THIRD DIVISION
June 1, 2011

No. 1-10-2077

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE: ESTATE OF TIMOTHY A. BREEN, Deceased. _____ PAUL PAVLOU, Petitioner-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County, Illinois. No. 08 P 1893 Honorable Mary Ellen Coghlan, Judge Presiding.

Justice Murphy delivered the judgment of the court.

Presiding Justice Quinn and Justice Neville concurred in the judgment.

ORDER

HELD: Trial court's determination that fee rate of $485 per hour and a total fee charge of $213,623.10 by executor and trustee for work on an estate valued at approximately $911,000 was not reasonable and change to $50 per hour for a total fee of $20,043 was not manifestly or palpably erroneous where evidence of record does not present support for such high fees.

Beneficiaries of the estate of Timothy A. Breen petitioned the Circuit Court of Cook County for a hearing on the appropriateness of fees taken by the trustee of the living trust of

Timothy A. Breen and executor of the estate of Timothy A. Breen. Petitioner trustee and executor, Paul Pavlou, filed a petition to ratify fees paid to him of $176,641.85 as trustee and of $36,981.25 as executor of the estate. Petitioner appeals the circuit court's findings that the hourly rate of $485 per hour that he charged as trustee and executor of the estate was unreasonable and application of the hourly rate to $50 per hour. The trial court accepted petitioner's accounting of hours worked of 76.25 hours as executor, leading to a fee of $3,812.50, and 324.61 hours for his performance as trustee and a fee of $16,230.50. The trial court ordered any funds previously paid in excess of these amounts be repaid to the trusts. Petitioner argues that the court's findings affirming the time charged and his extensive credentials require this court to find the circuit court abused its discretion in reducing his hourly rate. For the following reasons we affirm the findings of the circuit court.

I. BACKGROUND

Timothy A. Breen passed away in February 2008. Breen's estate was bequeathed to the Timothy Breen Living Trust, with the trust's assets consisting of financial accounts worth approximately $801,000, an automobile and a residential condominium unit valued at approximately $110,000. On April 30, 2008, petitioner was appointed independent executor of the estate and trustee of the living trust.

Petitioner is a certified public accountant and certified tax professional with over 23 years' experience in accounting and tax issues. Petitioner holds a bachelor's of science in commerce with a concentration in accountancy, a masters degree in business administration with concentrations in management and finance, and a masters of science degree in accountancy. Petitioner performed his duties as executor and trustee at a rate of $485 per hour. Katten Muchin

Rosenman LLP was hired by petitioner as counsel to work at the rate of $520 per hour.

On April 20, 2009, beneficiaries filed a petition for a hearing on the appropriateness of fees charged by petitioner and paid out by the estate. Beneficiaries alleged that petitioner had not discussed the terms of his engagement or that of counsel's and that payments had been made to each from the estate, also without notice to the beneficiaries. Further, the beneficiaries questioned the amount of work necessary on the trust and estate, alleging that the assets, including the condominium were limited. Beneficiaries alleged that petitioner breached his fiduciary duty and sought a hearing on the appropriateness of fees charged and a refund for any funds that exceed reasonable compensation.

Counsel moved to withdraw as counsel for petitioner based on petitioner's submission of a claim to his insurance company. On July 16, 2009, the trial court granted counsel's motion to withdraw and the beneficiaries' request for a hearing. On February 2, 2010, petitioner filed his petitions to ratify fees, one for his role as trustee and the other for his role as executor. Petitioner alleged that his education and years of experience allowed him to design investment model strategies that promoted the accumulation of assets. In addition, petitioner noted that damage to the condominium had to be repaired and that he had to liquidate all assets and then disburse them to the beneficiaries.

An accounting of his services was provided with each petition at a rate of $485 per hour. As executor, petitioner listed 76.25 hours of work for a total of $36,981.25. For his work as trustee, petitioner detailed 324.61 hours of work for a total of $176,641.85. Petitioner disbursed these funds to himself from the trust account without notice to the beneficiaries. Petitioner also disbursed funds, without notice, to Katten Muchin Rosenman LLP for their work on the estate.

Following briefing and a hearing on the matter, the trial court entered an order finding

that the hourly rate of $485 per hour that petitioner charged as trustee and executor of the estate was unreasonable and reduced the hourly rate to $50 per hour. The trial court did not modify petitioner's accounting of hours worked of 76.25 hours as executor and 324.61 hours as trustee, thereby allowing total fees of $20,043. The trial court ordered any funds previously paid in excess of these amounts be repaid to the trust.

Petitioner filed a motion to reconsider on June 8, 2010. The trial court denied that motion on June 29, 2010, and petitioner timely filed a notice of appeal on July 19, 2010. Petitioner received three extensions to file his appellant's brief, filing the brief on February 14, 2011. Petitioner noted that he would file a supplemental record that would include the transcript of the hearing on his petition. Appellee timely filed its brief on February 25, 2011. On April 1, 2011, petitioner moved to supplement the record and this court denied that motion as it was filed 35 days after appellee's brief. Petitioner again received an extension to file his reply brief and filed it on the final date allowed, April 25, 2011.[1]

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[1]Despite this court's denial of petitioner's motion to supplement the record, petitioner attached a copy of the transcript of the hearing before the trial court and argued for this court to reconsider its order denying his motion to supplement the record. Petitioner argues that Illinois Supreme Court Rule 329 allows a party to supplement the record at any time, citing *City of Chicago v. Yellen*, 325 Ill. App. 3d 311, 314 (2001), for the proposition that this is proper even after briefing on appeal. However, *Yellen* limits that holding to where the opposing party is not unduly prejudiced because it had presented alternative arguments, which did not occur in this case. Furthermore, the rules and case law clearly indicate that supplementing the record is permissive, not mandatory, and require a showing by the moving party of a reasonable excuse for

