

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

|                    |                                 |
|--------------------|---------------------------------|
| IN RE: ESTATE OF   | : No. OC-41-19-0116             |
| SANDRA L. NICHOLS, | :                               |
| Deceased.          | : Orphans' Court                |
|                    | :                               |
|                    | : Objections to First and Final |
|                    | : Accounting                    |

**DECREE**

**AND NOW**, this 23<sup>rd</sup> day of August, 2024, the Court notes that this matter came before the Court on March 4, 2024 and July 8, 2024, for hearing on the Objections to First and Final Accounting filed November 2, 2023 by Nadia Nichols through her natural guardian, Angela Nichols (hereinafter the "Objection"). In the Objection, Objector Nadia Nichols asserts Objections as follows:

- A. First Objection - Objection to Sale of Vehicles, Seeking a Surcharge of \$10,025.00.
- B. Second Objection - Objection to Sale of Real Estate, Seeking a Surcharge of \$137,140.83.
- C. Third Objection - Objection to Bank Account Values.
- D. Fourth Objection - Objection to Reimbursements to Benjamin Benschaw for \$450 and to Accountants for \$3,444,40 (withdrawn during hearing).
- E. Fifth Objection - Objection to Attorney's fees of \$12,233.46.
- F. Sixth Objection - Objection to Executrix Fee of \$12,233.46.
- G. Seventh Objection - Objection seeking Attorney's fees.

Based upon the testimony and Exhibits introduced during the hearings, those Objections are GRANTED in part, and DENIED in part, as follows:

**Finding of Fact:**

- 1. Sandra L. Nichols (hereinafter the "Decedent") died on November 30, 2018.
- 2. On February 25, 2019, Barbara A. Benschaw (hereinafter "Executrix") was appointed Executrix of the Estate of Decedent. Effective that same date, Andrea B.

Bower, Esquire (hereinafter “Estate Counsel”) entered her appearance as counsel to the Estate.

3. On July 31, 2019, Executrix and Estate Counsel filed the Estate Inheritance Tax Return (hereinafter the “Tax Return”).
4. The Tax Return claimed total assets of \$307,782.04, deductions of \$43,098.42, and net value subject to tax in the amount of \$264,683.62, and tax due on those assets in the amount of \$23,027.46, including the following:
  - a. Real estate bearing address 824 Wyoming Street, Williamsport, having a value of \$22,100.00.
  - b. Real estate bearing address 1140 Meade Street, Williamsport, having a value of \$40,000.00.
  - c. Real estate bearing both addresses 1021 Almond Street and 830 Wyoming Street, having a value of \$139,223.20.
  - d. Real estate bearing address 446 Wyoming Street, Williamsport, having a value of \$85,013.60.
  - e. A vehicle known as a 1951 Plymouth Coupe with a value of \$1,800.00.
  - f. A vehicle known as a 1990 Dodge Ram van with a value of \$1,200.00.
  - g. A vehicle known as a 1974 Dodge truck with a value of \$5,200.00.
  - h. A vehicle known as a 2004 Ford E250 van with a value of \$2,200.00.
  - i. A vehicle known as a 1996 Dodge Ram with a value of \$625.00.
  - j. A vehicle known as a 1988 Dodge Ram with a value of \$1,200.00.
  - k. The Tax Return does not appear to value personal property.
5. The Estate real property bearing street address 1140 Meade Street sold for a gross selling price of \$40,000.00, at closing conducted on June 14, 2019.
6. The Estate real property bearing street address 830 Wyoming Street sold for a gross selling price of \$16,000.00, at closing conducted on July 20, 2020.
7. The Estate real property bearing street address 824 Wyoming Street sold for a gross selling price of \$12,000.00 at closing conducted on April 21-22, 2020.

