

SUPREME COURT OF NEBRASKA

In re Estate of Buddie Stull, 261 Neb. 319

622 N.W.2d 886 (2001) · No. Nos. S-99-1253, S-00-055 · Decided March 2, 2001

SUMMARY

The Supreme Court of Nebraska reviewed an attorney-fee award in an estate matter involving the common fund doctrine. The court held that the county court properly considered the applicable reasonableness factors and did not abuse its discretion by awarding Attorney E. Michael Slattery one-third of the common fund generated through settlement negotiations. The judgment was affirmed.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	March 2, 2001
DOCKET	Nos. S-99-1253, S-00-055
DISPOSITION	affirmed
PROCEDURAL POSTURE	The residuary beneficiaries appealed the Cass County county court's award of attorney fees to E. Michael Slattery from a common fund created through settlement of a will-contest-related claim.
STANDARD OF REVIEW	When an attorney fee is authorized, the amount of the fee is entrusted to the trial court's discretion and will not be disturbed absent an abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Robert Anderson et al., the objectors v. E. Michael Slattery et al., E. Michael Slattery

TOPICS

- probate procedure
- estate litigation
- remedies
- appellate procedure
- standard of review

PRACTICE AREAS

- Probate
- Attorney fees
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the county court abused its discretion in determining the amount of attorney fees payable to Slattery from the common fund.
2. Whether the county court properly applied a one-third percentage to the common fund.
3. Whether the county court considered the factors relevant to determining a fair and reasonable attorney fee.

HOLDINGS

1. The applicability of the common fund doctrine was established as the law of the case because the objectors did not seek further review of the Nebraska Court of Appeals' original decision.
2. The county court did not abuse its discretion by awarding Slattery one-third of the sums recovered for the residuary estate from the common fund.
3. The amount of an authorized attorney fee is reviewed for abuse of discretion.

KEY QUOTATIONS

“When an attorney fee is authorized, the amount of the fee is addressed to the discretion of the trial court, whose ruling will not be disturbed on appeal in the absence of an abuse of discretion.” (890)

“We conclude that upon remand from the Court of Appeals with directions to consider only the amount of a reasonable fee to be awarded to Slattery for his services in obtaining the common fund of \$98,276.60, the county court did not abuse its discretion in awarding Slattery a fee from the common fund of one-third and, further, that \$21,839.24 of that sum should be paid from the objectors' share.” (891)

FACTUAL BACKGROUND

Attorney E. Michael Slattery represented Rosie Wolski in challenging charitable bequests that restricted the sale or other alienation of estate real property. He later pursued a rule-against-perpetuities theory and negotiated settlements with two charities that added approximately \$98,276.60 to the residuary estate. Although Slattery had a one-third contingent-fee agreement with Wolski, he had no fee agreement with the other residuary beneficiaries, who objected to paying one-third of the common fund. The county court awarded Slattery one-third of the fund after considering the factors relevant to a reasonable common-fund attorney fee.

PROCEDURAL HISTORY

Slattery represented Rosie Wolski in challenging charitable bequests in Buddie Stull's will. The county court approved a settlement that increased the residuary estate and awarded Slattery one-third of the resulting common fund. The Nebraska Court of Appeals held that the common fund doctrine applied but remanded for determination of a reasonable fee under the relevant fee factors. On remand, the county court again awarded Slattery one-third of the common fund, and the objectors appealed to the Nebraska Supreme Court.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Stull, 8 Neb. App. 301, 593 N.W.2d 18 (1999)
- Hauptman, O'Brien v. Milwaukee Guardian, 7 Neb. App. 60, 578 N.W.2d 83 (1998)
- Barnett v. Peters, 254 Neb. 74, 574 N.W.2d 487 (1998)
- Rapp v. Rapp, 252 Neb. 341, 562 N.W.2d 359 (1997)
- Hoiengs v. County of Adams, 254 Neb. 64, 574 N.W.2d 498 (1998)
- Talle v. Nebraska Department of Social Services, 253 Neb. 823, 572 N.W.2d 790 (1998)

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