

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of George C. Adams, Deceased.

BANK ONE,

Petitioner-Appellant,

v

MARY C. ADAMS,

Respondent-Appellee.

FOR PUBLICATION

June 24, 2003

9:10 a.m.

No. 236421

Washtenaw Probate Court

LC No. 94-105359-IE

Updated Copy

August 15, 2003

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

FITZGERALD, P.J.

Petitioner Bank One appeals as of right a probate court order rejecting petitioner's final accounting as trustee of the George Adams trust. Petitioner also challenges the probate court order requiring petitioner to pay the trust beneficiaries' attorney fees. We affirm part, vacate in part, and remand.

George Adams died in 1994 and his assets were placed in a trust previously established by Adams. Adams' three children—Mary, William, and Jeff Adams—were the personal representatives of the estate and the trust beneficiaries. Petitioner became trustee of Adams' trust on May 31, 1995. The beneficiaries became dissatisfied with petitioner's performance as trustee, and respondent Mary Adams filed a motion to compel petitioner to provide a final accounting of the trust and to compel petitioner to begin distributing assets to the trust beneficiaries.

The motion precipitated a host of issues surrounding petitioner's management of the trust assets and, on December 2, 1999, the probate court ordered that an arbitrator resolve those issues. Among the issues resolved was the reasonableness of petitioner's fees for managing the trust assets. The arbitrator ultimately reduced the administrative fees by \$118,510. On August 8, 2000, the probate court entered an order reflecting the arbitrator's opinion. Pertinent to the issues presented on appeal, the probate court ordered that

[petitioner] ... shall take no further actions giving rise to additional fees or expenses to be charged against the beneficiaries [of] the Estate, Trust and Voting Trusts without first receiving written approval of the beneficiaries, with the

exception that within ten (10) days of the date of this Order and Judgment that [petitioner] file a final account as fiduciary for approval by the beneficiaries and the Court as to all matters involving the Estate, Trust and Voting Trusts.

In November 2000, Mary Adams filed a petition and order to show cause as a result of petitioner's failure to comply with the time provisions of the August 8, 2000, order. On December 5, 2000, petitioner filed its "Second and Final Accounting." Jeff Adams filed objections to the accounting.

On February 8, 2001, the probate court held a hearing regarding petitioner's final accounting and respondent's objections thereto. Petitioner requested that the court receive the final accounting and permit petitioner to charge the beneficiaries fees for services rendered in preparing the final accounting. Respondent objected on the grounds that petitioner charged fees for services rendered without the approval of the beneficiaries and did not file the accounting in compliance with the court's order. At the conclusion of the hearing, the court permitted discovery and requested proposed orders from each of the parties. The parties filed proposed orders and briefs with supporting evidence in support of the proposed orders.

In a June 13, 2001, order, the probate court denied petitioner's final accounting and ordered petitioner to pay respondent's and Jeff Adams' "actual attorney fees and costs" incurred in litigating petitioner's final accounting. Petitioner filed a motion for reconsideration, and the court requested that the parties brief the issues raised in the motion. The motion for reconsideration was denied.

Petitioner first contends that it was denied due process of law because the "summary rulings" of the court deprived it of its rights without a hearing. We disagree.

The federal and state constitutions provide citizens with certain due-process rights. The essence of due process is "fundamental fairness." *Lassiter v Dep't of Social Services of Durham Co*, 452 US 18, 24; 101 S Ct 2153; 68 L Ed 2d 640 (1981). Whether the judicial proceedings were fundamentally fair requires an inspection of the particular facts of the case because due process "negates any concept of inflexible procedures universally applicable to every imaginable situation." *Bd of Curators of Univ of Missouri v Horowitz*, 435 US 78, 86; 98 S Ct 948; 55 L Ed 2d 124 (1978), quoting *Cafeteria Workers v McElroy*, 367 US 886, 895; 81 S Ct 1743; 6 L Ed 2d 1230 (1961).

At the very least, due process requires the court (1) to offer to hold a hearing before it deprives the litigant of a property interest and (2) to provide notice of the hearing to the litigant. In other words, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976) (citation omitted).