II. ANALYSIS

Executors are entitled to reasonable compensation for their services. 755 ILCS 5/27-1 (West 2008). Due to its skill, knowledge and expertise in the field, the probate court has broad discretion to determine what compensation is fair and reasonable in each case. *In re Estate of Coleman*, 262 Ill. App. 3d 297, 299. Because of this, a determination on fees by the probate court will only be overturned if it is "manifestly or palpably erroneous." *Id.*

While there is no bright-line rule in making a fee determination, factors to be considered include "the size of the estate, the work involved, the skill evidenced by the work, time expended, the success of the efforts involved, and the good faith and efficiency with which the estate was administered." *In re Estate of Marshall*, 167 Ill. App. 3d 549, 553 (1988). As noted above, the trial court may rely on its own experience and knowledge as well as submissions and testimony of any witnesses it deems fit. Based on the record before this court, the trial court did not err in reducing petitioner's fee award in this case.

Petitioner notes that the most important factor to be considered in determining reasonable compensation is the amount of time expended. *Coleman*, 262 Ill. App. 3d at 299. In *Coleman*, the petitioner attorney was named executor of the estate with a value of approximately $8 million as well as co-executor of an irrevocable trust set up by the decedent. The petitioner made several payments to himself from the estate, without notice, to cover his fees as executor. However, after disagreements between petitioner and the beneficiaries, he resigned as executor and sought executor and attorney fees of $80,000, minus the $75,000 he had already received. *Id.* at 298.

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its failure to timely file the record. No such argument has been presented here and we will not consider petitioner's supplemental materials.

Following a four-day hearing, the probate court ruled that the petitioner was entitled to $15,967.50 based on the market rate of $150 per hour and a reduction in hours claimed from 400 to 16.45 hours. The trial court found that the disbursements without notice were not made in good faith. In addition, it accepted testimony at the hearing that the $200 rate charged exceeded the market rate of $150. Therefore, based on these factors, because the work required was not overly difficult and largely ministerial, and remained unfinished, the *Coleman* court found that the trial court's fee determination was well-reasoned and not against the manifest weight of the evidence. *Id.* at 300-02.

Petitioner argues that the record is uncontradicted that he expended over 400 hours as executor and trustee. He notes that these totals were not modified, but accepted by the trial court as true. The trial court only made modifications to his rate; therefore, petitioner concludes that the trial court accepted his statement in good faith. Petitioner adds that he brought significant experience and was highly skilled in performing a number of sophisticated services that "brought a combined benefit of approximately $1 million dollars into the estate and trust."

Furthermore, petitioner argues that *Coleman* established that a fee of $150 per hour was appropriate for services as executor of an estate - in 1994 and Lake County, Illinois. He argues that in 2011 and Cook County, Illinois, the trial court's determination of a $50 per hour rate is erroneous on its face. Furthermore, petitioner argues that, contrary to *Coleman*, where the executor was described as unskilled, left many tasks unfinished and the work completed was ministerial, petitioner argues that the record demonstrates that he is highly skilled and completed sophisticated tasks. Accordingly, reducing his rate to one-third of that allowed in *Coleman* is error.

While true that petitioner provided a detailed list of hours worked that the trial court did not explicitly reject, petitioner's conclusory argument that all the factors weigh in his favor fails. Evidence was presented that his fee was unknown to the beneficiaries and, admittedly, that he disbursed payments to himself and Katten Muchin Rosenman LLP without notice. This same scenario was construed as evidence of bad faith by the court in *Coleman*. *Id.* at 301.

More importantly, the estate is not particularly large or complicated. The record shows that the estate was valued at approximately $911,000, but petitioner claims that the record evidences that he brought a value of nearly $1 million into the trust and estate. We have difficulty reconciling this argument with the record. Further, we note that this value, when compared to *Coleman*, supports a finding that the fees allowed by the trial court were proper.

The estate in *Coleman* was valued at approximately $8 million and a fee of $15,967.50 was allowed. Following petitioner's logic, the trial court's determination in this case that a fee of $20,043 on an estate worth less than $1 million was would be a reasonable determination. Even adjusting the estate and fee values to present day and location as petitioner suggests, the fee granted by the trial court would be high compared to that in *Coleman*. This is especially so when you factor in the funds disbursed to Katten Muchin Rosenman LLP for their work as counsel on the estate.

Petitioner maintains that, unlike *Coleman* where matters were unfinished by the executor, his work in this case was completed in a comprehensive and professional matter. However, in this case several matters were completed not by petitioner, but by outside counsel who was paid additional fees of over $25,000 for work on the estate. Therefore, the present day comparison of fees between this case and those in *Coleman* is even less striking than petitioner maintains.

Adding the attorney fees, the total fees distributed to settle the estate rise over $45,000 and a much higher percentage of the estate value for similar work than in *Coleman*. This further weakens petitioner's argument that *Coleman* supports a higher fee in this case. Accordingly, considering all of the relevant factors and the evidence of record, the trial court's decision was not manifestly or palpably erroneous.

III. CONCLUSION

Accordingly, for the aforementioned reasons, the decision of the trial court is affirmed.

Affirmed.