

NEBRASKA SUPREME COURT

In re Estate of Jack H. Gsantner

288 Neb. 222 (2014) · No. No. S-13-633 · Decided May 23, 2014

SUMMARY

The Nebraska Supreme Court reviewed an appeal concerning the reasonableness of a \$25,000 personal representative fee awarded in the estate of Jack H. Gsantner. The court held that the fee award was a final, appealable order affecting the personal representative's substantial right to reasonable compensation, and affirmed the award because it was supported by competent evidence and was not arbitrary, capricious, or unreasonable.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Wright, J.; Heavican, C.J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	May 23, 2014
DOCKET	No. S-13-633
DISPOSITION	affirmed
PROCEDURAL POSTURE	The personal representative appealed from a county court order awarding him a \$25,000 personal representative fee and from the order overruling his motion to alter or amend the award. The Nebraska Supreme Court first considered appellate jurisdiction and then reviewed the fee award for error on the record.
STANDARD OF REVIEW	Jurisdictional questions not involving a factual dispute are reviewed as questions of law. Appeals arising under the Nebraska Probate Code are reviewed for error on the record; the appellate inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. In reviewing a probate court judgment in a law action, the appellate court does not reweigh evidence and views the evidence in the light most favorable to the successful party.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

PARTIES

Ryan Gray, Personal Representative of the Estate of Jack H. Gsantner, deceased v. Kevin J. Gustafson, Other appellees identified in the caption as et al.

TOPICS

probate procedure

estate administration

final judgment rule

appellate jurisdiction

standard of review

PRACTICE AREAS

Probate

Appellate procedure

Estate administration

QUESTIONS PRESENTED

1. Whether the county court's order awarding Gray a \$25,000 personal representative fee was a final, appealable order under Neb. Rev. Stat. § 25-1902.
2. Whether the county court erred in determining that \$25,000 was reasonable compensation for Gray's services under Neb. Rev. Stat. § 30-2480.

HOLDINGS

1. An order awarding a personal representative fee is a final order when it affects the personal representative's substantial right to reasonable compensation and finally determines the total compensation payable for the services at issue.
2. The county court did not err in awarding Gray a \$25,000 personal representative fee because competent evidence supported the award and the decision was not contrary to law, arbitrary, capricious, or unreasonable.

KEY QUOTATIONS

"Thus, we conclude that the court's order awarding a personal representative fee of \$25,000 was a final order that determined what constituted reasonable compensation for Gray's services." (288 Neb. at 228-229)

"The order was dispositive of Gray's claim for reasonable compensation under § 30-2480 and thus affected a substantial right." (288 Neb. at 229)

"In reviewing the judgment awarded by the probate court in a law action, an appellate court does not reweigh evidence, but considers the evidence in the light most favorable to the successful party" (288 Neb. at 231-232)

FACTUAL BACKGROUND

Jack H. Gsantner died in February 2012 without a spouse or children. Ryan Gray, the managing officer of the mortuary that was a creditor for \$3,120.55 in funeral expenses, was appointed personal representative during intestacy proceedings and later discovered that the estate had substantial previously unknown assets and that Gsantner had executed a will. The estate ultimately had a value of \$5,180,514.23, and Gray sought a personal representative fee based on 2.5 percent of the gross estate. After conflicting evidence concerning the estate's

complexity, Gray's work, customary compensation, and the appropriate hourly or percentage rate, the county court awarded \$25,000.

PROCEDURAL HISTORY

Ryan Gray was appointed personal representative of the estate and requested compensation equal to 2.5 percent of the estate. After an evidentiary hearing, the Douglas County Court awarded him \$25,000 and later overruled his motion to reconsider, which functioned as a motion to alter or amend. The Nebraska Supreme Court overruled the appellees' motion for summary dismissal, determined that the fee order was final and appealable, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Pinnacle Enters. v. City of Papillion, 286 Neb. 322, 836 N.W.2d 588 (2013)
- In re Estate of Failla, 278 Neb. 770, 773 N.W.2d 793 (2009)
- Krings v. Garfield Cty. Bd. of Equal., 286 Neb. 352, 835 N.W.2d 750 (2013)
- Becerra v. United Parcel Service, 284 Neb. 414, 822 N.W.2d 327 (2012)
- In re Estate of McKillip, 284 Neb. 367, 820 N.W.2d 868 (2012)
- In re Estate of Lehman, 135 Neb. 592, 283 N.W. 199 (1939)
- In re Estate of Muncillo, 280 Neb. 669, 789 N.W.2d 37 (2010)
- In re Estate of Potthoff, 273 Neb. 828, 733 N.W.2d 860 (2007)
- In re Estate of Peters, 259 Neb. 154, 609 N.W.2d 23 (2000)
- In re Estate of Snover, 233 Neb. 198, 443 N.W.2d 894 (1989)
- In re Adoption of Amea R., 282 Neb. 751, 807 N.W.2d 736 (2011)
- In re Trust of Hrnicek, 280 Neb. 898, 792 N.W.2d 143 (2010)