



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

IN THE MATTER OF THE )  
ESTATE OF ) C.A. No. 1529-K  
CARRIE SIPPLE )

Date Submitted: May 19, 2003  
Draft Report: June 27, 2003  
Final Report: March 24, 2004  
(Attorneys Fees and Costs)

Larry W. Fifer, Esquire, Law Office, Lewes, DE; Attorney for Petitioner, Barbara L. Parsons.

Beth B. Miller, Esquire, Schmittinger and Rodriguez, P.A., Dover, DE; Attorney for Respondents Ronald and Linda Galeski.

Steven Schwartz, Esquire, Schwartz & Schwartz, Dover, DE; Attorney for Executor, H. Cabbage Brown, Jr.

GLASSCOCK, Master

This matter involved a review of a will. The petitioner was the daughter of the decedent. The will admitted to probate made the petitioner a residuary beneficiary but made a number of specific bequests and devises to others. The most valuable item was the Sipple home place farm, which under the challenged will was left to Ronald A. and Linda Galeski. The petitioner challenged the will on grounds that the decedent had executed the will under a mistake of fact; that the document comprising the will was legally deficient; that the decedent lacked testamentary intent; that the decedent lacked testamentary capacity and that the decedent was the victim of undue influence at the hands of the Galeskis.

The matter was vigorously tried over a three-day period. The will was defended by counsel for the estate, and also by independent counsel hired by the Galeskis. After trial, I found that the will was valid. Subsequently, counsel for the Galeskis has requested that the counsel fees and costs incurred by the Galeskis be paid from the estate.

The petitioner objects to payment of any fees from the estate to the Galeskis' attorney. On behalf of the estate, the executor joins in these objections, but states, with refreshing candor, that the actions of the Galeskis' attorney have aided the defense of the estate.

The executor, on behalf of the estate, had a duty to mount a reasonable defense of the will, including incurring reasonable counsel fees on behalf of the estate. *E.g.* Shepherd v. Mazzetti, Del. Supr., 545 A.2d 621, 623 (1988). The issue here, however, is not whether the fees incurred by the attorney engaged by the executor to defend the will may be paid from the estate. The issue is whether the additional counsel fees incurred by the Galeskis must also be paid from the estate.

The first ground on which the petitioner and the estate resist payment of the Galeskis' counsel fees is one of waiver or timeliness. The petitioner points out that the request for fees was not made until after my report had become final. The estate, however, remains open. Moreover, neither the petitioner nor the estate has indicated how the timing of the Galeskis' request for fees has caused them any prejudice. If the allowance of fees and costs as requested by Galeskis is required by equity, I find that the timing of the request is no bar to that particular relief.

The more substantial objection to the requested fees involves whether an individual beneficiary may have his fees compensated by the estate where the estate itself mounted a defense of the will.

It has been held - and I think it is a sound rule - that an individual legatee cannot be represented at the expense of the estate in a will contest proceeding where the legatee has a common interest with others who are adequately represented by the executor and its counsel. *See, In re Will*

of Caruso, N.J. Sup., 112 A.2d 532 (1955); 95 CGS Wills, §567. Here, [the attorneys whose fees are sought] represented beneficiaries whose interests were adequately protected by the [attorneys engaged to represent the estate]. Normally, such beneficiaries would be expected to pay their own counsel.

Estate of Langmeier, Del. Ch., No. 4081, Brown, Ch., (July 20, 1984) (slip op.) at 5.

The situation here, however, is unusual in that, for much of this litigation, the Galeskis' counsel acted as lead or sole counsel defending the interests of the estate. As the attorney for the estate concedes, counsel for the Galeskis bore much of the burden of the litigation, and her representation certainly worked a benefit for the estate. While the Galeskis will receive a large asset under the estate, there are other beneficiaries who were in essence free riders on the efforts of counsel for the Galeskis. Having worked a benefit for the estate, it is appropriate that the estate compensate the attorney for the Galeskis. *See, e.g., Ableman v. Katz*, Del. Supr., 481 A.2d 1114, 1120 (1984) rev'd on other grounds In Re Melson, Del. Supr., 711 A.2d 783 (1988) (holding that showing of benefit to estate resulting from representation may justify award of counsel fees from estate even to counsel for *losing* party, if counsel acted based on probable cause).

The question, then, becomes the size of the fee which is appropriate. It is especially important here to ensure that any fee awarded from the estate reflect a

reasonable counsel fee for work which benefitted the estate, because the parties who engaged the attorney seeking fees here receive under the will a special devise of real property. That is, any fee award will be paid at the expense of the residuary beneficiary and will not effect the award to the Galeskis.

The attorney for the estate has represented that his fees chargeable to the estate are around \$12,000. The Galeskis' attorney's fees and costs, requested in this motion, total almost \$79,000. While both the petitioner and the estate contend that the Galeskis' counsel fees request is excessive, the attorney for the estate points out that he was not engaged from the beginning of the litigation, that counsel for the Galeskis labored in defense of the will from the outset of this litigation and that, had counsel for the Galeskis not been involved and acted as lead counsel in the litigation "the attorneys fees and costs of the estate would have considerably greater."

The Galeskis are entitled to have their attorney compensated for reasonable fees and costs expended which benefitted the estate. The Galeskis and their counsel are not entitled to be reimbursed for efforts redundant of those provided in defense of the will by counsel for the estate. While the Galeskis are certainly entitled to engage counsel in defense of their interest rather than relying solely on the defense put forth by the estate, redundant or excessive efforts will not be reimbursed by the estate. It is

clear to me that some portion of the fee request is duplicative or otherwise not equitably chargeable to the estate.

Therefore, counsel should confer and provide me with a form of order which sets forth a reasonable counsel fee for the attorney for the Graleskis, representing the benefit to the estate as I have set forth above. If counsel cannot agree, each party should submit a brief letter memorandum within 30 days setting forth the appropriate size of the fees and costs award which should be made by the estate. I will then issue a supplemental draft report.

The period for exception to this draft report shall not begin to run pending my release of the supplemental draft report.

/s/ Sam Glasscock, III  
Master in Chancery

oc: Register in Chancery (KC)