

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Estate of

DOROTHY P. METTLE,

Deceased.

No. 38243-1-II

UNPUBLISHED OPINION

Armstrong, J. — Guy Mettle, a beneficiary of his mother’s trust, appeals trial court orders approving the final accounting of her estate and the interim accounting of her trust and denying his motion for an immediate distribution of funds from the trust. Mettle makes several additional claims for relief. We reject his claims and affirm.

Facts

Dorothy Mettle died on December 10, 2002. Her son Gregg is the personal representative of her estate as well as successor trustee of the trust she created.¹ Gregg and his brothers Guy and John are equal beneficiaries of Dorothy’s trust. At the time of her death, the combined value of the trust and estate was more than \$900,000.00.

Immediately before her death, Dorothy’s affairs were under the supervision of a guardianship court, and Gregg and John were her court-appointed guardians. All personal property in the estate was disposed of in the guardianship action. Guy appealed the final guardianship order, but his appeal was dismissed for want of prosecution.

On September 10, 2003, Gregg filed a petition for an order admitting Dorothy’s will to probate, appointing him personal representative, and adjudicating the solvency of the estate.

¹ Hereafter, we refer to the members of the Mettle family by their first names for the sake of clarity.

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Pursuant to the will's instructions, the court granted Gregg nonintervention powers. Dorothy's will further directed that the assets in her estate be transferred to the trustee and placed in the trust.

On October 6, 2004, Gregg sought to complete the estate's administration by filing a declaration of completion of probate. On November 1, 2004, Guy filed a petition for an accounting and approval of fees that challenged Gregg's proposed completion of probate. The estate's counsel worked with Guy's attorney to provide the information Guy sought.

In December 2004, Gregg distributed \$200,000.00 in trust funds to each beneficiary. Guy eventually received his check even though it was initially sent to an incorrect address.

The estate's closure was delayed pending a decision in *Estate of Hemphill v. Wash. State Department of Revenue*, 153 Wn.2d 544, 105 P.3d 391 (2005). That decision resulted in a refund of \$27,445.00 in estate taxes in September 2005. Closure also was delayed until the statute of limitations expired with respect to Dorothy's federal income tax returns on April 15, 2006.

Guy's demands caused additional delay. From the time the court appointed Gregg as personal representative and trustee, three different attorneys appeared on Guy's behalf and then withdrew. Although the estate's counsel attempted to work with these attorneys and Guy in a manner that would allow the estate to close without court hearings and additional attorney fees, Guy filed numerous pleadings that delayed closure of the estate.

On March 10, 2008, Gregg filed a petition for an order approving the estate's final accounting and decree of distribution. His petition noted that when the declaration of completion

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of probate was filed in 2004, the estate's ending balance was \$17,548.49. At the end of 2007, the balance was \$26,766.95. Gregg sought payment of a personal representative fee of \$2,000.00 from the estate as well as \$552.00 in guardian fees previously authorized by the guardianship court. He also sought approval of the professional fees and costs already paid.

On the same date, Gregg filed a petition to approve the trustee's interim accounting in the trust case. The petition detailed the trust account for the period of December 10, 2002 through December 31, 2007. It listed a starting balance of \$888,792.22, disbursements of \$600,000.00, and appreciation and additions of \$105,192.59, for an ending balance of \$393,984.81. Gregg sought permission to make an interim distribution of \$125,000.00 to each of the three trust beneficiaries. That distribution would leave approximately \$19,000.00 in the trust account, and the balance of the probate estate (approximately \$26,766.00, less authorized fees) would be transferred to the trust. The petition also sought approval of the trustee's attorney fees and consolidation of existing brokerage accounts into a single account. The court granted Gregg's subsequent motion to consolidate the trust hearing with the estate hearing.

The estate's counsel submitted declarations regarding attorney fees that attached every billing statement concerning the guardianship, estate, and trust, as well as the details of his billable hourly rate. The fees totaled \$27,954.02 and had been paid.

