

**PROBATE COURT OF HAMILTON COUNTY, OHIO**

ESTATE OF REGIS C. HARTZLER

CASE NO. 961801

**OPINION AND ENTRY SETTING ATTORNEY FEES**

This matter came before Judge Wayne F. Wilke on December 14, 1998, concerning Steven F. Gay's application for attorney fees and his motion for the approval of the distribution of estate assets. Present before the Court were the Applicant and attorney for the Estate of Regis C. Hartzler, Steven F. Gay; the decedent's son, Michael Hartzler, represented by Gregory L. Adams; and the decedent's daughter, Rebecca Campbell, who appeared *pro se*. The Court ordered Rebecca Campbell to submit her written objections to the requested fee at the close of the hearing. As the Court took the application for attorney's fees under submission, the application for approval of the distribution of assets was not ripe and shall be resubmitted.

FACTS

The decedent herein died intestate on February 24, 1996 survived by a spouse, the Administrator herein, Dorine Seaquist, and two adult children from a previous marriage, Michael Hartzler and Rebecca Campbell. Dorine Seaquest was appointed Administrator on April 22, 1996. While the Administrator was represented by counsel from the beginning of this estate's administration, the original attorney was replaced by Applicant

Steven F. Gay on March 11, 1997, when Mr. Gay filed a Notice of Substitution of Counsel.

This court is well aware of the relationship between the Administrator and the decedent's two children. The administrator had to defend their motion for her removal. The decedent's children filed exceptions to the inventory that the administrator had to defend. While the decedent's children may have contributed to the amount of time Mr. Gay spent on this estate, their actions do not account for the fact that the Administrator was late in filing her account in May of 1997 and again in August of 1998.

The original estate inventory indicated the estate contained assets totaling \$266,691.09. After Mr. Gay became attorney of record, the Administrator filed an amended Inventory reflecting estate ownership of \$277,606.38 worth of assets. Based upon this court's Local Rule 71.1, the guideline attorney fee amounts to \$15,295.37 when non-probate assets are also included.

On December 2, 1998, Mr. Gay filed an application requesting the Court to fix his compensation for his services rendered to the Administrator at \$50,000.00. Despite the fact that then-Local Rule 40.1(A) required attorneys to enter a written fee agreement with the fiduciary for the estate, Mr. Gay failed to do so.<sup>1</sup> In support of his application, Mr. Gay submitted his timesheets that indicated he has spent 333.33 hours on this estate. Rebecca Campbell objects to the requested fee and, based upon her examination of Mr. Gay's timesheets, believes a more reasonable fee would be \$22,100.00. For the reasons given below, the Court finds the attorney fee for this estate shall be \$38,925.00

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<sup>1</sup> This rule is now embodied in Local Rule 71.1(A), effective September 1, 1998.

## CONCLUSIONS OF LAW

Attorney fees related to the administration of an estate are qualified expenses, provided they are approved by a probate court. Revised Code §2113.36 states, in part:

"When an attorney has been employed in the administration of an estate, reasonable attorney fees paid by the executor or administrator shall be allowed as part of the expenses of administration. The court may at any time during administration fix the amount of such fees and, on application of the executor or administrator or the attorney, shall fix the amount thereof."

This court has exclusive jurisdiction, pursuant to that code section, to determine whether an attorney fee related to the administration of an estate is reasonable. *In re Estate of Cercone* (1969), 18 Ohio App.2d 26, 31. The Ohio Supreme Court has stated that reasonable attorney fees shall be based upon the actual services performed by the attorney and upon the reasonable value of those services. *In re Estate of Verbeck* (1962), 173 Ohio St. 557, 558. The court in *Verbeck* established the standard followed by this court when it stated "the burden is upon the attorney to introduce into the record sufficient evidence of the services performed and of the reasonable value of such services" in order to justify the amount requested. *Id.* at 559. Mr. Gay has failed to demonstrate the reasonable value of his services to this estate amounts to \$50,000.00.

The decedent died on February 24, 1996 and the estate was opened in April of 1996. Without an extension, the decedent's estate tax returns were required to be filed by November 24, 1996. Applicant Stephen Gay became involved with this estate on November 5, 1996 because the attorney for the estate at that time had not filed estate tax returns. Accordingly, Mr. Gay's timesheets indicate he spent 54.25 hours helping the attorney of record and the Administrator to file estate tax returns and the first partial fiduciary's account. Mr. Gay eventually filed a notice of substitution of counsel on

March 11, 1997. Because the decedent died intestate, the Administrator was not given testamentary authority to hire experts on the estate's behalf, nor did she apply to the Court for such authority. Until such time as the substitution of counsel was filed, the Administrator alone is responsible for any services rendered on behalf of the estate by anyone other than the attorney of record. Consequently, the Court need not inquire into whether those services rendered by Mr. Gay prior to March 11, 1997 were reasonable or beneficial to the estate.

Mr. Gay noted on his timesheets that on three separate occasions<sup>2</sup> he spent up to 7.25 hours preparing affidavits of survivorship, which, incidentally, benefited Administrator Dorine Seaquist individually. It cannot be said that such services benefited the estate. Since other tasks are included in the timesheet entries for those dates, the Court will disallow only 3.0 hours of the 7.25 hours.

On 10/08/98 and 10/09/98, Mr. Gay noted he spent 8.25 hours reviewing the amounts advanced to the estate by Dorine Seaquist and preparing the final account. The first partial account lists no advances from Dorine Seaquist and second partial account only lists two advances from Dorine Seaquist. It is implausible that reviewing advances made by Dorine Seaquist took up to 8.25 hours. Consequently, the final attorney fee will reflect that 4.0 hours shall be deducted from the applicant's total.

Mr. Gay estimates it will take him 17.58 hours to complete the administration of this estate in order to prepare and file a final account and to prepare and file final fiduciary income tax returns. As Mr. Gay has been preparing the final account since at least 11/04/98 and has already expended at least 10.75 hours on those tasks, Mr. Gay's

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<sup>2</sup> 6/30/97; 7/03/97; and 7/10/97

estimate to conclude the estate administration is unreasonable. It should take no more than five hours to conclude the administration of this estate.

Applicant Gay's requested fee is high. Despite Rebecca Campbell's contention, however, a sizable amount of the fees were generated as a direct result of the ill will that exists between the Administrator and the decedent's two children. For example, the decedent's children challenged whether the decedent's Delta frequent flier miles were an estate asset. The decedent's children brought a motion to remove the Administrator. The decedent's children filed objections to the inventory. Whether their actions were justified or not, the decedent's children were partly responsible for the amount of time applicant Gay has spent assisting in the administration of this estate.

Accordingly, the Court sets Stephen F. Gay's attorney fee for the complete administration of the Estate of Regis C. Hartzler at \$38,925.00.

SO ORDERED.

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WAYNE F. WILKE, JUDGE

cc: Stephen F. Gay  
Gregory L. Adams  
Rebecca Campbell