8. The Estate real property bearing street address 1021 Almond Street sold for a gross selling price of \$46,000.00 at closing conducted on March 1, 2021.
9. The Estate real property bearing street address 446 Wyoming Street sold for a gross selling price of \$50,000.00 at closing conducted on November 5, 2021.
10. The aggregate value of real estate as listed on the Tax Return was \$286,336.80. The aggregate gross selling price was \$164,000.00. Executrix did not present evidence at the hearing sufficient to fully explain the disparity. Based upon the testimony of real estate expert witness Patricia Smay, the Court finds that the parcels sold at or near their fair market value, at the time of sale.
11. The Executrix offered several, unpersuasive “explanations” for the long delay in the sale of the Estate real property, including the presence of stored personal property, the condition of the real estate, the need for repairs, the COVID-19 pandemic, and others. The Court notes that the Deceased passed more than a year prior to the onset of the COVID-19 pandemic, which almost certainly affected marketing of real estate during 2020. The Court finds that the Executrix simply failed to act promptly to administer the Estate and to liquidate Estate real property.
12. Many of the expenses listed in the Petition for Adjudication of Proposed Distribution appear to relate to maintenance of the Estate real property. The Court finds that, had the Executrix acted promptly to administer the Estate and to liquidate Estate real property, many of those expenses could have been avoided.
13. Based upon the Court’s finding that the Estate real estate sold at or near its fair market value at the time of sale, the Court must infer that either the Executrix did not exercise due diligence at arriving at the values placed in the Tax Return, or that the long delay in selling most of the parcels resulted in a diminution of their value, or both. Although it is difficult for the Court to determine which of those factors was the more significant, the Court finds that the parcels sold for far less than the values assigned by the Executrix in the Tax Return as a result of the misfeasance, or non-feasance of the Executrix.

14. It is clear from the testimony introduced by the Executrix that the Decedent was a “hoarder” of personal property, much of which had negligible value.
15. The written report of Ronald Derr, On-Line Trading Assistant & Estate Sales, dated October 4, 2019, introduced as Exhibit H, reveals as follows:
  - a. He conducted a sale of the Decedent’s personal property by contract with the Executrix.
  - b. He arranged for “three dumpster pulls to clean out areas prior to or during the sale.”
  - c. His gross sales totaled \$17,520.63.
  - d. His deducted costs totaled \$8633.00.
  - e. His net check to the Estate was \$8,887.63.
  - f. He also sold some personal property on eBay resulting in receipts to the Estate of \$1,008.50.
16. Because the Tax Return does not list personal property, the Court cannot determine whether the net selling price of \$8,887.63 does or does not represent a fair return to the Estate on that sale. The Court finds that a period of nearly one year elapsed between the death of Decedent and the sale (or disposal) of her personal property. In the view of the Court, that period of time was excessive for the routine sale of personal property, much of which was discarded as rubbish.
17. The Executrix introduced as Exhibit M the May 10, 2019 receipt from “Cash for Your Unwanted Cars or Trucks,” stating an aggregate selling price of \$1,000.00 for the following four (4) vehicles:
  - a. A vehicle known as a 2004 Ford van (white).
  - b. A vehicle known as a 1996 Dodge Ram (white).
  - c. A vehicle known as a 1988 Dodge van (blue).
  - d. A 1997 Laylon trailer (camper).
18. The Executrix did not provide any satisfactory explanation for the fact that the values of the vehicles listed in the Tax Return (which she signed on July 29, 2019) appear to be far higher than the cash price at which those vehicles were sold on

May 10, 2019, as reflected in Exhibit M. The Court must infer that either the Executrix did not exercise due diligence at arriving at the values placed in the Tax Return, or that the long delay in selling many of the vehicles resulted in a diminution of their value, or both. Although it is difficult for the Court to determine which of those factors was the more significant, the Court finds that the vehicles sold for far less than the values assigned by the Executrix in the Tax Return as a result of the misfeasance, or non-feasance of the Executrix.

