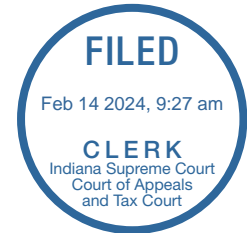


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

In re: the Estate of Loretta Louise Rector,
Timothy Rector,
Appellant-Petitioner

v.

Kathy Lynch, Personal Representative of the Estate of Loretta
Louise Rector,
Appellee-Respondent

February 14, 2024

Court of Appeals Case No.
23A-ES-2168

Appeal from the Jasper Superior Court
The Honorable Russell D. Bailey, Judge

Trial Court Cause No.
37D01-2111-ES-1075

Memorandum Decision by Judge Bradford

Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] Loretta Louise Rector died intestate on October 21, 2021. Loretta’s son, Timothy Rector, appeals the trial court’s order relating to some issues relating to Loretta’s estate (“the Estate”). In the challenged order, the trial court had ordered that Loretta’s residence be sold, that costs associated with an autopsy completed following Loretta’s death be paid by the Estate, and that certain attorney’s fees be paid by the Estate. Concluding that the trial court (1) did not abuse its discretion in ordering that Loretta’s residence be sold but did err in not allowing her heirs the opportunity to purchase the residence before it was made available for purchase by a member of the public, (2) abused its discretion in ordering that the costs associated with the autopsy be paid by the Estate, and (3) did not abuse its discretion in ordering the Estate to pay the challenged attorney’s fees, we affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

- [2] Loretta had eight children: Debra Smith, Ronald Rector, Michael Rector, Kathy Lynch, Timothy Rector, Tami Peters, Douglas Rector,¹ and Scott Rector. Loretta died on October 21, 2021. Although Loretta had written out a purported will on July 8, 2015, which had indicated that she had intended for her property to be divided equally among her eight children and that she had wished for Tami Peters to serve as the executor of the Estate, the trial court ultimately found that the purported will was not valid. As such, Loretta was determined to have died intestate.
- [3] Kathy was appointed personal representative of the Estate on December 16, 2021. Kathy filed an inventory of the Estate on April 29, 2022, which indicated that the total appraised value of the Estate was \$167,053.00.² In this inventory, Kathy valued Loretta’s residence at \$70,000.00.
- [4] On October 27, 2022, Debra, Michel, Ronald, Tami, and Timothy (collectively, “the Heirs”) objected to the inventory and petitioned to remove Kathy as personal representative of the Estate.³ In objecting to the inventory, the Heirs alleged that Kathy had “not accurately marshaled all of the assets of the [E]state,” the inventory does not conform to statutory requirements or indicate the fair market value of each item of property, and Kathy had refused “to

¹ Douglas was deceased at the time of Loretta’s death. He is survived by his daughter, Diana.

² This valuation included \$41,200.00, which reflected the amount allegedly owed to the Estate by Scott, Tami, Michael, and Douglas. It also indicated that Debra owed the Estate an indeterminate amount.

³ Scott was incarcerated at the time of Loretta’s death and does not appear to have participated at any time during the underlying administration of the Estate or the instant appeal.

disclose information regarding valuations that were performed.” Appellants’ App. Vol. II pp. 39, 40. The Heirs also objected to the valuation of Loretta’s residence at \$70,000.00, claiming that their valuation of the residence had found its value to be only \$45,000.00. The Heirs denied the allegation that Tami, Michael, Douglas, or Debra owed any money to the Estate. They also challenged the valuation of certain furniture and personal property and the inclusion of a 2014 Chevy Malibu in the Estate.

[5] Following a hearing on the Heirs’ challenge to the inventory, on November 21, 2022, the trial court found that Loretta’s purported will was invalid because it did not meet “the requirements of law.” Appellants’ App. Vol. II p. 74. The trial court further found that the evidence did not support the allegation that Tami, Michael, Douglas, and Debra had owed debts to the Estate and, as a result, the alleged debts “are not assets of the [E]state and shall be removed from the inventory.” Appellants’ App. Vol. II p. 75. The trial court also found that the value of the 2014 Chevy Malibu should be removed from the Estate, as it had been jointly owned by Ronald and Loretta at the time of Loretta’s death and was therefore “not an asset of the [E]state.” Appellants’ App. Vol. II p. 75. As for Loretta’s residence, the trial court found that Kathy and the Heirs had provided competing valuations of the residence and that it should be sold for “no less than the average price between the two appraisals of \$57,500.00 through a licensed real estate broker that frequently does business in the Demotte/Fair Oaks area.” Appellants’ App. Vol. II p. 77. The trial court also denied the petition to remove Kathy as personal representative of the Estate.

