

**PROBATE COURT OF HAMILTON COUNTY, OHIO**

ESTATE OF KENNETH E. WHITEFORD, DECEASED

CASE NO. 99-993470

**OPINION AND ENTRY DENYING  
APPLICATION TO APPROVE FEE AGREEMENT**

This matter came before Judge Wayne F. Wilke on January 8, 2001 regarding an application for the approval of a contingent fee agreement in excess of 33 1/3%. James M. Thorson, Jr. appeared on behalf of the Estate.

The decedent herein, Kenneth E. Whiteford, died intestate on June 30, 1997. No estate administration had commenced until June 29, 1999, when a special administrator was appointed. Following James M. Thorson's appointment as a successor special administrator, Darlene C. Wilson was appointed Administrator on July 22, 1999.

Between her appointment in July of 1999 and November 15, 2000, the Administrator did not file a single document. On November 15, 2000, the Administrator filed an application for the Court to approve a wrongful death settlement. A court magistrate approved the amount of the settlement on December 1, 2000 but set the matter of the attorney's fees for further hearing.

On December 5, 2000, attorney James M. Thorson, Jr. filed his motion for the Court to approve a contingency fee agreement for 40% of the wrongful death settlement proceeds. In support of that application, Mr. Thorson included a purported fee agreement

signed by the Administrator on June 30, 1999.<sup>1</sup> For the reasons that follow, the Court hereby denies the application for a 40% contingency fee.

Ohio Superintendence Rule 71(I) provides that **prior** to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the fee contract **shall** be filed with the court, unless otherwise ordered by local court rule. Hamilton County Probate Court Local Rule 71.2(A), in turn, requires an application for authority to enter into a contingent fee agreement to be approved prior to the parties entering into such an agreement. However, probate court approval is not required if the contingent fee agreement does not exceed 33 1/3 % of the recovery. Local Rule 71.2 (C) sets a maximum fee of 33 1/3% if prior approval is not obtained.

Counsel for the Estate contends that the unusual circumstances surrounding the appointment of a fiduciary in this case (before the statute of limitations ran) justifies his not filing this application sooner. The Court agrees that under the facts of this case, the fiduciary was not required to obtain approval immediately upon her appointment. However, she should have brought this application within a reasonable time. Eighteen months after her appointment, however, is not reasonable.

Accordingly, the Court denies the application for a 40% contingency fee and instead, sets the attorney's fees at 33 1/3% of the wrongful death settlement proceeds. The Administrator is hereby ordered, within 14 days of the date of this entry, to file an Amended Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims indicating attorney's fees based on 33 1/3% of the settlement proceeds, as well as

---

<sup>1</sup> As noted above, the fiduciary was not appointed until July 22, 1999.

the proportional increase in distribution to the four next of kin.

SO ORDERED.

---

WAYNE F. WILKE, JUDGE

cc: James M. Thorson, Jr. / 48277  
Darlene C. Wilson