

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF GERTRUDE NEWELL, DECEASED

CASE NO. 964249

AMENDED ENTRY DENYING FIDUCIARY'S APPLICATION FOR REIMBURSEMENT OF EXTRAORDINARY EXPENSES; GRANTING *NUNC PRO TUNC* FIDUCIARY'S MOTION FOR RECONSIDERATION AND GRANTING MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before Judge Wayne F. Wilke on September 19, 2000 concerning fiduciary Doris Baker's request for Findings of Fact and Conclusions of Law regarding the Court' denial of her application for reimbursement of extraordinary expenses. Present were Rose Ann Fleming, who represents the movant, Doris Baker, and Thomas A. Baldwin on behalf of Santa M. Smith.

On April 19, 2000, this court denied Administrator Doris Baker's application to be reimbursed for extraordinary expenses she allegedly incurred in pursuing a wrongful death and survivorship action on behalf of her great-grandmother. On April 21, 2000, the Administrator filed a motion for reconsideration of that decision. The basis for Ms. Baker's motion was that the Court issued its decision denying extraordinary expenses prior to the date allowed for written closing arguments. The parties were given until April 19, 2000 to submit written closing arguments. The Court issued its entry denying the payment of the extraordinary expenses on April 18, 2000 and it was docketed on April 19, 2000. Santa Smith filed his closing argument on the morning of April 19, 2000. After being notified that the Court had entered its order, Doris Baker filed her closing argument on April 21, 2000 and also asked for the Court to reconsider its decision. After

setting the motion for reconsideration for hearing, the Court denied that request. Now, Doris Baker requests that the Court issue Findings of Facts and Conclusions of Law for the Entry Denying Fiduciary's Application for Reimbursement of Extraordinary Expenses from April 19, 2000.

Revised Code §2315.01 provides for the order of trial, including closing arguments. Revised Code §2315.23 makes the order applicable to trials by a court. Because of those statutory provisions, a party with the burden of proof of an issue is entitled to open and close the evidence and argument. *Polasky v. Stampler* (1971), 30 Ohio App.2d 15, 18. Having given the parties until April 21, 2000 to submit their closing arguments, this court arguably should not have entered its decision denying Ms. Baker's application until those arguments were submitted. Accordingly, the Court has *sua sponte* reexamined the closing arguments and shall render an amended decision herein with full consideration to the written closing arguments. The Court will also provide findings of fact and conclusions of law for the parties' benefit. After taking the parties' closing arguments into full consideration, the Court denies Administrator Doris Baker's application for extraordinary expenses.

FINDINGS OF FACT

The decedent, Gertrude Newell, died intestate in September of 1964. No estate had been opened for her until 1996 when it became apparent that the Estate would be receiving proceeds from a class action wrongful death settlement stemming from experimental radiation treatment that the decedent and others received. Given the passage of time from the decedent's death until the Estate's administration, the decedent's next of kin consisted of her six great-grandchildren. Great-granddaughter

Doris Baker was appointed administrator of this estate on September 25, 1996. The Estate was awarded \$50,978.45 from the class action settlement.

On February 22, 2000, Ms. Baker filed an application for the Court to reimburse her the sum of \$11,665.88 for extraordinary expenses she incurred pursuing the settlement for the Estate. Sandra Jones, one of the next of kin, filed objections to the application. In support of her opposition, Sandra Jones filed a copy of the Order Granting Recognition Awards from the class action lawsuit in which Judge Sandra S. Beckwith awarded Ms. Baker \$4,000 for reimbursement of some of the expenses Ms. Baker incurred as a result of her advocacy as well as \$5,000 for her time and efforts involved with the case.

Doris Baker introduced copious documents to support her claim and they were admitted into evidence. Those documents substantiate Doris Baker's contention that she expended money. Whether they substantiate her claim that they were incurred pursuing relief for the families of those involved in General Hospital's radiation experiments is a question of fact the Court need not answer. For the reasons that follow, the Court hereby denies Doris Baker's application for reimbursement.

CONCLUSIONS OF LAW

Revised Code §2117.02 requires that an administrator present any claim against the estate within three months of appointment. Doris Baker was appointed administrator on September 25, 1996 so the time set by statute for a fiduciary to bring a claim against the Estate has long since past. Ms. Baker's records indicate that at the time of her appointment, she had allegedly expended \$7,879.24. At the very least, she should have

brought her claim in a timely manner for this amount back in 1996. The statute of limitations bars consideration of these alleged expenses.

Second and more importantly, Ms. Baker already had the opportunity to present her claims for expenses in the federal court. Judge Beckwith recognized two individuals as being instrumental in bringing the Cincinnati Radiation Litigation before the court and Doris Baker was not one of them. Judge Beckwith did consider Doris Baker's documentation to support her assertion that she had spent substantial sums of her own money to promote the interests of the Plaintiff class. Judge Beckwith found that \$4,000 would adequately repay Doris Baker for expenditures she made and debts she incurred in voluntarily advancing the interests of the Plaintiff class. In addition, Judge Beckwith awarded Doris Baker with \$5,000 as recognition for her efforts with the litigation.

Since the federal court previously heard Ms. Baker's claim for out-of-pocket expenses, she is precluded from relitigating that issue in this court under the doctrine of estoppel by judgment. Estoppel by judgment prevents a party from relitigating a cause of action after a final judgment has been rendered on the merits as to that party. *Kirby v. S.G. Loewendick & Sons* (1992), 64 Ohio St.3d 433, 437. As the Ohio Supreme Court has written, "a final judgment or decree rendered upon the merits, *** by a court of competent jurisdiction, is conclusive of rights, questions and facts in issue as to the parties and their privies, and is a complete bar to any subsequent action upon the same cause of action between the parties or those in privity with them." *Id.* at 437, 438 quoting *Whitehead v. Gen. Tel. Co. of Ohio* (1969), 20 Ohio St.2d 108. Ms. Baker has already been awarded \$9,000 and her expenses were considered when the trial court calculated that amount. Further consideration of the purported expenses by any court is improper.

Doris Baker had a full and fair opportunity to be heard in the United States District Court on the issue of her purported claims. The evidence indicates she presented her alleged expenses to Judge Beckwith and that Judge Beckwith considered the documentation that Ms. Baker submitted. After consideration, Judge Beckwith partially granted those expenses. That she was only somewhat successful in that forum does not, however, grant her the opportunity to seek further payment in this court. Accordingly, Doris Baker's application for reimbursement is denied.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: Rose Ann Fleming / 41337
Thomas A. Baldwin /
Sandra Jones / pro se
Michael Napier / pro se