

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF WILLIAM A. GAINES, SR., DECEASED

CASE NO. 99-991315

ENTRY OVERRULING EXCEPTIONS TO ACCOUNT IN PART AND SETTING ATTORNEY FEE

This matter came before Judge Wayne F. Wilke on November 8, 2000 regarding numerous exceptions to the fiduciary's account filed on June 14, 2000. Present were James A. Reichert on behalf of the fiduciary, and the Exceptor, Florence Gaines-Waters, who appeared *pro se*. At the close of the parties' evidence, the Court ordered final arguments to be submitted by December 8, 2000 and permitted responses to those closing arguments to be submitted by December 22, 2000. This matter is now ripe for decision.

The decedent, William A. Gaines, Sr., died testate on February 10, 1999. Donald R. Gaines was appointed Executor on March 15, 1999. On May 31, 2000, the Executor filed his first partial account. On June 14, 2000, the Exceptor timely filed her exceptions and then supplemented those exceptions on October 6, 2000.

In her Exceptions, Ms. Gaines-Waters noted seventeen (17) separate exceptions. The supplement to her exceptions includes eight (8) exceptions, many of which are redundant. The Court shall address each of the exceptions in the order they appear on the Exceptions and the Supplemental Exceptions.

1. The Exceptor contends the partial account is defective in that no status report was filed. A Status Report was filed contemporaneously with the Account. This exception is overruled.

2. The Exceptor contends income listed in the account in the amount of \$4,272.29 should be described more fully. The Executor has satisfactorily listed the income, including rent payments and interest. This exception is overruled.
3. The Exceptor contends the Executor should explain the entry “other receipts” of \$36,775.17. This entry is in the recapitulation and not in the body of the account. The Executor has satisfactorily accounted for this amount. This exception is overruled.
4. The Exceptor contends there is an irregularity with respect to the transfer of the Norwich Lane property. The Executor has satisfactorily demonstrated that Barbara Harris and Donald Gaines released their interest in this property to Arthur Gaines. This exception is overruled.
5. The Exceptor contends the account is forced-balanced. The Court finds this exception well taken as there is a mathematical error of \$366.06. The Executor shall address this computational error accordingly on his final account, otherwise the final account may not balance.
6. The Exceptor contends John Haugabrook was inappropriately hired as an appraiser. The Court finds that as a matter of law, Mr. Haugabrook’s appointment as an appraiser did not violate Local Rule 61.1(A) as he was a former brother-in-law not related by blood to the decedent. Further, no payment was made to him. This exception is overruled.

7. The Exceptor contends the Executor should reimburse the Estate for alleged inappropriate expenses. Item 13 of the account reflects the payment Donald Gaines made back into the Estate pursuant to court order. This exception is overruled.
8. The Exceptor contends that Arthur Gaines inappropriately made only one rent payment. The Court finds that the value to the Estate of having Arthur Gaines managing and caring for the real estate in question is at least equivalent to any rent that might have been received. This exception is overruled.
9. The Exceptor contends the real estate commission of \$1,930.00 to Wm. Larkin Realty should not have been paid. The Court finds that services were rendered to the Estate; that the Executor acted in good faith in paying this commission; and that litigating a claim for quantum meruit might have been much more costly. This exception is overruled.
10. The Exceptor contends all of the disbursements for airfare and train fare must be disallowed and paid by the Executor individually. The Court finds this exception well taken. The Executor had no authority to pay \$3,265.00 for travel expenses to five individuals from the assets of the Estate. This amount will be charged as a setoff against the fiduciary's commission so that the fiduciary's commission will be reduced proportionally.
11. The Exceptor contends the Executor should not be compensated. The Court overrules this exception. The Executor has earned the

statutory fiduciary's commission pursuant to R.C. §2113.35. As stated above, however, the commission shall be reduced by \$3,265.00.

12. The Exceptor contends a real estate commission was omitted from the accounting. The HUD closing statement attached to the fiduciary's account clearly shows what commission was paid. The Executor had no obligation to include this commission in the account since he only accounted for the net proceeds from the sale. This exception is overruled.
13. The Exceptor contends the Executor failed to list the costs relating to the sale of the Drexel Place property or the refinancing of the Norwich Lane property. The details for both properties are included in the HUD statements attached to the account. This exception is overruled.
14. The Exceptor contends the account is improper for not indicating the number of the account, for being "1 year and 4 months late" (sic) and that this accounting should be the "2nd" account. While the first partial account does not clearly indicate that it is the "First" partial account, the filing of this exception indicates the animus between the Exceptor and the Estate, and also indicates the petty steps that Florence Elaine Gaines-Waters is willing to take to thwart the administration of this Estate. This exception is overruled.

15. The Exceptor contends the Drexel Place property should be reappraised. This exception has been addressed above and is overruled.
16. The Exceptor contends a status report was not filed with the partial account. This exception is duplicative and is overruled.
17. The Exceptor contends the account is force-balanced. This exception is duplicative and is overruled.

As stated above, eight exceptions were submitted in “Supplemental Objections” filed on October 16, 2000. The Court summarily overrules all of the eight exceptions as they merely restate, in part, the seventeen original exceptions discussed above. The Court finds that several of these 25 exceptions were so without merit and good faith on the Exceptor’s part that she must bear a portion of the attorneys fees incurred to defend the Executor’s actions.

On September 20, 2000, this court notified counsel for the Estate as well as Florence Elaine Gaines-Waters that it was taking the application for extraordinary attorney’s fees under advisement and subject to written objections. The Court finds that Mr. Reichert has justified the requested attorney fee of \$12,187.50 and the Executor is hereby authorized to pay that fee to Mr. Reichert from the Estate for full satisfaction of services rendered to the Estate. Of that \$12,187.50, the Executor is hereby ordered to charge \$1,786.50 against the share that Florence Elaine Gaines-Waters would have received as part of her final distribution.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: James Reichert/20871
Florence Elaine Gaines-Waters

