

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

ORPHANS' COURT DIVISION

ESTATE OF ROSE KORNBERG,
AN INCAPACITATED PERSON
O.C. NO. 333 IC OF 2002
CONTROL NO. 032477

OPINION

HERRON, J.

FEBRUARY 17, 2005

The question presented is whether to grant the fee requests submitted by the original guardian of the estate, now deceased, and the successor guardian. Both fee requests have been measured against the appropriate standard of what is fair and reasonable in the circumstances and reduced substantially based upon an examination of the amount of work performed, the character of the services rendered and the complexity of the problems involved.

Brief History

On May 24, 2002, an Order was entered by the Honorable Lynn Hamlin adjudging Rose Kornberg a totally incapacitated person and appointing DLK Managed Care Solutions as plenary guardian of the person and Herbert Squires, Esquire, now deceased, as plenary guardian of the estate. The Court's adjudication considered the testimony of Robert Pearlstein, M.D., a specialist in geriatric care, who offered his expert opinion that Ms. Kornberg suffered from moderate dementia compounded with a high degree of anxiety and depression. Dr. Pearlstein commented specifically that she suffered from poor short term memory which resulted in escalating her anxieties and

frustrations as she was unable to remember and understand chronologically what was going on in her life. As a result of his observations and examinations of Ms. Kornberg, he found that her judgment was definitely impaired and that she could neither communicate effectively nor make reasonable decisions regarding either her health care or her finances. At the time of his examination, Ms. Kornberg was over 90 years of age and since she was suffering from a multi-infarct dementia or a vascular dementia, the prognosis for improvement was poor. She was then and continues now to be a resident of a full time nursing facility where she receives total care at a substantial cost to her estate.

The first fee petition reviewed by this Court resulted in an Order of August 21, 2002 granting counsel's fees of \$3,985.25 for services rendered through the incapacity proceedings and an additional \$2,300.00 to Herbert E. Squires, Esquire for legal services rendered to the incapacitated person for the period May 29, 2002 to May 6, 2003. Subsequently, the guardian's inventory was filed reflecting total assets in the amount of \$811,845.27 and an Order was entered requiring bond in the sum of \$1,200,000.00.

The following year, for reasons of ill health, Mr. Squires asked to be relieved of his duties as guardian of the estate and his daughter, Michele Squires, Esquire, was appointed in his place by decree dated July 7, 2003. On November 28, 2003, Michele Squires, Esquire filed a petition for allowance requesting that the Estate of Herbert Squires, Esquire be paid the sum of \$10,760.00 representing services rendered as guardian for one year and that she be paid the sum of \$4,466.00 for services rendered as successor guardian among other requests for allowance not relevant to this decision. On December 21, 2004, Michele Squires, Esquire supplemented her fee request for time spent through December, 2004.

Discussion

A review of guardian fees does not appear to have been the subject of substantial case precedent in Pennsylvania, however, this Court's review of such decisions indicates that generally the Court must evaluate the fee against the standard of what is fair and reasonable and consider a host of other factors including, but not limited to, an examination of the "amount of work performed, the character of the services rendered; and the difficulty of the problems involved". LaRocca Estate, 431 Pa. 542, 546, 246 A.2d 337, 339 (1968). Furthermore, courts have held that: "Any awards must adhere to the established rule of law that all fees and charges against the estate of an incompetent must be on the most moderate scale". Williams Estate, 9 Fid. Rep. 681 (O.C. Allegheny 1959). See Davidson's Estate, 300 Pa. 26, 150 A.152 (1930). In Lewis, Incompetent, 18 Fid. Rep. 2d 211, 215 (O.C. Montgomery 1998), Judge Taxis, then senior judge serving on the Montgomery County Orphans' Court, commented favorably on the theme that "all fees and charges against the estate of an incompetent must be on the most moderate scale" and endorsed the other principles noted above. Furthermore, he adopted for his analysis an evaluation of several additional factors in order to reach a conclusion of what "...the complete job is worth". He looked at whether or not the services were routine, whether the guardian's role was passive, whether the guardian's responsibilities were lessened significantly by the outside services of trained financial professionals to whom accounting and investment duties were delegated, etc. As stated in Williams Estate, "the aggregate of fees charged to the estate should not exceed one reasonable fee for all services performed." Williams Estate, 9 Fid. Rep. at 682 (quoting Fischer Estate, 1 Fid. Rep. 83 (O.C. Phila. 1950)). As Judge Taxis considered the fee requests pending before

him for the incapacitated person, Mary Lewis, he reduced the guardian's fee request of \$44,500.00 to \$25,000.00 and approved in addition payment of income commissions. He considered counsel's fee claim of \$40,000.00 and reduced this to \$30,000.00 for the legal services rendered. With these principles in mind, we now turn to a review of the separate fee requests submitted by the Estate of Herbert Squires and the successor guardian, Michele Squires, Esquire.

Needless to say, reviewing time records is a tedious, time consuming and inexact process oftentimes made more so by the scant description of services rendered. Recognizing this dilemma, courts in the past have tried to dodge the chore by adopting a percentage approach to approving the requests as, for example, applying a percentage of the corpus as a reasonable rule of thumb. The percentage analysis has been rejected in favor of the LaRocca criteria.

