

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN THE JURISDICTION OF
THE KENT COUNTY REGISTER OF WILLS

IN THE MATTER OF THE ESTATE)
OF LEONARD RICH.) KCROW FOLIO F03072007R L

PRO HAC VICE MASTER'S REPORT
(EXCEPTIONS TO ACCOUNTING)

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POPPITI, Master Pro Hac Vice

Pursuant to Chancery Court Rule 144(a)(1), this is the report on the exceptions to the final accounting, as filed collectively by four beneficiaries of the estate. Upon review of the documentary and testimonial evidence presented at the one-day hearing convened on May 20, 2013, all but one of the exceptions are dismissed. For the reasons set forth herein, a limousine expense incurred five years after the decedent's death is disallowed. Combined with other corrected calculations, this report concludes that the Administratrix shall return \$845.02 to the estate account and distribute same to the heirs.

I. Introduction

This matter comes before the Court, pursuant to 12 Del.C. § 2302(b), through exceptions taken by four of the decedent's children, Leonard Rich, Jr., Marie A. Hannibal, Bernard K. Rich, and Lenora C. Jones (collectively "the Exceptants"), against the accounting filed by the personal representative, Linda Gussoff ("the Administratrix"), in the estate of Leonard Rich ("the Decedent"). The Decedent died intestate on March 17, 2007, and the Kent County Register of Wills issued Letters of Administration to Linda Gussoff, the Decedent's daughter.

II. Jurisdiction, Burdens of Proof, and Scope of Review

Upon the filing of exceptions to an accounting, the Delaware Constitution provides that when exceptions are heard by the Court, "the account shall be adjusted and settled according to the right of the matter and the law of the land."¹ Chancery Court Rule 198 prescribes the following procedural framework for allocating the respective burdens of proof: "At the hearing of exceptions the personal representative shall first be heard upon the exceptions taken; then the exceptant shall be heard, and the personal representative shall be heard in rebuttal." The personal representative bears the initial burden of proof in

¹ Del.Const., Art IV, § 32, ¶2, cls. 3 & 4.

responding to exceptions to an account.² More specifically, the personal representative bears the initial burden of demonstrating that the account was properly prepared.³

The final accounting of the Decedent's estate was admitted into evidence.⁴ As noted during the hearing, the accounting contains a certification by the Kent County Chief Deputy Register of Wills, attesting that she has "examined the foregoing account, tried the calculations and additions, compared the vouchers and [found] the same to be correctly adjusted and settled."⁵ Consequently, pursuant to Delaware Rule of Evidence 202(d)(1)(b), the Court takes judicial notice that the personal representative has provided sufficient documentation of all deductions set forth in the final accounting.⁶ This practice is consistent with *In re Estate of England*,⁷ wherein then-Master Kiger took judicial notice of the contents of the underlying estate file, which in that case confirmed that the accounting of the estate was audited by the Register of Wills (through an assigned deputy) and that vouchers supporting the debts listed thereon had been verified.⁸

Accordingly, the scope of this Court's review will be limited to whether the expenses on the accounting were properly deducted when calculating the net personal estate to be distributed to the heirs.

² *In Re Estate of Gedling*, 2000 WL 567879, at *11 (Del.Ch. 2000).

³ *In Re Estate of Stepnowski*, 2000 WL 713769, at *1 (Del.Ch. 2000).

⁴ Tr. Exh. 1.

⁵ Tr. 128.

⁶ *State v. Falkowski*, 2001 WL 1448487, *1 n.1 (Del.Super. 2001) ("As the Register of Wills is a Clerk of the Court of Chancery, 12 Del.C. § 2501, the court has taken judicial notice of that office's records.").

⁷ 2000 WL 128854 (Del.Ch. 2000).

⁸ *Id.* at *5-6.