Here, the court held a hearing with regard to petitioner's final accounting and respondent's objections to the accounting. The court then permitted the parties to brief their respective positions with regard to the accounting and to submit proposed orders. In an order rejecting the final accounting, the court ordered petitioner to show cause why the "compilations and summary of fees paid . . . shall not be held to be true and accurate." The court also gave

petitioner another opportunity to brief the issues raised in petitioner's motion to reconsider. Under these circumstances, the court complied with all due-process requirements by giving petitioner full and ample opportunity to present its position to the court by hearings and by briefs.

Petitioner also argues that the probate court erred by rejecting petitioner's proposed order without first determining that petitioner's final accounting was factually inaccurate. However, by accepting respondent's accounting and rejecting petitioner's accounting, the court implicitly found that petitioner's accounting was factually inaccurate. Further, the parties were given the opportunity to submit briefs and evidence in support of their respective positions before the court issued its order, and the show cause order permitted petitioner an opportunity to demonstrate any inaccuracies in respondent's accounting.

Petitioner contends that the beneficiaries did not properly object to petitioner's final accounting. It argues that the beneficiaries were required to specifically object to petitioner's payments to third parties for professional services rendered in administration of the trust during the period of the final accounting. Specifically, petitioner contends that MCL 700.7205 required that the beneficiaries file a petition and demonstrate "some reason" why the fees are not proper. In addition, petitioner argues that *Mann v Day*, 199 Mich 88; 165 NW 643 (1917), requires (1) that any objection to a trustee's accounting be specific and (2) that the beneficiary offer "good reason" to disallow certain fees.

MCL 700.7205 provides in relevant part:

On petition of an interested person, . . . the court may review the propriety of employment of a person by a trustee including an attorney, auditor, . . . or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed and the reasonableness of the compensation determined by the trustee for the trustee's own services.

Here, Jeff Adams, a clearly interested person, filed an objection to petitioner's final accounting, asserting that *all* the fees that petitioner charged the trust in connection with the final accounting were improper because petitioner did not timely file the final accounting pursuant to the August 8, 2000, probate court order and because the charges were not approved by the beneficiaries as required by the order. The probate court concluded that any fees charged in violation of the August 8, 2000, court order were not reasonable, and we agree with this conclusion.

Concerning the specificity and propriety of the beneficiaries' objections to petitioner's payments to third-party professionals in connection with the final accounting, we find that the beneficiaries' objections were specific and provided good reason to disallow the payments. First, Jeff Adams' objection was specific because he clearly argued that the fees violated the August 8, 2000, court order. Second, as stated above, fees charged in violation of a court order amount to a "good reason" to disallow the fees. Thus, the beneficiaries' objections were proper.

Petitioner next contends that the probate court erred by awarding respondents "actual attorney fees and costs incurred . . . in the within proceedings as to the Objections to the Second

and final Account." A probate court's award of attorney fees is reviewed for an abuse of discretion. See *In re Humphrey Estate*, 141 Mich App 412, 439; 367 NW2d 873 (1985), citing *In re Estate of Weaver*, 119 Mich App 796, 798-799; 327 NW2d 366 (1982).

"[A]ttorney fees are not ordinarily recoverable unless a statute, court rule, or common-law exception provides the contrary." *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16, 37-38; 576 NW2d 641 (1998). Here, a review of the record does not reveal the authority under which the probate court awarded respondents their actual attorney fees. What can be gleaned from the record, at most, is respondent's and Adams' argument that they were entitled to attorney fees on general equitable principles. However, it is improper to award attorney fees on general equitable principles. See, e.g., *Gove v Gove*, 71 Mich App 431, 436; 248 NW2d 573 (1976). Thus, if the probate court awarded attorney fees solely on the basis of equitable principles, the court erred as a matter of law. Because we are unable to determine the authority pursuant to which the probate court awarded attorney fees, we are unable to determine if the fees were properly awarded. The dissent concludes that the attorney fees were properly awarded as a sanction for over-billing the trust and failing to adhere to the court's order. However, the trustee was already sanctioned for this misconduct when the arbitrator reduced the fees and expenses relating to the administration of the trust by \$118,510. There is no support in the lower-court record for the dissent's speculation that the probate court awarded attorney fees for this period as a sanction for the trustee's earlier misconduct that was the focus of the arbitration. It is, therefore, imperative that we remand this matter for the probate court to explain its basis for awarding attorney fees. We vacate the award of attorney fees and remand for reconsideration and a statement of the reasons for the award.

Affirmed in part, vacated in part, and remanded for proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

Hoekstra, J., concurred.