In pro se responses to Gregg's petitions, Guy requested various forms of relief, including replacing Gregg as personal representative and trustee and denying him compensation, terminating the estate's counsel due to bad faith, disgorging payments made by the estate to

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counsel, blocking any distributions to Gregg and John, requiring Gregg and John and the estate's counsel to post surety in varying amounts, and the immediate payment of Guy's own distribution. Guy also sought summary judgment, an award of fees and costs, authorization to retain an attorney, and a chance to conduct additional discovery and present more evidence.

Following a hearing on June 27, 2008, the trial court entered orders approving the final accounting of the estate and the interim accounting of the trust. Section 4 of the order approving the interim accounting provides:

That the interim distribution proposed by the Trustee is authorized and that such distribution may be delayed until the statutory period for appealing this Order has expired or until any appeal of this Order has been resolved.

Clerk's Papers (CP) at 630. Both orders denied Guy's requests for relief and the estate's request for sanctions. The estate's counsel provided Guy with copies of the orders that he handed to the judge for signature, and Guy did not object to their form.

Guy moved for reconsideration, arguing that he had not had time to analyze the estate's pleadings before the hearing and that he had since discovered acts of perjury within those pleadings as well as misconduct by the court and the estate's counsel. The trial court denied the motion for reconsideration.

Guy then filed a motion for distribution, arguing that section 4 of the order approving the interim accounting was the result of ex parte communication between the estate's counsel and the trial judge. The court denied this motion as well.

Guy appealed the orders referred to above and subsequently sought discretionary review of additional rulings pertaining to the estate and trust proceedings. This case concerns only his

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appeal of the order approving the estate's final accounting, the order approving the trustee's interim accounting, and the denial of Guy's motions for reconsideration and distribution.

Analysis

I. The Trial Court's Rulings

A. Standard of Review

Washington's Trust and Estate Dispute Resolution Act (TEDRA), gives the courts "full and ample" power and authority to administer and settle all estate and trust matters. RCW 11.96A.020(1)(a), (b); *In re Estate of Riddell*, 138 Wn. App. 485, 492, 157 P.3d 888 (2007). If TEDRA is inapplicable, insufficient, or doubtful with reference to the administration and settlement of trust and estate matters,

the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court.

RCW 11.96A.020(2); *see also In re Irrevocable Trust of McKean*, 144 Wn. App. 333, 343, 183 P.3d 317 (2008) (TEDRA grants plenary powers to the trial court).

Probate proceedings are equitable in nature. *In re Estate of Black*, 116 Wn. App. 476, 483, 66 P.3d 670 (2003), *aff'd*, 153 Wn.2d 152, 102 P.3d 796 (2004). Our review is therefore de novo on the entire record. *Black*, 116 Wn. App. at 483. We apply the same standard to trust proceedings unless factual questions are presented. *See In re Riddell*, 138 Wn. App. at 491 (deferring to trial court's factual findings regarding trust but reviewing its decision to deny equitable relief de novo).

B. Order Approving Final Accounting and Decree of Distribution

This order approved the personal representative's activities, the professional fees and costs incurred and paid by the personal representative, the fees of \$2,000 and \$552 to be paid to the personal representative from the estate, and the delivery of the balance of the estate's property to Gregg as trustee of his mother's trust. It also denied Guy the additional relief he sought.

On appeal, Guy's principal complaint focuses on the trial court's approval of Gregg's activities as personal representative. Guy argues that Gregg violated Washington law with his untimely filing of Dorothy's will and his failure to file annual accountings, and he challenges Gregg's delay in closing the estate as well as the fees he received. *See In re Estate of Larson*, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985) (personal representative of estate has fiduciary relationship with estate's beneficiaries and owes duty to act in their best interests).

Guy is correct in stating that Gregg did not file Dorothy's will in a timely manner. RCW 11.20.010 provides that any person with a will in his custody or control shall, within 30 days after receiving knowledge of the testator's death, deliver the will to the court or the executor. This provision is intended to safeguard the integrity of testamentary dispositions. *In re Hyde's Estate*, 190 Wash. 88, 93, 66 P.2d 856 (1937). Liability under the statute is not triggered, however, unless the aggrieved party has sustained damages as a result of its violation. RCW 11.20.010.

