

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the ESTATE of GERTRUDE ENGELS,
a Protected Person

GILBERT ENGELS,

Petitioner-Appellant,

v

MARLIS GREENING,

Respondent-Appellee.

UNPUBLISHED

June 12, 1998

No. 200182

Wayne Probate Court

LC No. 88-824884

Before: Sawyer, P.J., and Kelly and Smolenski, JJ.

PER CURIAM.

Petitioner, Gilbert Engels, appeals as of right the order of Wayne County Probate Court Judge Martin T. Maher denying his petition to reopen the estate of his mother, Gertrude Engels, and to appoint a personal representative of the estate. We affirm.

In September, 1987, Mary MacDonald was appointed as conservator for Gertrude Engels. Gertrude Engels had two adult children, petitioner, Gilbert Engels, and respondent, Marlis Greening. MacDonald served as conservator of the estate until Gertrude Engels' death on December 14, 1988. MacDonald thereafter filed a petition to recover her fiduciary fees from the estate, in the amount of \$17,301. Petitioner and respondent filed objections to MacDonald's petition for fees. However, the probate court granted MacDonald's petition, found that the objections filed by petitioner and respondent were unreasonable, and directed MacDonald to file a petition to recover from the estate the reasonable fees, costs, and expenses incurred by her, her attorneys, and her expert witness in defending her petition for fees against the objections. The probate court later granted MacDonald's petition for the fees, costs and expenses incurred in defending her petition for fiduciary fees. Petitioner did not appeal the order. The estate was closed on April 10, 1991. Several years later, on October 16, 1995, petitioner filed a petition to reopen the estate and to appoint a personal representative to challenge the probate court's order granting MacDonald the fees incurred in defending her petition for fiduciary fees, based on the holding in *In re Sloan Estate*, 212 Mich App 357, 364; 538 NW2d 47 (1995), that fees

incurred while defending a petition for attorney or fiduciary fees may not be recovered from the estate. The probate judge denied the petition to reopen the estate and to appoint a personal representative, and awarded respondent \$200 in sanctions against petitioner and his attorney for filing a frivolous petition.

Petitioner first argues that the probate court erred in denying his petition to reopen the estate and to appoint a personal representative. We disagree.

MCL 700.543; MSA 27.5543 provides that, without obtaining a court order, a fiduciary of an estate may employ counsel to perform necessary legal services on behalf of the estate, and the counsel shall receive reasonable compensation for such services. Today, fees and costs incurred by a conservator in defending a petition for fiduciary fees may not be recovered from the estate pursuant to MCL 700.543; MSA 27.5543, because, even assuming such fees and costs were “necessary,” they clearly do not benefit the estate. *In re Sloan Estate, supra*, pp 362-363. However, at the time the estate was closed in the instant case, no rule of law prohibited a fiduciary from collecting such fees and costs from the estate. Prospective application of a rule of law is preferred where the issue is one of first impression whose resolution was not clearly foreshadowed. *Line v State of Michigan*, 173 Mich App 720, 723; 434 NW2d 224 (1988). Furthermore, we will not apply the *Sloan* decision retroactively where it would be impossible to recover fees paid to fiduciaries in the past, and where attempting to do so would result in a considerable administrative burden. *Walen v Department of Corrections*, 443 Mich 240, 249; 505 NW2d 519 (1993); *Line, supra*, p 723. Therefore, petitioner has presented no grounds for reopening the estate.

Petitioner next argues that the probate court erred in awarding respondent \$200 in sanctions against him and his attorney for filing a frivolous petition. We disagree. A court’s determination that a pleading is frivolous will not be reversed on appeal unless clearly erroneous. *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997).

MCR 2.114(D) provides that the signature of an attorney or a party constitutes a certification by the party that the signer 1) has read the document, 2) that, to the best of the signer’s knowledge, information, and belief formed after reasonable inquiry, the document is well-grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and 3) that the document was not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *Warden v Fenton Lanes, Inc*, 197 Mich App 618, 626; 495 NW2d 849 (1994). If a pleading is signed in violation of MCR 2.114(D), the party, the attorney, or both, must be sanctioned. MCR 2.114(E). Petitioner had no authority for his position that *Sloan* should be applied retroactively to reopen a closed estate and offered no real reasons for his position. The probate judge did not clearly err in finding that the petition to reopen the estate and to appoint a personal representative violated MCR 2.114(D).

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Michael R. Smolenski