III. Nature and Stage of the Proceedings

A. Summary of Issues Derived from Pleadings

The Exceptants filed exceptions on June 26, 2012, wherein they objected to the following six entries on the accounting: (1) a \$600 fee for bookkeeping services; (2) the Decedent's pension repayment in the amount of \$13,330.98; (2) the amount of \$7,102.84 for cleaning, repairs, and removal of items from the Decedent's property; (4) the funeral expense in the amount of \$20,850.00; (5) attorney's fees in the amount of \$4,100.00; and (6) calculation and distribution of the balance remaining in the hands of the personal representative in the amount of \$4,695.02.⁹

B. Redefined Scope of Dispute to be Resolved

Mediation of the exceptions was conducted on April 1, 2013, at which time the parties resolved the dispute over the \$600 fee for bookkeeping services, leaving the Court to rule upon the five remaining issues cited above.¹⁰

At the beginning of the hearing convened on May 20, 2013, the parties were given one last opportunity to confer and resolve those five remaining disputes. That conference led to resolution of the following two issues: (1) the pension repayment in the amount of \$13,330.98¹¹ and (2) payment of attorney's fees in the amount of \$4,100.00.¹²

With regard to the funeral expense, the parties were able to narrow that dispute to (1) the \$1,200.00 difference between the estimated and the actual cost of the funeral and (2) the headstone cost of \$1,900.00.¹³

⁹ Tr. 5-6 & Exh. 1.

¹⁰ Tr. Exh. 3.

¹¹ Tr. 6.

¹² Tr. 9-10.

¹³ Tr. 7-8.

Aside from the bipartite dispute of the funeral expense, the only two other remaining issues for the Court to resolve are (3) the calculation of the amount of \$7,102.84 for cleaning, repairs, and removal of items from the Decedent's property, and (4) the balance remaining in the hands of the personal representative in the amount of \$4,695.02. These four issues will be addressed *seriatim* below.

IV. Facts Adduced at the Hearing on the Exceptions

A. The Funeral Expenses

As to the dispute arising from the funeral expense, the Administratrix presented the testimony of the funeral director, Darnell McPherson, who expounded on the two facets of the funeral expense: the \$1,200.00 increase from the original estimate of funeral services and the \$1,900.00 charge for the headstone.¹⁴ Mr. McPherson is the grandson of the Decedent.¹⁵

1. The Difference Between the Estimated and Actual Cost of the Funeral Expense

With regard to the approximately \$1,200.00 difference in the final invoice for the funeral, Mr. McPherson explained that the total bill was \$11,209.00, but the original estimate was \$9,879.00,¹⁶ to reflect family discounts.¹⁷ For example, the embalming was discounted from \$1,595.00 to \$795.00, a difference of \$800.00.¹⁸ As for why the family discount is not reflected in the final bill, the funeral director explained that the discount would lapse if the balance was not paid in 30 days from the date of the estimate, as required by Federal Trade Commission guidelines.¹⁹ The Decedent's family did not pay

¹⁴ Tr. 62.

¹⁵ Tr. 68.

¹⁶ Tr. 67. & Exhs. 23 & 24.

¹⁷ Tr. 70.

¹⁸ Tr. 70.

¹⁹ Tr. 71-72.

that balance in 30 days, and therefore, an additional \$1,200.00 was due above and beyond the original estimate.

2. The Forfeited Headstone Deposit

As to the headstone dispute, Mr. McPherson explained that the original price was \$9,400.00, for a pre-selected headstone that required a deposit of \$2,500.00. The Decedent's family could not agree on the details of the headstone, and they did not pay the balance due. As such, the \$2,500.00 deposit was forfeited.²⁰ When the family finally moved forward with a second headstone, the estate was required to pay \$1,900.00 due to the lost deposit. Because of the family relationship, the funeral director was able to lessen the amount payable from \$2,500.00 to \$1,900.00.²¹

B. Deductions for Cleaning, Repairs, and Removal of Items from the Decedent's Property

With regard to the sum of \$7,102.84 deducted from the estate, the Administratrix presented the testimony of Gary Gusoff. Mr. Gusoff is married to the Administratrix; he is an attorney in other jurisdictions; and he served as the Administratrix's agent in handling several responsibilities, such as bookkeeping. Mr. Gusoff's testimony centered mainly on explaining, item by item, the list of bills detailed in his letter of August 10, 2012, addressed to the Kent County Register of Wills. Said letter, entered as Exhibit 4, was itself an explanation of what money was spent from the estate account and for what purpose. On direct questioning by the Court, Mr. Gusoff could not explain why the itemized payments of Exhibit 4 did not add up to \$7,102.84; in fact, the payments exceed \$7,102.84.