The record shows that in January 2003, Guy learned of his mother's death as well as his inheritance from her estate. Although Gregg did not file his mother's will with the court until nine months later, the trial court found that the heirs received timely notice of Gregg's appointment as personal representative and the pendency of probate proceedings. Guy can show no prejudice in

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Gregg's delay in filing the will where he learned of his inheritance in a timely manner and has shared in the disbursements to date. *See Myers v. Exch. Nat'l Bank*, 96 Wash. 244, 164 P. 951 (1917) (action for damages where objecting party did not receive disbursement due to custodian's failure to timely produce will).

Guy also complains that Gregg failed to file annual accountings on behalf of the estate. As stated, the trial court granted Gregg nonintervention authority, which granted him statutory authority to manage the estate without court involvement. *See* RCW 11.68.090(1) (personal representative acting under nonintervention powers may administer and settle the decedent's estate without intervention of court). The objective of a nonintervention probate is to simplify probate actions and procedures. 26B Cheryl Mitchell and Ferd Mitchell, *Washington Practice: Probate Law and Practice*, § 3.11 at 64 (2006). Because of his nonintervention authority, Gregg was not required to file annual reports. *See* RCW 11.68.090(1) (personal representative acting under nonintervention powers may exercise powers granted to personal representative under chapter 11.76 RCW but is not obligated to comply with duties the chapter imposes on personal representatives); RCW 11.76.010 (personal representative shall file annual report of the estate's affairs). Furthermore, although Guy filed a petition requesting an accounting, he never requested a hearing on the matter or sought an order requiring Gregg to file an accounting with the court. *See* RCW 11.68.065 (allowing beneficiary whose interest in estate has not been fully distributed to petition for court order directing personal representative to deliver report of estate's affairs).

Much of Guy's argument concerns his belief that when Gregg filed his declaration of the probate's completion in 2004, there was nothing left to resolve regarding the estate. Guy argues

repeatedly that Gregg created unnecessary delay, and compiled unnecessary fees and expenses, by not seeking a final closure order until 2008.

The record shows, however, that the estate's closure was delayed by the tax refund in 2005 and by the income tax issue that was not resolved until 2006. Guy's own actions further delayed the estate's closure. Guy prevented the estate from closing in 2004 with his petition for an accounting, and the record is replete with his filings protesting Gregg's activities as well as those of counsel for the estate. The record shows the extent to which counsel tried to arrive at an agreed closure and does not support Guy's repeated allegations that others are responsible for the delay. As the estate's counsel noted during the hearing on the petitions,

He complains about the delays in closing this estate and complains about the significant attorney fees incurred in this estate, and I would agree with him on both counts; but I would also have Guy Mettle look at the reasons why there [have] been significant delays and significant fees.

Report of Proceedings (RP) (June 27, 2008) at 7. Counsel added that he had received more than eight inches of material from Guy concerning the two petitions.

Guy also contests the trial court's approval of the fees Gregg requested and the amount of professional expenses paid by the estate, which include expenses authorized by the guardianship proceeding, funeral expenses, and accounting expenses. The fees requested and incurred are nominal and appear to be reasonable.

C. Order and Decree Approving Trustee's Interim Accounting

In an order authorized by RCW 11.106.030, the trial court approved the interim accounting for the period from December 10, 2002 through December 31, 2007, as well as the trustee's activities. The court's order allowed the trustee to consolidate all brokerage assets into

a single account,² approved the trustee's attorney fees as set forth in counsel's declaration, and authorized the interim distribution the trustee proposed with the condition that such distribution could be delayed until the statutory period for appealing the order expired or until any appeal of the order was resolved. The court again denied the relief that Guy sought. Guy's challenge of this order again focuses on Gregg's actions, as well as the court's approval of the attorney fees awarded and its postponement of the interim distribution.