19. The Executrix introduced as Exhibit J a three-page handwritten summary of labor invested by Benjamin Benshaw in performing various labor services on behalf of the Estate, at the hourly rate of twenty dollars (\$20) per hour, for the aggregate payment of the sum of \$360.00. The Court finds the work performed and wages paid to be reasonable. The Court questions only why those services were rendered between April 4, 2019, and August 21, 2019. Had the Executor completed her duties promptly, the administration of the Estate would have been completed long before the summer of 2019.
20. The Executrix introduced as Exhibit K the engagement letter of Andrea Bower, Esquire, dated June 13, 2019, which clearly states that her fees will be based upon a sliding scale, calculated as a percentage of the assets of the Estate. For reasons more fully set forth elsewhere in this Opinion, the Court finds that approach to be unacceptable, that the attorney's fees associated with the administration of an Estate should not be calculated without regard to the nature of the actual services.
21. The Executor's Statement of Proposed Distribution (hereinafter the "Statement") was filed on September 1, 2023. The sum of Attorney's Fees and Fiduciary Fees listed at Page 10 of the Statement list each at \$12,608.46, obviously calculated as a percentage of assets. The sums paid to each on Page 8 of the Statement differ. The Court infers that Page 9 lists some of the sums in error.
22. The Executrix introduced as Exhibit L a partially typed and partially handwritten list of her services to the Estate by date and time. The Court is suspicious about the fact that approximately one-half of the entries are typed and one-half handwritten,

and that the time listed for many of the activities seems excessive (e.g., a total of four (4) hours on April 11 and April 12 of 2019 for “sort through office and dispose of unneeded paperwork and mail, sort through office, add to disposable paperwork” all performed at Almond Street).

23. In addition to the fact that the Executrix services listed in Exhibit L are otherwise suspect, the Court notes that most of the listed services are ministerial tasks, such as cleaning branches, disposing of rubbish, and the like. The vast majority of the listed services are no more remarkable than the services provided to the Executrix by Benjamin Benschaw, at the hourly rate of twenty dollars (\$20) per hour.
24. The Executrix did not provide any satisfactory explanation for the long delay in her administration of the Estate.
25. The Executrix did not provide any satisfactory explanation for the long delay in her sale or disposal of the Estate personal property, much of which was discarded.
26. The Executrix did not provide the Court with any satisfactory explanation for the disparity between the relatively high values applied to the Estate real property in the Tax Return, as compared to the relatively low selling price.
27. The Executrix did not provide the Court with any satisfactory explanation for the disparity between the relatively high values applied to the Estate vehicles in the Tax Return, as compared to the relatively low selling price.
28. The Executrix did not provide the Court with contemporaneous time records by Estate counsel listing services provided, by date and time. A summary, which lacked meaningful detail, was offered but not admitted into evidence. The Court infers that Estate counsel expected to be compensated based upon the asset value of the Estate, in the fashion outline in the engagement letter introduced as Exhibit K.
29. Total Receipts listed at Page 4 of the Statement are \$130,139.42, including a total of \$116,300.14 from what appears to be insurance policies. Total debts listed at Pages 5 through 8 of the Statement, appear to be \$97,863.36.
30. The sum listed for distribution (minus the Register and Recorder fee) at Page 9 of the Statement is \$144,855.72. The Court finds that adding that sum to Total Debts

of \$97,863.36, and death taxes of \$23,047.56, yields a total for assets, before those expenses, of \$265,766.64, which appears to include \$116,300.14 from insurance policies. Without the insurance policy proceeds, the net Estate assets appear to be \$149,466.5.

**Discussion:**

**A. First Objection - Objection to the Sale of Vehicles**

Objector seeks a surcharge of \$10,025.00, the difference between the selling price of the Estate vehicles and the appraisals performed by Muncy Restoration Works. In order to grant such a surcharge, the Court must make a finding that the Muncy Restoration Works values were realistic. On this record, the Court cannot. Objector introduced no evidence on the vehicle values. The Objector urges the Court to conclude that the Muncy Restoration Works values were accurate, and that the selling prices were not. The converse is equally likely. While the difference between the appraised values and the selling prices is troubling, the Court lacks an evidentiary basis to choose between them.

**B. Second Objection - Objection to the Sale of Real Estate**

Objector seeks a surcharge of \$137,140.83, the difference between the selling price of the Estate real estate and the values listed in the Tax Return. In order to grant such a surcharge, the Court must make a finding that the values listed in the Tax Return were realistic. On this record, the Court cannot. Objector introduced no evidence on the real estate values. The Objector urges the Court to conclude that the values listed in the Tax Return were accurate, and that the selling prices were not. The converse is equally likely. The record evidence consists of the testimony of real estate professional Patricia Smay, who credibly testified that the Estate real estate parcels sold at, or above, their fair market value. Unlike the Estate vehicles, there is sufficient evidence to support a finding on which valuation is the better of the two. Based upon the testimony of real estate expert witness Patricia Smay, the Court finds that the parcels sold at or near their fair market value, at the time of sale.