One other concern must be mentioned which is of paramount importance when allowing fees in guardianship matters, i.e., the amount of the incapacitated person's estate. Fees, especially excessive or unreasonable claims, can severely deplete an incapacitated person's estate and thereby compromise the care and services delivered to the incapacitated person. Given Ms. Kornberg's age of 96 and an actuarially short life span, it is not likely that her present estate of \$500,000.00 more or less will be depleted even if the fee claims pending review are granted in full and, for this reason, this Court has not had to adjust the fee claims in order to preserve the assets for long term care. We are mindful that fees may have to be adjusted downward simply to preserve principal.

As we examine the fee claims in this matter, we note with approval the description provided for the services rendered by Herbert Squires, Esquire. In most all

instances, there is sufficient information to allow the Court to determine whether the time was spent on routine matters or otherwise, thereby allowing comparison of the rate charged with the nature of the service rendered. For the most part, Ms. Squires followed the same practice except for a series of entries for 2003 reflecting only a brief notation of a telephone call to someone without any description of the matter discussed. (See, for example, “5/13: TC with Rose”; “5/27: TC with Rob Slutsky”; “6/2: TC with Saul”.) \$1,500.00 of Ms. Squires’ billing is labeled as telephone calls with no description of the reason for the expenditure of time even though the time expended ranged from a quarter hour to as much as two hours.

Since the burden of justifying and supporting the fee claim rests with the service provider, the Court must either reject the portion of the claim which is unsupported, request more information which may be difficult or impossible to provide given the passage of time, or assume as in this case that the service was simply routine. In the case of Ms. Squires’ time records, one cannot even tell who initiated the call.

Yet another prong of the analysis turns on a global view of the total time spent and whether it appears reasonable when compared to charges claimed for services rendered in other similar types of matters. The time records of Herbert Squires, Esquire span a one year period, May 29, 2002 through May 6, 2003 for which he claims \$10,200.00 for 53.5 hours. Just one year prior to this billing period, he requested and was allowed a fee of \$2,300.00 for a similar one year period. Ms. Squires’ fee claim covers the period May 12, 2003 through December 20, 2004, or approximately one and one-half years, but she spent only 33.45 hours. The number of hours expended by Herbert Squires appears excessive and unreasonable unless warranted by unusual or difficult problems

encountered during the guardianship. None were found. Ms. Squires hours expended for the period are substantially fewer and appear reasonable.

The final test applied to the fee claim involves a detailed line by line review of the time sheets in order to assess the reasonableness of the time spent for the particular service rendered and the charge claimed. Herbert Squires, Esquire charged a uniform rate of \$200.00 per hour as did Michele Squires, Esquire except for the last nine month period when she claimed no set hourly charge leaving that for the Court's discretion.

This Court recognizes and sympathizes with counsel in these matters as they are called upon to determine an hourly rate for which there is very little guidance available. Undoubtedly, when professionals render service, there is a lost opportunity charge incurred if they have to substantially reduce their normal billing rate. And yet, in guardianship matters, this is expected especially where the nature of the service rendered is routine and largely ministerial as in this case. The general rule bears repeating: "All fees and charges against the estate of an incompetent must be on the most moderate scale." Williams Estate, 9 Fid. Rep. at 681.

Both fee claims under scrutiny here involve, with very few exceptions, no legal work at all but rather routine tasks and chores most people undertake on a regular basis in their lives. The time records offer many such examples: "5/31/02 Meeting...for signature cards"; "6/3/02 Discussions...concerning bills"; "6/25/02 Transfer funds to pay B/C & B/S"; "8/9/02 Paying bills"; "12/26/02 Checked bank statement"; "2/6/03 Went to PNC bank for deposit"; "4/24/03 Balanced check book"; "4/7/03 Wrote out checks for tax returns". And for Ms. Squires, similar entries appear: "6/20/03 balance checkbook"; "7/1/03 review bills"; "7/22/03 pay bills". For these routine and ministerial services, this

Court cannot in good conscience award \$200.00 per hour as claimed. For these services, the Court will fix an hourly fee of \$100.00, a sum charged by others in the community and of a “moderate” character. Neither Herbert Squires, Esquire nor Michele Squires, Esquire performed any investment services since Ms. Kornberg’s assets were managed by other professionals.

Applying the principles and rules discussed herein, this Court has determined that 9.25 hours were spent on legal related matters and awards the Estate of Herbert Squires his claimed hourly rate of \$200.00 per hour or \$1,850.00. The Court reduces the total hours claimed of 53.6 hours during a one year period to a total of 40 hours and compensates the estate for 30.75 hours at an hourly rate of \$100.00 or \$3,075.00 for a total of \$4,925.00 rather than the \$10,700.00 requested.

With respect to the fee claim of Michele Squires, Esquire, the Court accepts the 33.45 hours claimed but finds that only 11.25 hours were related to legal services warranting a fee claimed of \$2,250.00 at an hourly rate of \$200.00. The remaining 22 hours for ministerial services rendered shall be compensated at a rate of \$100.00 per hour or \$2,200.00 for a total fee award of \$4,450.00.

While this Court has substantially reduced the present guardian’s fee allowance request, we find no evidence of bad faith or intent to gouge the incapacitated person’s estate. This decision simply represents a determination that the fair and reasonable test requires a downward adjustment of the billing rates for services of a non-legal character. If the present guardian is unwilling or unable to accept such guidance for fee allowances in the future, this Court will appoint a successor guardian of the estate and is confident

that other members of the Bar will accept such appointments on behalf of our elderly population with an appropriate discounted hourly fee for non-legal services rendered.

A contemporaneous Order is issued awarding the fees in accordance with this opinion.

BY THE COURT:

JOHN W. HERRON, J.