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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARY BOCK,

B267174

Plaintiff and Appellant,

(Los Angeles County Super. Ct. No. BP145773)

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Defendant and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County. Maria E. Stratton, Judge. Affirmed.

Phillips Law Partners, Gary R. Phillips for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Appellant and executor Mary Bock appeals from the probate court's orders awarding compensation for ordinary services to (i) Bock, as personal representative of decedent, pursuant to Probate Code section 10800,¹ and (ii) her attorney, pursuant to section 10810. Bock contends the court miscalculated the compensation that she and her attorney were statutorily entitled to receive.

Sections 10800 and 10810 set forth identical formulas for calculating ordinary compensation for personal representatives and their attorneys based on "the value of the estate." In simple terms, the larger the value of the estate, the greater the amount of ordinary compensation awarded. In this matter, the probate court determined that Bock and her attorney were entitled to receive a lesser amount than Bock requested, finding that Bock's request inflated the value of the estate by double counting what was effectively a single asset. We agree and accordingly affirm.

BACKGROUND

Shea-Robert Sheahan, decedent, died testate in November 2007. Bock was appointed executor of decedent's will, and letters testamentary were issued in January 2014.

¹ Unless otherwise noted, all statutory references are to the Probate Code.

Sections 10800 and 10810 both provide that ordinary compensation for general services provided in administering an estate be calculated based on the value of the estate pursuant to the following formula: (1) 4 percent on the first \$100,000; (2) 3 percent on the next \$100,000; (3) 2 percent on the next \$800,000; (4) 1 percent on the next \$9,000,000; (5) 1/2 percent on the next \$15,000,000; and (6) for amounts above \$25,000,000, "a reasonable amount to be determined by the court."

A probate referee was appointed to appraise the assets of the estate, which, in December 2013, were estimated to have an approximate value of \$800,000. According to Bock, the estate's sole asset was a membership interest in a limited liability company. Documents submitted by Bock showed that articles of organization for a limited liability company entitled Richard & Mary, LLC (the LLC), were filed in Nevada in September 2002. The articles of organization listed decedent as the manager of the LLC. The articles of organization, however, did not list any members of the LCC, no operating agreement was ever executed, and certificates of membership interest were never issued. Nevertheless, a 2003 letter from the Internal Revenue Service to decedent identified him as the "single member" of the LLC. Apparently based on these documents, the probate referee agreed with Bock that the estate's sole asset was a 100 percent membership interest in the LLC.

The probate referee valued the LLC at \$2,505,000, concluding that the LLC's only asset was a five-acre lot of undeveloped real property in Clark County, Nevada. To arrive at this valuation, the referee relied on a 2009 appraisal report, prepared by a Nevada appraisal services firm, that retrospectively valued the land, as of the date of decedent's death, at \$2,505,000. The LLC itself had no value other than the value of the land.

In February 2014, Bock petitioned the probate court for authority to act as the manager of the LLC and execute an agreement for sale of the Nevada real property for \$1,775,000.³ In March 2014, the court entered an order

Bock's petition explained that, following decedent's death, the Las Vegas area experienced a severe economic downturn, negatively affecting real estate prices. Though the real estate market had partially recovered, prices had not returned to 2007 levels.

authorizing Bock to (i) act as manager of the LLC, (ii) sell the real property for \$1,775,000, and (iii) pay a commission to the real estate broker who procured the sale.

Following the sale, Bock proceeded to close the probate and, in the process, moved for compensation for herself and her attorney. Bock asserted the value of the estate was \$4,169,768, consisting of (i) the membership interest in the LLC, valued at \$2,505,000 and (ii) \$1,664,768 in cash, \$1,659,023 of which was received in connection with the sale of the Nevada real property. Applying sections 10800 and 10810, the \$4,169,768 valuation resulted in ordinary services compensation requests of \$54,698 for each of Bock and her attorney.⁴

In response to the requests for ordinary compensation, the probate court issued a note prior to the hearing stating: "calculation appears to be incorrect, as it includes the entire value of the LLC plus the net proceeds of sale from the LLC's sole asset in the compensation base." At a subsequent hearing, when discussing the issue of ordinary compensation with Bock's attorney, the court said: "[I]t seemed like if the estate is the 100 percent owner of the LLC, that's an asset of the estate. And if an asset of the asset of the estate is sold, it seems like it should be taken into account." Bock's attorney acknowledged that the LLC's current value was zero since it distributed proceeds of the real property to the estate, but argued that the appraised value of the LLC (based on its 2007 value), plus the receipts from sale of the real estate, constituted the total value of the estate.

This amount was calculated as follows: \$4,000 [4% of \$100,000] + \$3,000 [3% of \$100,000] + \$16,000 [2% of \$800,000] + \$31,698 [1% of \$3,169,768] = \$54,698.

After further proceedings, the probate court denied Bock's initial request for ordinary compensation. Bock then prepared a supplemental petition in accordance with the court's calculation of the estate's value. This calculation relied on the \$2,505,000 appraised value of the LLC and recognized a loss on sale of the LLC's property of \$845,976. Along with nominal receipts, the calculated estate value totaled \$1,664,769. This estate value resulted in ordinary compensation awards of \$29,648 to each of Bock and her attorney.⁵

Bock timely appealed.6

DISCUSSION

The compensation awarded pursuant to sections 10800 and 10810 is "intended as a payment for the services which are involved in substantially every probate case," and is accordingly referred to as "statutory" or "ordinary" compensation. (*Estate of Hilton* (1996) 44 Cal.App.4th 890, 895.) The probate court may authorize additional, "extraordinary" compensation when a probate matter presents issues requiring services going beyond those