²⁰ Tr. 76. & Exh. 26.

²¹ Tr. 85.

C. Accounting for the Balance Remaining in the Hands of the Personal Representative

Although the accounting reflects a balance remaining in the hands of the personal representative of \$4,695.02, the Administratrix proffered that there is, in fact, no money remaining. According to Mr. Gusoff's letter of August 10, 2012, which was admitted into evidence as Exhibit 4, the following monies were spent after the final accounting was filed:

Limousine ride to unveiling of second headstone	\$575.00
Closing costs to Register of Wills	\$79.68
Lost deposit from first headstone	\$1,950.00
Bookkeeping assistance	\$650.00
Miscellaneous bill from sale of house	\$1,300.00
Partial reimbursement to Administratrix for second headstone	\$570.06
TOTAL:	\$5,124.74

On direct examination, Mr. Gusoff confirmed the expenses, with one significant difference.²² He stated that the \$1,950.00 was a cash payment to the funeral home for transporting the second headstone.

During the hearing, the Court added up the expenses being discussed and came to a total of approximately \$4,475.00.²³ If expenses tallied to only \$4,475.00, then there should be some \$220.00 remaining on hand. When asked by the Court to explain the discrepancy, Mr. Gusoff had little response.²⁴

²² Tr. 96-102.

²³ Tr. 113.

²⁴ Tr. 113

D. Other Issues at the Hearing

In accordance with Rule 198, the Exceptants were given an opportunity to present their own evidence at the conclusion of the personal representative's case in chief.²⁵ The Exceptants did not present any witnesses of their own, nor did they propound any documentary evidence of their own to rebut the personal representative's case in chief.²⁶ The Exceptants did not even challenge whether the above-listed expenses were in fact paid.²⁷ Though the Exceptants took the opportunity to cross-examine Gary Gusoff, the scope of their cross-examination focused on the delinquency in filing the accounting,²⁸ the number of break-ins at the Decedent's house,²⁹ and the calculation of the balance remaining in the hands of the personal representatives.³⁰

V. Case Law

The Court hereby adopts a three-factor test when analyzing the appropriateness of deductions: relevance,³¹ reasonableness,³² and timeliness.³³ This is not new case law but rather the synthesis of so many wise Chancery decisions over the years. The factors

²⁵ Tr.129-133.

²⁶ Tr. 130-33.

²⁷ The Exceptants did object to the presentation of copies of these documents in lieu of the originals, based on the Exceptants' misunderstanding of the best evidence rule. Tr. 19. The Court overruled the objection because the personal representative provided sworn testimony identifying the contents of the copies, and the Exceptants neither raised any genuine question as to the authenticity of the documents nor cited circumstances in which it would be unfair to admit copies into evidence in lieu of the original documents. See Delaware Rules of Evidence 901(a)&(b)(1) and 1003.

²⁸ Tr. 51-52.

²⁹ Tr. 52.

³⁰ Tr. 55-60.

³¹ See *IMO Estate of Warburton*, 1996 WL 422342, at *5-6 (Del.Ch. 1996)(M. Kiger)(distinguishing between expenses that arise from the administration of an estate and expenses that arise merely because the decedent has died).

³² *In Re Walker's Estate*, 122 A. 192, 193 (Del.Orph. 1923)("When such expenses are necessary in order to properly protect the property or the interests of the estate, and are incurred in good faith, in transacting the business of the estate with reasonable care and diligence[,] [the personal representative] should be given credit for them in the account.").

³³ See *IMO Estate of Yost*, 1997 WL 907996, at *1 (Del.Ch. 1997)(citing *Criscoe v. Derooy*, 384 A.2d 627 (Del.Ch. 1978))("[T]here is a special public policy favoring prompt settlement of estates.").

are intertwined yet unique, and as seen in the case at bar, one factor can be so strong as to be determinative.

Relevance goes to the heart of estate administration: Does the deduction serve the best interests of the estate? Does the deduction protect and preserve the estate? Is the deduction appropriate, given the general standards of estate administration?

Reasonableness speaks to the amount spent: Is the amount spent the fair market value of such goods or services? Is the amount spent proportionate to a benefit that the estate receives or a detriment that the estate avoids?