[6] On January 6, 2023, the Heirs filed a request for the trial court to approve the sale of Loretta’s residence to Ronald for \$57,500.00. On March 7, 2023, the Heirs renewed their request to remove Kathy as personal representative of the Estate. In making their renewed request, the Heirs noted the pending request for the sale of Loretta’s residence to Ronald and alleged that on or about March 1, 2023, Kathy had been found guilty by a federal jury of nine felony counts “for her willful failure to pay the IRS payroll taxes.” Appellants’ App. Vol. II p. 90. Kathy thereafter renounced her right to serve as personal representative for the Estate. The trial court removed Kathy as personal representative of the Estate and appointed Tami Peters as the temporary personal representative of the Estate on July 21, 2023.

[7] In August of 2023, the trial court held a hearing on the pending motions after which it ordered, *inter alia*, as follows:

The Court, being duly advised, now FINDS and ORDERS that no objections to the appointment of Tami Peters as Successor Personal Representative were filed with the Court, therefore the Court now appoints Tami Peters as Successor Personal Representative of the Estate of Loretta Louise Rector....

Further, the Court FINDS and ORDERS that Attorney Morris A. Sunkle’s Petition for Allowance of Fees to Personal Representative’s Attorney in the amount of \$3,918.75 is granted and shall be paid out of the estate assets.

Further, the Court FINDS and ORDERS that all costs associated with the autopsy performed on the decedent shall also be paid out of the estate assets.

Further, the Court now ORDERS the real estate sold for no less than the average price between the two previously acquired appraisals of \$57,500.00 through a licensed real estate broker that frequently does business in the DeMotte/Fair Oaks area, pursuant to the Court's order of November 22, 2022.

Appellants' App. Vol. II p. 126.

Discussion and Decision

- [8] Timothy appeals the trial court's order on behalf of the Heirs, challenging the trial court's determinations that Loretta's residence should be sold, the costs of the autopsy should be paid out of the Estate, and payment of some of Attorney Sunkle's fees should be paid out of the Estate. The Estate has not filed an appellee's brief.

When an appellee has not filed an answer brief, we need not undertake the burden of developing an argument on the appellee's behalf. Rather, we may reverse the trial court if the appellant presents a case of prima facie error. Prima facie error means at first sight, on first appearance, or on the face of it. If an appellant does not meet this burden, we will affirm.

Henderson v. Henderson, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010) (internal citations omitted).

I. Sale of Residence

- [9] Timothy contends that the trial court abused its discretion by ordering the Estate to sell the residence. See *In re Estate of Jackson*, 938 N.E.2d 1200, 1206 (Ind. Ct. App. 2010) (applying the abuse of discretion standard of review to an

appeal from a trial court's order regarding an objection to the sale of estate property), *trans. denied*. "An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it or it misinterprets the law." *Id.* (internal quotation omitted).

[10] Timothy points to our decision in *Campins v. Capels*, 461 N.E.2d 712, 721 (Ind. Ct. App. 1984), in which we indicated that, under limited circumstances, sentimental value attached to an asset is a proper consideration in property disputes. Timothy argues that the evidence before the trial court indicated that the Heirs had wished to keep the residence as a family home and that they had requested that the trial court transfer title of the residence to them, provided that they compensate Kathy for her share of the residence. The record reveals that the Heirs had disputed the trial court's determination that the residence should be sold. Alternatively, they had requested that the trial court approve the sale of the residence to Ronald. The Heirs asserted below that, while acting as personal representative for the Estate, Kathy had interfered with their attempts to acquire the residence, with Kathy's attorney confirming as much, indicating that she had not wanted "to sell the property to her family." Tr. Vol. II p. 143.

