

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of LUELLA A. MURPHY.

MARY MURPHY, Personal Representative of the
Estate of LUELLA A. MURPHY, Deceased,

UNPUBLISHED
February 4, 2010

Appellee,

v

PATRICK MURPHY,

No. 287828
Newaygo Probate Court
LC No. 04-002659-DE

Appellant.

Before: Donofrio, P.J., and Meter and Murray, JJ.

MEMORANDUM.

Appellant Patrick Murphy appeals as of right from a probate court order approving appellee Mary Murphy's final accounting as personal representative of the estate of the parties' deceased mother, Luella Murphy. On appeal, Patrick challenges the probate court's approval of a charge of \$3,381 for attorney fees incurred by the estate in defending against Patrick's prior appeal of an order dividing and distributing the estate among Luella's five children. The charge was to be assessed solely against Patrick's share of the estate. We reverse the probate court's order to the extent that it holds Patrick liable for the estate's attorney fees.

Patrick argues that the probate court improperly found him liable for the estate's attorney fees because no statute or court rule authorized an award of attorney fees. We agree. Whether the probate court was authorized to award attorney fees is a question of law. We review questions of law de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004).

It is well settled that attorney fees ordinarily are not recoverable unless a statute or court rule specifically provides for them. *Matras v Amoco Oil Co*, 424 Mich 675, 695; 385 NW2d 586 (1986). The estate relied on MCL 600.2591 and MCR 2.114 as authority for an award of attorney fees incurred by it in defending against Patrick's prior appeal. However, neither of those authorities permit recovery of costs, including attorney fees, incurred on appeal. *DeWald v Isola (After Remand)*, 188 Mich App 697, 703; 470 NW2d 505 (1991). Even if they did, the probate court specifically found that Patrick's prior appeal was not frivolous and was not filed for an improper purpose. Thus, there was no basis to award attorney fees under either MCL 600.2591 or MCR 2.114.

MCR 7.216(C), MCR 7.219, and MCL 600.2445 set forth the standards for recovering costs or attorney fees associated with an appeal, and attorney fees may be recovered only for vexatious appeals. A request for attorney fees for a vexatious appeal pursuant to MCR 7.216(C) must be made in an appropriate motion under MCR 7.211(C)(8). Here, the estate did not request attorney fees in a motion filed in accordance with MCR 7.211(C)(8).

Because an award of attorney fees was not authorized under any of the authorities cited by the probate court or the parties, and no other applicable authority authorizing an award of attorney fees has been identified, we reverse the probate court's order approving appellee's final accounting in part, to the extent that it holds Patrick liable for the estate's attorney fees of \$3,381.

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

/s/ Pat M. Donofrio

/s/ Patrick M. Meter

/s/ Christopher M. Murray