

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ESTHER BENFER, a Protected
Individual.

CLARKE F. BALDWIN,

Petitioner-Appellee,

UNPUBLISHED
November 21, 2006

v

LINDA S. COOK,

Respondent-Appellant.

No. 262895
Lenawee Probate Court
LC No. 04-144426-CA

Before: White, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the probate court's order granting in part her request for attorney fees. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent, an attorney, performed caretaking services for Esther Benfer and sought payment for those services at her usual professional rate of \$150 an hour. Respondent sought over \$11,000 in attorney fees. Following a hearing, the probate court found that respondent had not performed legal services for Benfer or the estate and placed no credibility in her testimony or her billing statement. It awarded respondent \$500 in addition to \$2,000 that she had already been paid.

The probate court's findings of fact are reviewed for clear error. *In re Webb H Coe Marital & Residuary Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999). "A finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court, on the entire evidence, is left with the firm and definite conviction that a mistake has been committed." *In re Powell Estate*, 160 Mich App 704, 710; 408 NW2d 525 (1987). This Court will defer to the probate court on matters of credibility because of its special opportunity to consider the demeanor of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 2.613(C).

An attorney is permitted to recover reasonable compensation for her services. MCL 700.5413. "To be chargeable against the estate, the attorney fees must be for services rendered

on behalf of and benefitting the estate.” *In re Prichard Estate*, 164 Mich App 82, 86; 416 NW2d 331 (1987). “In general, the court has broad discretion in determining what amount constitutes reasonable compensation.” *In re Krueger Estate*, 176 Mich App 241, 248; 438 NW2d 898 (1989). In making its determination, the court should consider such factors as “the amount of time spent, the amount of money involved, the character of the services rendered, the skill and experience necessary, and the results obtained.” *Id.* “The burden of proof on these considerations rests on the party claiming a right to that compensation.” *Id.* at 249. The court’s ruling is reviewed for an abuse of discretion. *In re Weaver Estate*, 119 Mich App 796, 799; 327 NW2d 366 (1982).

The probate court did not abuse its discretion in refusing to compensate respondent at her usual hourly rate for attorney services. “Good business ability, rather than professional skill, is the element most needed in the administration of estates; and compensation, save in exceptional cases, should be adjusted by the value of services among that class.” *Wisner v Mabley Estate*, 70 Mich 271, 285; 38 NW 262 (1888). Therefore, an attorney serving as a fiduciary is not automatically entitled to charge attorney rates for fiduciary services. *Id.* Further, respondent admittedly engaged in self-dealing and other acts which, if not unethical, were at least questionable. When a fiduciary causes harm to the estate, she may be deprived of all or part of the compensation she would otherwise be entitled to. *In re Thacker Estate*, 137 Mich App 253, 263; 358 NW2d 342 (1984).

We reject respondent’s argument that the probate court’s ruling was the result of bias or partiality. While the court was critical of respondent’s conduct, a court’s remarks during the course of a trial that are critical of or hostile to a party or its case do not ordinarily establish bias or partiality. *Schellenberg v Rochester Lodge No 2225 of the Benevolent & Protective Order of Elks*, 228 Mich App 20, 39; 577 NW2d 163 (1998). Here, the probate court’s opinions were based on the evidence presented at the hearing, which do not ordinarily constitute bias or partiality. Respondent has not presented any evidence of deep-seated favoritism or antagonism that would overcome the presumption of impartiality. *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999).

Affirmed.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly