THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LAURENS COUNTY
Court of Common Pleas
Frank R. Addy, Jr., Circuit Court Judge
2016-002337

In the Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay, ... Petitioner/Respondent

v.

Martha Brown and Mary Moses,. . . . . Respondents/Petitioners

Appellate Case No. 2016-002337

RESPONSE TO PETITIONER/RESPONDENT'S PETITION FOR REHEARING

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TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT

LAW/ANALYSIS

I. The Court correctly held that ten percent of an estate exceeding half a million dollars was not insufficient compensation for the Petitioner/Personal Representative.

The probate judge found the value of the estate to be $ 512,185.47 (R. p. 9, # 10) and in so doing gave the PR the benefit of an inflated personal property valuation. Without informing the court or the heirs, the PR had paid himself 18.3% of the Estate and was seeking an additional $ 13,447.05 (R. p. 9, #11) at trial. The total the PR sought in commissions, attorney fees and expenses was $ 157,179 or 31% of the estate's value (R. p. 10, # 12). The probate judge, having found the commissions taken by the PR to be "clearly excessive" (R. p. 10, # 13), reduced those to 10% of the Estate; and all succeeding courts have upheld this finding.

The probate judge, who had the advantage of observing the witnesses, found that "The PR failed to provide any legitimate basis for the fees he claimed.... Although the PR in Memorandum argued he had 468.6 hours of time as PR, the proof he provided failed to support this." (R. p. 9, # 8) The judge further found "The twin flaws in the PR's position are his failure to provide adequate proof for the hours he claims and his failure to prove a necessity for most of the hours he claims." (R. p. 8, # 1).

Though the PR claims he should be rewarded for his credentials, he admitted that there was not much legal work to be done (R. p. 206/6-7), and he hired his law firm to do that (R. pp. 10-11, # 17). He also hired an outside provider to do the tax work and had his firm's paralegals put in 204.6 hours on the Estate (R. pp. 10-11, # 17), primarily to boost the value of the personalty so that the PR could get a bigger commission. Ultimately, without making a finding of extraordinary services the probate judge awarded the PR a fee of $ 51,300, which is twice the usual statutory fee. The Petitioner has not been underpaid.

Four courts have now found this to be adequate compensation, but the PR claims that he should be the arbiter of what constitutes the "reasonable compensation" stated in the decedent's Will. In fact, it is the duty of the probate judge to interpret the Will where it gives no standards to determine what the Testatrix considered to be reasonable compensation. In exercising his discretion the judge no doubt took into consideration that the Testatrix's primary intent was to benefit her heirs, not the Personal Representative, plus the inflated value of the Estate. The judge would also have taken into consideration the inefficiency and incompetence of the PR's management of the Estate (R. pp. 1414-1427) and would not have made the Estate subsidize that.

Respondents view the compensation received by the PR to be excessive, and it certainly cannot be said to be less than reasonable compensation. Courts can go no further than the credible proof they are presented, and the probate judge was unwilling to credit Petitioner's time sheets at face value (R. p. 9, # 8). It is worth noting that the PR in the first part of his testimony explained how he arrived at his fee, which the probate judge characterized as "he had no method or formula for determining the amount of the four draws he gave himself other than pulling a figure out of the air." (R. p. 9, # 8).

This Court was more charitable, but the PR testified that he was not charging as an attorney (R. p. 172/1- 173/7) and that there was very little attorney work to be done (R. p. 206/6-7). His second try at supporting his bloated fee did advance some factors which lawyers use in setting their fees; but the PR had manifestly not used these factors in setting his own fees, because he testified he simply charged what he thought he deserved (R. p. 174/9-16, 19-24; 205/1-4, 16-20).

The PR wants this Court to consider the affidavit of Alan Medlin, which was not introduced into evidence. Petitioner did not call Mr. Medlin to testify, and Mr. Sullivan admitted that the only information Mr. Medlin had on which to base an opinion was what Mr. Sullivan had told him (R. p. 196/1-13). The Court should not and cannot consider this document.

As to the Petitioner's request for an additional $ 2500 to wrap up the Estate, the Respondents have made known that their firm belief that the PR has already been overpaid; but they entrust this issue to the sound discretion of the Court.

CONCLUSION

The Personal Representative's demand for more money has now been heard by four courts. All four have agreed that he has been paid enough. His longing for lucre is simply unsupported by the evidence, by Law and by Equity. Respondents respectfully request the Court to deny the Petitioner/Respondent's Petition for Rehearing, because there is no basis to grant it.

Respectfully submitted,

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June 13, 2018

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CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee at Cox Ferguson and Wham LLC and that on the 13 day of June, 2018 she served the Response to Petitioner/Respondent's Petition for Rehearing herein by depositing a copy of it in the United States Mail, postage prepaid and addressed to:

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Deborah Ball

June 13, 2018