[11] Given that Loretta had had beneficiaries other than the Heirs and Kathy, we cannot say that the trial court abused its discretion in ordering that the residence be sold and the benefits from the sale be included in the Estate. However, given that there has been no formal objection to Ronald purchasing the residence, we conclude that the trial court abused its discretion by failing to give Ronald, the only heir of Loretta who has expressed a written interest in purchasing the

residence, the opportunity to do so. Based on the trial court’s language that the residence be sold “for *no less* than the average price between the two previously acquired appraisals[,]” we conclude that the trial court should provide Ronald with a right of first refusal. Appellant’s App. Vol. II p. 126 (emphasis added). A right of first refusal allows the holder of the right “to purchase the property on the same terms that the seller is willing to accept from a third party.” *Hyperbaric Oxygen Therapy Sys., Inc. v. St. Joseph Med. Ctr. of Ft. Wayne*, 683 N.E.2d 243, 248 (Ind. Ct. App. 1997), *trans. denied*. Doing so enables the trial court to ensure that ownership of the residence remains with the family, the interests of all the beneficiaries of the Estate are protected, and the market determines the residence’s value while respecting the trial court’s minimum valuation. On remand, we instruct the trial court to give Ronald a right of first refusal to purchase the residence, a right which Ronald must exercise within a reasonable timeframe as determined by the trial court.

II. Cost of Autopsy

[12] Timothy next claims that the trial court abused its discretion by ordering that the cost of the autopsy conducted on Loretta would be paid out of Estate assets.

“Expenses of administration” includes expenses incurred by or on behalf of a decedent’s estate in the collection of assets, the payment of debts, and the distribution of property to the persons entitled to the property, including funeral expenses, expenses of a tombstone, expenses incurred in the disposition of the decedent’s body, executor’s commissions, attorney’s fees, and miscellaneous expenses.

Ind. Code § 29-1-1-3(a)(12). If a determination as to cause of death could have had some potential effect on or value to the accounting of an estate, then the costs associated with an autopsy could potentially be included as expenses of administration of the estate. However, that is not the case here; nothing in the record even suggests that any official determination regarding Loretta's cause of death would have had any effect on the administration of the Estate, let alone any benefit to it.

[13] Timothy asserts that because Kathy had unilaterally decided to have the autopsy performed, even though none of her siblings had thought it was necessary, and its determinations had had no impact on the ultimate execution of the Estate, the Estate should not have to bear the costs of the autopsy. Tami testified that all of Loretta's children had been aware that Loretta had "had kidney problems for a long time" and that her kidney's "were just shutting down" prior to her death. Tr. Vol. II p. 131. Tami further testified that after all of her siblings had objected to the need for an autopsy, Kathy had "said forget it, she was just going to get [it] and she would pay for it herself." Tr. Vol. II p. 132.

[14] The record is devoid of any value or benefit the autopsy provided to the Estate. Given that fact, coupled with the evidence that Kathy had indicated to her siblings that she would "pay for [the autopsy] herself," Tr. Vol. II p. 132, we agree with Timothy that the trial court abused its discretion in ordering that the costs associated with the autopsy be paid by the Estate.

III. Attorney's Fees

[15] “An attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable.” Ind. Code § 29-1-10-13. Timothy does not dispute that Attorney Sunkel should have been paid out of the Estate for work that he had completed in legitimate service to the Estate. Timothy claims, however, that some of the work that had been completed by Attorney Sunkel had not been for the benefit of the Estate but rather for Kathy's benefit in her individual capacity, specifically, the following:

February 15, 2022	Received email regarding items taken by family. Kathy wanting to do something to family member to return items. Sent email explaining that Personal Representative needs to be specific if allegations of theft are being made. Kathy acknowledged she does not have good evidence of what was taken.	0.50 Hours
February 16, 2022	Received more emails regarding how to report assets. Responded that Kathy is not acting in a fiduciary manner and is treating assets to be her own.	0.25 Hours
September 7, 2022	Sent email to client to act responsibly or we will ask to resign as counsel	0.40 Hours
December 6, 2022	Researched statute limiting Personal Representative from acquiring property in an estate unless agreed to by all heirs or with Court approval. Sent Kathy a copy of statute and inquired if Kathy wanted to buy real estate and personal property. Received question about when to do Petition to Buy Real Estate. Sent client a copy of Court Order and explained issues.	0.80 Hours

Ex. Vol. pp. 77, 83, 86. Each of the challenged entries relates, at least tangentially, to the administration of the Estate. As such, we conclude that the trial court did not abuse its discretion in ordering the challenged fees to be paid by the Estate.

[16] We affirm the judgment of the trial court in part, reverse in part, and remand to the trial court for further proceedings consistent with this decision.

Altice, C.J., and Felix, J., concur.

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