

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF EDDIE J. THOMPSON

CASE NO. 920479

OPINION AND ENTRY SETTING ATTORNEY FEES

This matter came before Judge Wayne F. Wilke on April 8, 1999, regarding applications for attorney fees brought by George W. Bunyan, Jr. and Alvertis W. Bishop, Jr. Present were the applicants and Eddie Thompson, Jr., who opposes the requested fees.

FINDINGS OF FACT

The two fee applications before the Court are part of the last stages in the seven-year administration of this estate. Mr. Bishop seeks an attorney fee of \$36,078.75 while Administrator d.b.n. Bunyan seeks an attorney fee of \$28,293.75. For the reasons that follow, Mr. Bishop shall be granted a fee in the amount of \$29,875.00 and Mr. Bunyan shall be granted a fee of \$28,293.75.

The decedent died intestate on December 19, 1991. He was survived by a wife, Alberta Thompson, and three adult children. On January 29, 1992, Alberta Thompson filed an application to administer the decedent's estate and she was appointed administrator the next day. Within weeks, Alberta Thompson's appointment was being attacked. Due to the Alberta Thompson's health and advancing age, the Court replaced

her as fiduciary and appointed George W. Bunyan, Jr. in her place on June 13, 1992. Mr. Bunyan filed an amended inventory on September 18, 1992 that indicated the estate owned assets totaling \$81,913.86.

While his client had been removed as fiduciary in June of 1992, Mr. Bishop was still involved in representing Mrs. Thompson as fiduciary at least through August 26, 1994. That date is when the First District Court of Appeals entered a judgment entry affirming this court's July 2, 1993 entry overruling Eddie Thompson, Jr.'s exceptions to her final account. The evidence indicates the majority of the time Mr. Bishop spent on this estate was incurred after Mrs. Thompson filed her final account. While no substitution of counsel appears to have ever been filed, Mr. Bunyan began identifying himself as the attorney for the estate as early as September 18, 1992.

After several years of successfully defending a number of appeals, Mr. Bunyan is prepared to close this estate. On January 13, 1999, Mr. Bunyan filed an application for attorney fees in the amount of \$28,293.75 for services he has rendered to the Estate. In support of that application, Mr. Bunyan attached his timesheets indicating he has spent 226.35 hours on this estate.

On March 8, 1999, Mr. Bishop filed an application for attorney fees in the amount of \$35,793.75 plus costs of \$455.00. Mr. Bishop attached timesheets that indicate he spent 286.35 hours on this estate.

Eddie Thompson, Jr. filed objections to the payment of fees to both Mr. Bunyan and Mr. Bishop. However, Mr. Thompson's objections concern matters already litigated and accordingly, are barred by *res judicata*.

CONCLUSIONS OF LAW

This court is granted exclusive jurisdiction to determine the reasonableness of attorneys' fees which are to be paid by a fiduciary and which are allowed as part of the expenses of administration. *In re Estate of Cercone* (1969), 18 Ohio App.2d 26, 31. Several distinct yet overlapping provisions concern the payment of attorney fees for services related to a decedent's estate. The actual authority for the payment of fees is codified at R.C. §2113.36, which provides, in part:

"When an attorney has been employed in the administration of the estate, reasonable attorney fees paid by the executor or administrator shall be allowed as a 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."

While Superintendence Rule 71 provides guidance with respect to the payment of attorney fees related to probate matters, Disciplinary Rule 2-106 is even more informative.

Disciplinary Rule 2-106(B) lists numerous factors to be considered as guides in determining the reasonableness of a fee. Those factors include the time and labor required, the novelty and difficulty of the questions involved, the fee customarily charged in the locality for similar legal services, the nature and length of the professional relationship with the client, and the amount involved and the results obtained. While the amount of time expended is certainly a factor, it is not the only factor to be considered.

Moreover, at the time of the decedent's death, Hamilton County Probate Court Local Rule 40.1(C)¹ also provided a guide for the legal fees to be charged by an attorney

¹ While this court's local rules are substantially the same, they have all been renumbered, effective September, 1998, in harmony with the Ohio Rules of Superintendence.

for services rendered in the complete administration of an estate. The guideline fee would closely approximate the following:

$$\begin{array}{rclcl} \$81,913.86. & \times & 4.5\% & = & \$ 3,686.13 \\ & & \text{total} & = & \$ 3,686.13 \end{array}$$

While this court's guidelines have never been intended as a schedule of minimum or maximum fees to be charged, the guideline fee represents a presumptively reasonable fee for the complete administration of an estate. As the Ohio Supreme Court has held, an attorney requesting a fee for legal services has the obligation to introduce sufficient evidence of the services performed and of the reasonable value of such services. *In re Estate of Verbeck* (1962), 173 Ohio St. 557, 559. Those applicants who seek a fee in excess of the guideline have an increased burden to demonstrate why the greater fee should be granted. In this case, George W. Bunyan, Jr. has exceeded that burden and has demonstrated they he is entitled to the requested fee.

Disciplinary Rule 2-106 requires an examination of several factors in determining a reasonable attorney fee. As stated above, those factors include the time and labor required, the novelty and difficulty of the questions involved, the fee customarily charged in the locality for similar legal services, the nature and length of the professional relationship with the client, and the amount involved and the results obtained. While the amount of time expended is certainly a factor, it is not the only factor to be considered.

Eddie Thompson, Jr.'s unsuccessful efforts for a judicial body to recognize his varied and numerous claims of wrongdoing in connection with the administration of this estate has hindered and delayed the estate's administration. As early as April of 1992, Mr. Bishop had predicted that Eddie Thompson, Jr. and his sibling's actions would

constitute a burden upon the estate in the form of attorney's and administrator's fees that would otherwise be unnecessary. Time has proven Mr. Bishop's prediction to be true.

This estate has been filled with litigation and strife, as even a cursory examination of its seven-year docket will demonstrate. The original administrator's and the successor administrator's actions have been challenged by a multitude of unsuccessful theories. Mr. Bunyan was obligated to defend at least two motions for the removal of the fiduciary, exceptions to the inventory, motions for reconsideration, objections to various decisions of magistrates as well as several appeals. Mr. Bunyan has clearly demonstrated the reasonableness of the fee he seeks.

With respect to Mr. Bishop's application, he has also justified, in part, the reasonableness of his requested fee. Mr. Bishop adequately documented the time he spent and services rendered to Alberta Thompson. However, the Court is obliged to separate the services Mr. Bishop provided to Mrs. Thompson as fiduciary of this estate from the services provided to Mrs. Thompson or her estate individually. The capacity in which Mr. Bishop rendered his services is an important distinction.

Alberta Thompson served as fiduciary from January 29, 1992 until she was discharged, after her final account was approved. The First District Court of Appeals upheld this court's approval of Alberta Thompson's final account on August 26, 1994. Mr. Bishop's timesheets indicate he spent 239 hours representing Alberta Thompson as fiduciary up to that point. Accordingly, Mr. Bishop shall be paid \$29,875.00, plus costs of \$265.00. Mr. Bishop may seek payment for the remaining 47.35 hours from Alberta Thompson individually or from her estate.

Accordingly, the Court authorizes the payment of attorney fees of \$ 28,293.75 to George W. Bunyan, Jr. and \$29,875.00 plus costs of \$265.00 to Alvertis W. Bishop, Jr.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: George W. Bunyan, Jr.
Alvertis W. Bishop, Jr.
Eddie Thompson, Jr.