A trustee is a fiduciary who owes the highest degree of good faith, diligence, and undivided loyalty to the beneficiaries. *In re Estate of Ehlers*, 80 Wn. App. 751, 757, 911 P.2d 1017 (1996). A trustee's duties and powers are determined by the terms of the trust, by common law, and by statute. *Ehlers*, 80 Wn. App. at 757. One statute requires trustees to provide trust beneficiaries with notice of a "significant nonroutine transaction." RCW 11.100.140(1)(a). The record does not show, however, that Gregg engaged in any trust transaction other than the distribution in which Guy shared.³ And, although Guy again complains that Gregg failed to provide an annual accounting, there were no receipts and disbursements to account for, except for the \$600,000 disbursement that included Guy. *See* RCW 11.106.020 (trustee shall deliver to beneficiaries annual statement of all receipts and disbursements of trust funds). Furthermore, correspondence shows that counsel for the estate kept Guy informed of trust matters. Any failure to provide annual trust accountings did not prejudice Guy, and his claim of wrongdoing fails. *See In re Park's Trust*, 39 Wn.2d 763, 773, 238 P.2d 1205 (1951) (trustee not liable to beneficiary

² Guy makes repeated assertions of wrongdoing related to this consolidation. Our record does not support Guy's claims, and we defer to the trial court's rejection of these assertions.

³ According to Gregg, distributions to accountants, attorneys, and other professionals were made from the estate.

where failure to provide accounting was harmless). We also note that the trust balance increased under Gregg's administration.

As for the trial court's approval of the attorney fees requested, we review that approval for abuse of discretion. *See In re Estate of Larson*, 103 Wn.2d at 521 (courts will not interfere with allowance of attorney fees in probate matters unless facts and circumstances clearly show abuse of discretion). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). Guy's criticisms are based primarily on his claim of delay, which, as discussed, was due in large part to his own efforts. Many of the fee entries were the result of interactions with Guy and his attorneys. As Gregg stated, "A great deal of attorney time was devoted to dealing with Guy Mettle's voluminous and irrelevant documents filed with the court." CP at 483. We see no abuse of discretion in the trial court's approval of the trustee's attorney fees as set forth in counsel's detailed declarations.

Finally, Guy takes issue with the postponement of the interim distribution until any appeal of the order is resolved. As stated, the court has plenary authority in trust proceedings. *See* RCW 11.96A.060 (court may issue orders "that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title"). Here, the trial court reasonably conditioned the interim disbursement on the resolution of any appeal to ensure that there would be sufficient assets in the trust to satisfy attorney fees expended on its behalf. And, as Gregg argues, the court's order advances the intent of the trust, which is to distribute maximum assets evenly among the Mettle siblings.

D. Requests for Additional Relief

In his responses to the petitions for a final accounting of the estate and an interim accounting of the trust, Guy made several requests for affirmative relief. He sought Gregg's removal as personal representative and trustee, termination of the estate counsel's representation due to bad faith, disgorgement of payments made to counsel, the prohibition of any distributions to Gregg and John, the requirement that they as well as counsel post a surety bond, and an immediate payment of his share of the trust. Guy also sought an award of fees and costs for his efforts, authorization to retain an attorney, and a chance to conduct additional discovery and present more evidence. He argued further that he was entitled to summary judgment based on the negligence of Gregg and the estate's counsel.

We review a trial court's decision to retain a personal representative or trustee for an abuse of discretion. We find none in the trial court's refusal to terminate Gregg's appointment in either capacity. *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 716, 732 P.2d 974 (1987); *In re Beard's Estate*, 60 Wn.2d 127, 132, 372 P.2d 530 (1962). Nor do we find any grounds for the estate counsel's termination. Counsel's conduct, as demonstrated by the record and by the respondent's brief on appeal, shows no basis for any determination that he has acted in bad faith with regard to the estate, the trust, or the beneficiaries. See *In re Estate of Larson*, 103 Wn.2d at 521 (attorney's fiduciary duties run to personal representative and heirs of estate).

We find no grounds to block a distribution of funds to Guy's brothers; indeed, any such action would interfere with the purpose of the estate and trust, which, as the trial court observed,

is to divide everything that is left “among the three boys.” RP (June 27, 2008) at 16. Guy’s request that his brothers and the estate’s counsel post a surety bond worth millions of dollars because of their bad faith and fraud is baseless; there is no evidence of wrongdoing on his brothers’ or the estate counsel’s part. Similarly, there is no basis to award Guy fees, costs, or sanctions, and no reason to authorize him to retain an attorney and conduct additional discovery.

