Appellant.

UNPUBLISHED

February 8, 2000

No. 210095

Oakland Probate Court

LC No. 96-250689 CV

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

This case arises from an accounting of the estate of Melva Bauer, a/k/a Melva Bauer Lockhart, a protected person. After a hearing regarding petitioner's first and final account, and over respondent's specific objections to certain items in the account, the probate court accepted petitioner's account. Respondent appeals as of right. We reverse and remand.

Respondent contends the probate court erred when it allowed petitioner's first and final account without requesting and examining essential supporting evidence and without permitting respondent's counsel to cross examine petitioner. An administrator is obliged to sustain the correctness of his or her accounts and the propriety of the charges contained therein, including the specific items to which objections are made. *In re La Freniere's Estate*, 316 Mich 285, 292; 25 NW2d 252 (1946). When a party has challenged certain items involved in the account, "[i]t is our duty to determine whether the conclusions reached as to the allowance or disallowance of items are supported by the findings, and whether the findings are supported by the evidence." *In re Finn's Estate*, 281 Mich 478, 481; 275 NW 215 (1937). This Court will not reverse a probate court's findings unless clearly erroneous. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

Here, after petitioner testified to his beliefs that the receipts and disbursements were accurate and the fees claimed were fair and reasonable, respondent objected on the record¹ to certain allegedly

improper charges, including some funeral expenses, nursing care expenses, a petty cash item, and fiduciary fees claimed by petitioner. With respect to the challenged fiduciary fees, petitioner subsequently offered that the time he actually spent performing tasks for decedent's estate far exceeded the hours he claimed, without specifically addressing respondent's objection. Our review of the transcript of the three-minute hearing reveals, however, that the probate court failed even to inquire into most of the items objected to by respondent, and that the abrupt nature of the proceedings and the cursory treatment of respondent's objections precluded respondent the opportunity to obtain petitioner's explanations of the challenged charges. Because the record contains no evidence to support the items objected to by respondent and provides no basis from which we may meaningfully review the probate court's ruling, we remand for an evidentiary hearing at which the parties may present evidence relevant to any objections concerning petitioner's account. *In re Finn's Estate, supra*. The probate court shall modify its ruling if necessary to conform to the evidence presented.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage

¹ We disagree with petitioner's argument on appeal that respondent is not entitled to relief because he did not file written objections pursuant to MCR 5.707(A)(3)(b). This subrule addresses information that the accounting must include, not the manner in which an objection must be raised. We note that this subrule neither mandates written objections nor precludes oral objections. Furthermore, MCR 5.119(B) specifically provides that "[a]n interested party may object to a pending petition orally at the hearing or by filing and serving a paper which conforms with MCR 5.113."