Timeliness is always an admired but elusive factor: Does the deduction occur in a timely manner so as to achieve a benefit (or avoid a detriment) for the estate? The Court takes note and affirms the notion that there can be absolute deadlines for deductions. For example, it has been the long held policy in Delaware that some deductions to real property are valid for the first ninety days after the decedent's death *and no longer* (unless, of course, the proceeds from the sale of the real property flow back into the estate accounting).

VI. Analysis and Report

A. The Funeral Expenses

Funeral expenses are customarily and statutorily deductible from the estate's assets.³⁴ Notably, after payment of administrative expenses and attorneys' fee, the Delaware General Assembly has accorded the expense of a decedent's funeral with the second highest priority among all other pecuniary claims against an estate.³⁵ That statutory priority is consistent with this Court's explanation in *Smolka v. Chandler*³⁶ of the

³⁴ 12 Del.C. § 2105; *In Re Estate of Artymenko*, 2000 WL 268304, *1 (Del.Ch. 2000).

³⁵ See 12 Del.C. § 2105(a)(2).

³⁶ 20 A.2d 131, 133-34 (Del.Ch. 1941).

special nature of a funeral expense and the concomitant duty of a personal representative to pay those expenses:

The funeral of a deceased person is a work of necessity, as well as charity and piety. It is the duty of [a personal representative] to bury the deceased in a manner suitable to his degree and the circumstances of the estate; and if this duty is performed by the personal representative, or indeed by another not officiously but from necessity, the law implies a promise of reimbursement out of the assets of the estate for the reasonable expenses incurred and paid[.]³⁷

Woven together, the General Assembly and this Court have given funeral expenses the rebuttable presumption of being relevant, reasonable, and timely.

1. Difference Between the Estimated Cost and the Actual Cost

The Court finds the funeral director's testimony to be entirely credible. The Decedent's family did not pay the discounted bill on time, and therefore, an additional \$1,200 had to be paid. There was no assertion that the Administratrix was responsible for the bill not being paid on time. The Administratrix acted appropriately in paying the entirety of the funeral bill.

2. The Headstone

The Decedent's family ordered a headstone, putting down a \$2,500.00 deposit from the estate. The family failed to follow through on the order, and consequently, the deposit was lost. There was no assertion that the Administratrix was responsible for failing to follow through on the order. Eventually, a second headstone was ordered. The cost was \$1,900.00. The Administratrix paid for the second headstone, and it has since been erected. There is no evidence to suggest that the Administratrix acted inappropriately.

³⁷ *Id.* at 133-34.

B. Deductions for Cleaning, Repairs, and Removal of Items from the Decedent's Property

In propounding Exhibit 4, along with his testimony at the hearing, Mr. Gusoff attempted to explain the costs related to prepping the Decedent's house for sale. Those explanations were confusing and at times, simply "did not add up". The Court appreciates the concern of the Exceptants. However, taken as a whole, the deductions are allowable.

The Decedent's house was his most significant asset. I commend the Administratrix on the speed with which the house was sold. The Decedent died in March 2007 and the house was sold by August.³⁸ The Exceptants at trial did not question the sale price of \$165,000.00.

Prepping the house for sale was relevant to administering the estate, because the house was estate's largest asset. Moreover, spending \$7,102.84 for the prep work appears reasonable, especially in light of the fact that the house sold quickly and achieved a sale price that no one questioned. Again, it seems reasonable to spend approximately \$7,000.00 to generate a sale of \$165,000.00. Finally, the expenses were clearly timely given that they were spent within months of the Decedent's death.

C. Accounting for the Balance Remaining in the Hands of the Personal Representative

The accounting indicates that there is \$4,695.02 remaining in the hands of the personal representative. The Administratrix claims that there is nothing left, after paying for the closing costs of the Register of Wills, as well as a bill from the sale of the house, bookkeeping assistance, the second headstone, and a limousine ride to the unveiling of

³⁸ At the time of the sale, Linda Gusoff was actually serving as Personal Representative Ad Litem and had not been fully frocked as the Administratrix. See *IMO Estate of Leonard Rich, Sr.*, C.M. 2560-K-MG (ORDER) Oct. 17, 2007 (M.Glasscock).

the second headstone. The Court disagrees. Based on a corrected calculation as outlined below, there should be \$845.02 still remaining.