TEDRA permits discovery only when a judicial proceeding placing a specific issue in controversy has commenced, or when good cause is shown. RCW 11.96A.115. Guy’s requests for discovery are general at best, and he acknowledges in one pleading that he already may have received some of the material he seeks. We see no reason why the trial court should have granted Guy’s request to conduct additional discovery.⁴ And, we see no basis for summary judgment on negligence grounds.

In addressing Guy’s claims for additional relief, we do not address the claims for relief based on grievances related to the guardianship proceeding, which have been resolved. Nor do we address his motion for recusal of the trial judge who entered the orders at issue in this appeal; we have already denied discretionary review of the trial court’s denial of that motion. We do not consider Guy’s claim that the trial court did not have jurisdiction to enter the orders at issue; his appellate brief argues both for and against jurisdiction, and we need not consider an issue supported by such contradictory assertions. *See Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998) (lack of reasoned argument is insufficient to merit judicial

⁴ We do not here consider Guy’s motions to compel the production of documents, perpetuate testimony, or require the estate to post a supersedeas bond. Guy filed these motions after filing his notice of appeal in this case, and we recently denied discretionary review of the trial court’s refusal to consider them.

consideration).

A lack of reasoned argument also prevents us from considering Guy's additional claims, including those concerning the allegedly criminal actions of his brothers and the estate's counsel over the years, both before and after his mother's death. We also decline to consider claims of error supported only by Guy's own allegations. *See* RAP 10.3(a)(6). Although the resolution of his mother's estate and trust has taken far too long, we agree with the trial court that there is no evidence of a conspiracy against Guy, and no evidence that anyone is attempting to deprive him of funds to which he is entitled.

E. Order Denying Reconsideration

In his motion for reconsideration, Guy argued that Gregg and his attorney committed perjury in the pleadings that supported the initial orders and in their argument on those orders. Additional claims of misconduct included the manner in which the estate's counsel drafted the orders the trial court signed and the court's failure to recognize that Gregg, his brother, and the estate's counsel acted on behalf of the estate and trust without authority. The trial court found no merit in the allegations of misconduct or perjury and no intent to deprive Guy of the money from the trust. We see no abuse of discretion in the court's decision. *See Weems v. N. Franklin Sch. Dist.*, 109 Wn. App. 767, 777, 37 P.3d 354 (2002) (trial court's denial of reconsideration reviewed for abuse of discretion).

F. Order Denying Motion for Distribution

Guy filed a motion for distribution after the trial court denied his motion for reconsideration. He sought the immediate distribution of \$125,000.00 from the trust and objected

to section four in the order approving the interim accounting. Section four delayed the interim distribution until any appeal of the order was resolved. Guy argued that this provision was the result of ex parte contact between the estate's counsel and the trial judge and therefore void.

We rejected Guy's claim of ex parte contact in denying review of the trial judge's refusal to recuse himself. In the order denying review, we explained that section four was included in the draft order that the estate's counsel handed to the judge in open court, and that the judge signed the order in open court. Guy was present and did not object to the language of the order during the hearing. He does not demonstrate that any ex parte communication occurred, and the trial court properly denied his motion for distribution.

II. Attorney Fees

Both parties request attorney fees on appeal. Under RAP 18.1, a party on appeal is entitled to attorney fees if a statute authorizes the award. *Steele v. Lundgren*, 96 Wn. App. 773, 787, 982 P.2d 619 (1999). Under RCW 11.96A.150(1), attorney fees on appeal are available at our discretion:

[A]ny court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

The estate/trust also seeks attorney fees and costs under RAP 18.9(a), which authorizes a court to order any party who files a frivolous appeal to pay terms or compensatory damages. *Holiday v.*

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City of Moses Lake, 157 Wn. App. 347, 356, 236 P.3d 981 (2010), *review denied*, 170 Wn.2d 1023 (2011).

We deny Guy's request for fees and grant the estate/trust's request for fees under RAP 18.1 and RCW 11.96A.150(1). This appeal, and the extended litigation associated with it, has not benefited the estate or trust; indeed, it has harmed both by depleting the existing assets otherwise available to the three beneficiaries. If Guy cannot pay these fees and costs himself, his distribution from the trust must be reduced by the attorney fees and costs awarded to the estate/trust.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Penoyar, C.J.