The calculation for this amount was: $\$4,000 \ [4\% \ of \$100,000] + \$3,000 \ [3\% \ of \$100,000] + \$16,000 \ [2\% \ of \$800,000] + 6,648 \ [1\% \ of \$664,769] = \$29,648.$

Bock filed a notice of appeal on September 29, 2015. The probate court's written ruling awarding ordinary compensation of \$29,648 was issued on July 2, 2015, and served by the clerk of the court on that date. The order was appealable. (See § 1300, subds. (e), (f) [appeal may be taken from order fixing compensation]; *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1450, fn. 5 [probate court's minute order denying compensation request was immediately appealable]; *Leader v. Cords* (2010) 182 Cal.App.4th 1588, 1594-1595.) The 60-day period to appeal from the date of clerk's service was not triggered, however, because neither a notice of entry of order, nor a file-stamped copy of the order, was served. (See Cal. Rules of Court, rule 8.104(a)(1)(A).) Accordingly, the notice of appeal was timely filed.

of the typical case. (*Ibid.*; §§ 10801 [for personal representatives], 10811 [for attorneys].) Although Bock and her attorney requested extraordinary compensation below, the probate court elected not to award it, and Bock has not argued on appeal that the court erred in this regard. As such, the only issue presented on appeal is whether the probate court improperly determined ordinary compensation.

Subdivision (b) of both section 10800 and section 10810 explains how to determine estate value for purposes of calculating ordinary compensation: "[T]he value of the estate accounted for by the personal representative is the total amount of the appraisal value of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property."

Bock argues, based on this formula, that the probate court was required to value the estate as if it held two assets and suffered no losses. The first of these two assets was the "total amount of the appraisal value of property in the inventory." The property in the inventory consisted of the LLC membership interest, which the probate referee valued, at the time of decedent's death, at \$2,505,000. (See § 8802 [probate inventory and appraisal lists property of the estate and "shall state the fair market value of the item at the time of decedent's death . . ."].) The second asserted asset was the proceeds from the sale of the Nevada real property, totaling \$1,659,023. Bock contended that this amount was a "receipt" of the estate, as it was received from the LLC.

At a hearing in the probate court, Bock (through her attorney) acknowledged that her proposed method of determining the value of the estate "looks like . . . double compensation." Nevertheless, Bock argued, and

contends on appeal, that her method was proper because the estate itself did not have a direct interest in the Nevada real property, but only a membership interest in the LLC. This membership interest was personal property, which the estate continued to hold after the Nevada real property was sold by the LLC. Even though (as also acknowledged by Bock) the actual value of the membership interest was zero following the LLC's distribution of the real estate proceeds, she asserted that no "losses from the appraisal value on sales" existed because there was no sale of the membership interest itself. Thus, according to Bock, the only material items to consider in determining the value of the estate were the appraised value of the LLC and the funds the estate received from the LLC. And, although the only asset with any independent value was the real property, Bock argued she was entitled to combine both the appraised value and the realized value because of the manner in which the property was held.

Bock cites no authority, and we are aware of none, that would allow such double counting. Instead, citing *Estate of Getty* (1983)143 Cal.App.3d 455, 465, Bock argues the probate court had no discretion to vary from the statutory formula in determining the value of the estate. While this general proposition is correct, it does not follow that the court had no authority to consider the nature of the estate assets in applying the valuation formula. The two components of the statutory formula that the probate court found applied were (i) "the total amount of the appraisal value of property in the inventory" [\$2,505,000] (ii) "less losses from the appraisal value on sales" [\$845,976]. This analysis was correct, as the language of the statutory valuation formula is not so constrained that it allows a loss to be acknowledged only when property held directly is sold. Given the facts here—that the estate was the only asserted member of the LLC, that the

appraisal value of the LLC was necessarily based solely on the appraised value of the real estate, and that the real estate sold for less than its appraised value—the court properly determined that there was a loss from the appraisal value on sale. In effect, it was the item appraised that suffered the loss.

Courts have rejected attempts by personal representatives or their attorneys to inflate the asserted value of an estate. In Estate of Sanchez (1995) 33 Cal. App. 4th 239, an administrator, who operated a business owned by the decedent, argued that he was entitled to calculate his compensation based on the gross receipts of the business, contending that "because he is personally responsible for every dollar passing through the estate, he should receive commensurate compensation." (Id. at p. 242.) The court dismissed this argument, finding that compensation should derive from the net receipts from the continued operation of the business. (Id. at p. 243.) Likewise, in Estate of Reinhertz (1947) 82 Cal.App.2d 156, net, not gross, income from the operation of an apartment house was determined to be the proper basis for calculating statutory compensation. (Id. at p. 163; see also Estate of Swanson (1959) 171 Cal.App.2d 437, 442 [net and not gross income from operation of a motel was the proper basis for calculating compensation].) And in *Firebaugh* v. Burbank (1898) 121 Cal. 186 (Firebaugh), the court found that when insurance proceeds were paid on estate property destroyed by fire, no additional compensation was warranted because "the property of the estate would thereby be only changed in form, but not increased in value, and no additional estate would be accounted for." (Id. at p. 190.)

Firebaugh is particularly instructive. Here, the sale of the Nevada real property and distribution of proceeds to the estate resulted in no increase in

the value of estate property. Instead, just the opposite occurred—the actual value of estate property declined from the original appraisal value.

The probate court, therefore, properly identified a loss from the appraisal value on the sale. Subtracting the amount of this loss from the appraisal value, the court correctly determined the value of the estate for purposes of calculating compensation under sections 10800 and 10810.

DISPOSITION

The probate court's order determining the amount of ordinary compensation that Bock and her attorney are entitled to receive is affirmed.

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GOODMAN, J.*

We concur:

ASHMANN-GERST, Acting P.J.

CHAVEZ, J.,

^{*} Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.