Balance Remaining in the Hands of the Personal Representative from the First and Final Accounting	\$4,695.02
LESS THE FOLLOWING DEDUCTIONS	
Closing costs to Register of Wills	Already accounted for
Miscellaneous bill from sale of house	(\$1,300.00)
Bookkeeping assistance	(\$650.00)
Payment for second headstone	(\$1,900.00)
Limousine ride to unveiling of second headstone	Disallowed
NET TOTAL	\$845.02

The Court notes that these deductions and receipts thereof were not examined by the Kent County Chief Deputy Register of Wills, because payments were made *after* the final accounting was filed. As such, these deductions come under greater scrutiny.

The closing costs to the Register of Wills were already accounted for, and therefore, cannot be counted twice. Pages 2 and 3 of the final accounting clearly indicate that the net estate of \$4,744.70, less the closing costs of \$79.68, equals the monies remaining in the hand at \$4,695.02.

A bill to fix and replace an old door of the Decedent's home for \$1,300.00 is an allowable deduction. This bill was apparently not paid at the time the house was sold, and the creditor later appeared demanding payment.³⁹ This deduction follows the same reasoning as the \$7,102.84 spent prepping the home for sale.

Paying a bookkeeper \$650.00 is also an allowable deduction. The Administratrix is permitted to hire a bookkeeper to help in the administration of the estate. The Court notes that the sloppy, piecemeal, and hard-to-follow bookkeeping is exactly why the

³⁹ Tr. 92-93.

estate accounting is being contested. As such, the Administratrix probably did not get her money's worth. However, there is no evidence indicating that the bookkeeper payment was other than relevant, reasonable, and timely.

The payment of \$1,900.00 for the second headstone is an allowable deduction as discussed above in Section VI.A.2.

The Administratrix proffered that there were other expenses in regard to the second headstone. She reimbursed herself for \$570.06 for additional costs of the second headstone.⁴⁰ However, there is no receipt from the funeral home as to the additional costs, and to the contrary, a letter from the funeral home indicates the amount paid for the second headstone was \$1,900.00 and no more.⁴¹

In addition, according to Mr. Gusoff's testimony, the Administratrix reimbursed herself \$1,950.00 for a cash payment to have the headstone transported.⁴² Actually, Mr. Gusoff's testimony is that the transportation cost was \$1,900.00, so the Administratrix reimbursed herself via a check for \$1,500.00 and via one for \$450.00.⁴³ No explanation is given for the \$50.00 overpaid to the Administratrix. Moreover, there is no receipt or documentation. Adding confusion, Mr. Gusoff's letter of August 10, 2012, indicates that the \$1,950.00 was to replace the lost deposit on the first headstone.⁴⁴ The fact that the amount spent on replacing the lost deposit was \$1,900.00 and not \$1,950.00 is yet another frustrating indication of how sloppy the overall bookkeeping is.

⁴⁰ Tr. 102.

⁴¹ Tr. Exh. 26.

⁴² Tr. 97.

⁴³ Tr. 97

⁴⁴ Tr. Exh. 4.

Consequently, the Court finds that the Administratrix may deduct only \$1,900.00 for the second headstone as documented in Exhibit 26 and not an additional \$570.06 or \$1,950.00.

Furthermore, the Court disallows the limousine bill of \$575.00. Paying for a limousine was possibly relevant and possibly reasonable, but it certainly was not timely. Generally, at the time of burial, the funeral home will offer a limousine to the decedent's family as part of its overall services; family members, fraught with grief, are not then burdened with driving from say, the church to the gravesite. In the present case, the Administratrix hired a limousine *five years after burial* to transport some family members to the unveiling of the headstone. The expense was appropriate at the time of burial but not five years later.

VII. Conclusion

For the reasons cited above, the revised calculation of balance remaining in the hands of the personal representative is \$845.02. That amount shall be divided equally among all of the Decedent's intestate heirs. This draft report will become a final report if no exceptions are taken within the timeframe prescribed by Chancery Court Rule 144(a)(1).