**C. Third Objection - Objection to Bank Account Values.**

The Court finds that Objector introduced no evidentiary basis for this Objection.

**D. Fourth Objection - Objection to Reimbursements to Benjamin Benschaw for \$450 and to Accountants for \$3,444,40 (withdrawn during hearing).**

The Objection to Reimbursement to Accountants for \$3,444.40 was withdrawn during the hearing. The Court finds that the sums paid to Benjamin Benschaw as reflected in Exhibit J are reasonable.

**E. Fifth Objection - Objection to Attorney's fees of \$12,233.46.**

The Commonwealth of Pennsylvania has not established fees for the services of either a fiduciary to an estate, nor its counsel. Since 1983, estate administration attorneys have frequently relied upon a sliding scale fee schedule based upon a percentage of estate assets, which Chester County Judge Wood referred to as the "Pennsylvania Attorney General Fee Schedule" in his decision in the matter of *In re Johnson's Estate*, 4 Fiduc. Rep. 2d 6 (Chester Cnty. 1983). Remarkably, the Pennsylvania Attorney General has disclaimed authorship. This Court concludes that the Johnson Estate fee calculation formula has never been more than a legend, perpetuated by attorneys disinclined to keep time records. Our Superior Court, in a non-precedential decision, has endeavored to disabuse attorneys of the Johnson Estate legend. *See In re Estate of John Susick*, 2016 WL 2909246, 2 (Pa. Super. Ct. 2016)(holding that the fee schedule chart in question "could not be used to automatically justify attorney's fees that would otherwise be considered unreasonable.")(unpublished decision)(citing *In re Estate of Preston*, 560 A.2d 163 (Pa. Super. Ct. 1989)). Nevertheless, the legend persists.

Attorney's fees charged to an estate must be based upon the value of the services rendered (rather than some talismanic formula). *Dorsett v. Hughes*, 509 A.2d 369 (Pa. Super. Ct. 1986). Estate Counsel bears the burden of establishing that the fees sought are reasonable, given the nature of the required legal services. *In re Estate of Sonovick*, 541 A.2d 374, 376 (Pa. Super. Ct. 1988).

Here, the Court has no evidence upon which to base a finding that the fees were reasonable. The Court is reluctant, however, to disallow all fees. While the Executrix clearly failed her fiduciary duty to the Estate, it is difficult for the Court to attribute her dereliction of duty to Estate Counsel. The Tax Return values are clearly erroneous, and the



Executrix was clearly not diligent in her fiduciary duties. The record evidence does not, however, support attribution of those failures to Estate Counsel.

**F. Sixth Objection - Objection to Executrix Fee of \$12,233.46.**

The Court begins with the observation that appointment as an estate executor “confers an honor and trust and, commensurately, the duty to oversee the administration with competence so as to avoid compromising the probity of the estate.” *In re Estate of Walter*, 191 A.3d 873, 880 (Pa. Super. Ct. 2018)(quoting *Matter of Estate of Frey*, 693 A.2d 1349, 1353 (Pa. Super. Ct. 1997)).

The Executrix undertook to justify her fee claim through Exhibit L, but the evidence does not support the fee claimed by the Executrix. The Exhibit is half-typed, and half handwritten. The handwritten portion was obviously added after the typing. Many of the listed task times appear excessive. Most of the listed task are ministerial (sorting mail, removing rubbish, etc.). The handwritten tasks in 2020 include many entries for “property check.” The decedent died in November of 2018. The Court finds that, had the Executrix administered the Estate promptly, 1) less time would have been required to simply “maintain” and “check” on Estate real property, 2) less time would be required to liquidate personal property of little monetary value, and 3) the Tax Return may have contained realistic values, resulting in the payment of far less tax.

