

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of EDWARD JOSEPH MCCORMICK,
Deceased.

ERIC A. BRAVERMAN, Personal Representative
of the Estate of EDWARD JOSEPH
MCCORMICK, Deceased,

Petitioner-Appellee,

v

LINDA MCCORMICK and MARY
MCCORMICK,

Respondents-Appellants.

UNPUBLISHED
December 11, 2008

No. 277558
Wayne Probate Court
LC No. 1992-513517-DE

Before: Zahra, P.J., and Cavanagh and Jansen, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that the probate court did not err by declining to hear the motion for disqualification of the probate judge. Although the motion was apparently timely filed, it was never noticed for a hearing. See *Forest v Parmalee*, 60 Mich App 401, 405; 231 NW2d 378 (1975). I further concur with the majority's rejection of respondents' assertion that there remained outstanding claims against the estate. The circuit court terminated the estate's alimony obligation to Mary McCormick in 2004. I respectfully dissent, however, from the majority's decision to affirm the probate court's approval of petitioner's final accountings. I would remand for an evidentiary hearing concerning several questions that remain unanswered in this case.

Under MCR 5.310(C)(2)(c)(iv), the probate court must hold a hearing when an interested party objects to a personal representative's accountings. Respondents objected to the personal representative's accountings in this case, but the court failed to hear these objections before deciding petitioner's motion to approve the accountings and to close the estate. I conclude that the probate court abused its discretion by failing to hold a hearing on respondents' objections before approving petitioner's final accountings.

I also conclude that the probate court abused its discretion by failing to hold an evidentiary hearing on the matter of petitioner's fees and compensation. I fully acknowledge

that personal representatives have the authority to defend or prosecute actions on behalf of the estate and are “entitled to receive from the estate necessary expenses and disbursements including reasonable attorney fees incurred.” MCL 700.3720. I also acknowledge that a personal representative may periodically pay his own compensation, “as earned,” out of the estate without prior court approval, MCL 700.3719(1), that attorneys may serve as personal representatives, MCL 700.3719(2), and that attorney personal representatives are entitled to reasonable compensation, see MCR 5.313(A). However, court approval is generally required before attorney fees and other compensation may be paid in decedent’s estate cases. See MCR 5.313(A) and MCR 5.313(F). Indeed, the lower courts “should normally hold an evidentiary hearing when the opposing party challenges the reasonableness of a fee request.” *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). Moreover, there remained several unanswered questions concerning a payment to petitioner in the amount of \$41,485 from the estate. Petitioner failed to itemize this \$41,485 payment, and respondents objected to the payment on this ground. Because respondents objected to the propriety and reasonableness of the personal representative’s claimed fees and compensation, I conclude that the probate court was required to hold an evidentiary hearing on the matter before awarding the petitioner’s requested compensation and fees.

Lastly, I conclude that the probate court abused its discretion by failing to hold a hearing concerning the distribution of the proceeds of the sale of the Henry Ruff Road property. Although I concur with the majority’s conclusions that the personal representative was authorized by a previous court order to sell the Henry Ruff Road property and that the receiver was entitled to compensation out of the proceeds of this sale, it appears from the record that petitioner did not fully and completely account for the disbursement of the \$118,763.51 generated by the sale of the property. Most of these proceeds were paid over as receiver’s fees, but I have located precious little evidence concerning the receiver’s actual entitlement to these fees. It is true that “[r]eceivers have a right to compensation for their services and expenses” *Cohen v Cohen*, 125 Mich App 206, 215; 335 NW2d 661 (1983). However, a receiver’s rate of compensation must be reasonable and must not be excessive. See *id.* In my view, the probate court was required to hold an evidentiary hearing—and to fully consider the reasonableness and propriety of the receiver’s “payoff” of \$105,156—before approving petitioner’s disposition of the proceeds of the sale of the Henry Ruff Road property.

I would reverse the probate court’s approval of petitioner’s accountings and remand for an evidentiary hearing consistent with my reasoning set forth in this separate opinion.

/s/ Kathleen Jansen