

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of BONNIE M. LAVERTY, Deceased.

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WILLARD L. MIKESELL,

Petitioner-Appellant,

v

WILLIAM L. FERRIGAN, Personal  
Representative of the Estate of BONNIE M.  
LAVERTY, Deceased,

Respondent-Appellee,

and

LORENA F. HAMMOND, LINDA M. DAVIS,  
and SHARON J. MILLER,

Appellees.

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Before: Gage, P.J., and Hoekstra and Meter, JJ.

PER CURIAM.

Petitioner, the former personal representative and attorney for the Estate of Bonnie M. Laverty, deceased, appeals as of right the from the probate court's order denying his request for attorney fees. We affirm.

These parties appear before this Court for the second time. Petitioner previously appealed to this Court a probate court order surcharging and sanctioning him in the amount of \$44,092.71, but allowing him to offset against that amount \$30,114.75 in attorney fees. Respondent William L. Ferrigan, the successor personal representative of the estate, and appellees Lorena Hammond, Linda Davis and Sharon Miller, who are all heirs at law of the deceased, cross appealed challenging the probate court's decision to award petitioner the full amount of his requested attorney fees. This Court affirmed the surcharge but reversed the award of attorney fees and remanded to the probate court for a determination of the reasonable value of petitioner's attorney fees in light of the court's findings of fact. *In re Estate of Laverty*, unpublished opinion per curiam of the Court of Appeals, issued June 18, 1999 (Docket No.

207040). On remand, the probate court denied petitioner's request for attorney fees in its entirety on the basis that petitioner's legal services did not benefit the estate.

Petitioner first contends that the probate court erred by denying the request for attorney fees without first conducting a hearing. The award or denial of attorney fees, and the valuation thereof, falls within the probate court's discretion and will be overturned on appeal only when the court manifestly abuses that discretion. *In re Estate of Weaver*, 119 Mich App 796, 799; 327 NW2d 366 (1982). Because the decedent's heirs objected to the attorney fees petitioner sought, petitioner bore the burden of demonstrating the reasonableness of the requested fees. MCR 8.303(F);<sup>1</sup> *In re Krueger Estate*, 176 Mich App 241, 248-249; 438 NW2d 898 (1989).

Pursuant to MCL 700.543, which was in effect at the time of the probate court's order,<sup>2</sup> "a fiduciary of an estate may employ counsel to perform necessary legal services in behalf of the estate and the counsel shall receive reasonable compensation for the legal services." The attorney's fees can be charged against an estate only when the services rendered were on behalf of and beneficial to the estate. *In re Brack Estate*, 121 Mich App 585, 591; 329 NW2d 432 (1982). Legal services rendered on behalf of an estate are compensable when 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); *In re Prichard Estate*, 164 Mich App 82, 86-87; 416 NW2d 331 (1987).

In remanding to the probate court, this Court specifically instructed that the court should "determine the reasonable value of petitioner's services *in light of the court's own findings*." [Emphasis added.] The probate court previously held an eight-day trial, at which testimony was taken and evidence admitted, to determine the issue of attorney fees. On remand, the court concluded

that [petitioner's] services did not increase or preserve the assets of the estate, thereby benefiting it. From the pleadings, the arguments of counsel, and the findings of fact . . . this court can only conclude that the services did not increase or preserve the assets of the estate but in fact depleted the estate in the extraordinary amount of \$44,092.71.

We conclude that the probate court's prior findings based on the abundant existing record plainly were a sufficient basis for the court to make the required findings on remand without holding any further hearings, and therefore that the court properly relied on the prior findings. See *Driver v Hanley (After Remand)*, 226 Mich App 558, 564; 575 NW2d 31 (1997) (noting that a trial court on remand possesses authority to take any action consistent with the appellate court's opinion).

Petitioner next challenges the probate court's finding that he was entitled to none of the attorney fees he sought. The evidence presented at trial showed that the probate court removed petitioner as the personal representative of the estate and appointed a new representative who had to undertake and submit a new accounting. Testimony established that petitioner did very little

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<sup>1</sup> Effective January 1, 2002, this provision was renumbered as 5.313(F).

<sup>2</sup> This statute was repealed by 1998 PA 386, § 8102, which became effective on April 1, 2000.

correctly when handling the estate; in fact, the estate incurred severe tax penalties and other costs because of petitioner's mismanagement. Petitioner did not increase or even preserve the estate's assets, instead he appears to have depleted the estate's assets. No evidence existed that petitioner benefited the estate in any way. This Court previously affirmed the probate court's determination that the \$44,092.71 surcharge against petitioner was appropriate. As this Court observed in its previous decision, to give petitioner the full amount of his requested attorney fees would "provide[] petitioner a benefit to which he was not entitled to the detriment of the estate and its beneficiaries." In light of the overwhelming evidence before the probate court and the findings by both the probate court and this Court, we conclude that to award petitioner *any* attorney fees would provide him a benefit to which he is not entitled, and that the probate court did not abuse its discretion by denying the requested attorney fees in their entirety.

Petitioner also suggests that the probate court erred by failing to follow MCR 5.709<sup>3</sup> and former MCR 8.303 when determining the appropriate amount of attorney fees. We find these suggestions lacking merit, however, because the probate court had an ample record on which to base its findings and made specific findings of fact and conclusions of law when rendering its decision.

While it appears that on appeal petitioner also takes issue with the fact that the probate court did not award any amount in fiduciary fees, we note that petitioner never requested fiduciary fees before the probate court. Petitioner expressly averred at trial that he did not charge for his fiduciary services, and that all his efforts constituted legal services for which he was entitled to be paid at the attorney rate. Because petitioner did not previously request fiduciary fees and because the issue was not expressly addressed by the probate court, petitioner has failed to properly preserve this issue for our review. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Regardless, because the services rendered by petitioner did not benefit the estate, petitioner is entitled to neither attorney nor fiduciary fees. *In re Humphrey Estate*, 141 Mich App 412, 437; 367 NW2d 873 (1985).

Affirmed.

/s/ Hilda R. Gage  
/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter

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<sup>3</sup> The rule was repealed effective April 1, 2000.