While Pa.R.A.P. 126(b) precludes reliance on any non-precedential decision filed prior to May 1, 2019, the language of *In re Estate of John Susick* is instructive:

The determination of the reasonableness of a fiduciary's compensation is left to the sound discretion of the Orphans' Court.” *In re Estate of Rees*, 625 A.2d 1203, 1206 (Pa.Super.1993). Under the Probate, Estates and Fiduciaries Code, “the court shall allow such compensation to the personal representative as shall be reasonable and just, and may calculate such compensation on a graduated percentage.” 20 Pa.C.S. § 3537. “[A]ttorney's fees in an estate are based on the reasonable value of the service actually rendered.” *Rees, supra* at 1206. Attorneys “seeking compensation from an estate have the burden of establishing facts which show the reasonableness of their fees and entitlement to the compensation claimed.” *Id.* The orphans' court is authorized “to reduce to a ‘reasonable and just’ level

those fees and commissions claimed by the fiduciary and their counsel.” *Id.* We will not overturn an orphans' court's decision to disallow attorney's fees “absent a clear error or an abuse of discretion.”

*In re Estate of John Susick*, 2016 WL 2909246, 2 (Pa. Super. Ct. 2016)(unpublished decision)(citing *In re Estate of Rees*, 625 A.2d 1203, 1206 (Pa. Super. Ct. 1993)).

**G. Seventh Objection - Objection seeking Attorney’s fees.**

The Court finds that this Objection lacks sufficient evidentiary support.

## ORDER

**AND NOW**, this 23<sup>rd</sup> day of August, 2024, for the reasons more fully set forth above, it is Ordered and Directed as follows:

1. The First Objection is Denied. While the selling prices for the vehicles was far less than the values assigned in the Estate Tax Return (i.e., appraisals performed by Muncy Restoration Works), the record evidence does not support a finding that the values in the Estate Tax Return were accurate.
2. The Second Objection is Denied. While the selling prices for the Estate real estate was far less than the values assigned in the Estate Tax Return, the record evidence does not support a finding that the values in the Estate Tax Return were accurate. In fact, the Court finds that the selling prices reflected fair market value, at the time of sale.
3. The Third Objection is Denied, for the reasons more fully set forth above.
4. The Fourth Objection is Denied, for the reasons more fully set for above.
5. The Fifth Objection is Granted in part. There is no evidentiary basis upon which the Court can find that the services provided by Estate Counsel and the fees charged, were fair and reasonable. Since some services were obviously provided, the Court is left to determine a sum, without an evidentiary basis. The sum listed for distribution (minus the Register and Recorder fee) at Page 9 of the Statement is \$144,855.72. The Court finds that adding that sum to Total Debts of \$97,863.36, and death taxes of \$23,047.56, yields a total for assets, before those expenses, of \$265,766.64, which appears to include \$116,300.14 from insurance policies. Without the insurance policy proceeds, the net Estate assets appear to be \$149,466.5. The Court finds that a reasonable attorney's fee, in an Estate involving assets in that amount, would be in the range of \$7,473 to \$14,946. Thus, the Court hereby reduces attorney's fees to the sum of \$10,000.00.
6. The Sixth Objection is Granted in part. There is no evidentiary basis upon which the Court can find that the services provided by the Executrix were fully

in the best interest of the Estate. In fact, some were not. The sum listed for distribution (minus the Register and Recorder fee) at Page 9 of the Statement is \$144,855.72. The Court finds that adding that sum to Total Debts of \$97,863.36, and death taxes of \$23,047.56, yields a total for assets, before those expenses, of \$265,766.64, which appears to include \$116,300.14 from insurance policies. Without the insurance policy proceeds, the net Estate assets appear to be \$149,466.5. The Court finds that a reasonable executor fee, in an Estate involving assets in that amount, would be in the range of \$7,473 to \$14,946. Since the Executrix in this matter failed for the reasons more fully set forth above, the Court hereby surcharges the Executrix, and reduces her commission to the sum of \$7,473.00.

7. The Seventh Objection is Denied, as lacking sufficient evidentiary support.
8. The Executrix is Ordered and Directed to make reasonable efforts to either amend the Tax Return, or to take such other action as may be required to secure a refund for overpaid Estate taxes.
9. The Executrix is Ordered and Directed to file an Amended First and Final Account and an Amended Petition for Adjudication of Proposed Distribution, consistent with this Order.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator  
Andrea B. Bower, Esquire  
Elizabeth A. While, Esquire