

In the Estate of Clifford Johnson
119 P.3d 425 (2005)

Facts: Clifford Johnson drafted a will. Clifford elected his sister, Evva, as the personal representative of his will. The will bequeathed all the residue of the estate (besides a \$5,000 payment to a third party) to Clifford's son, Maynard. The total assets of Clifford's estate were valued at approximately \$682,000 with the estate's debt valued at approximately \$186,000. The majority of the debt was owned by Humana Hospital who had treated Clifford while he was ill. Humana Hospital applied for creditor's protection. At the hearing, the Court ordered that as Maynard had been acting as an agent of the estate he should be named a co-personal representative of the estate. Humana Hospital then filed a motion to remove Maynard and Evva as the personal representatives of the estate as for two (2) years the debt owed to Humana had remained unpaid. When Humana filed this motion, Humana was represented by the law firm of Hughes, Thorsness. Maynard and Evva resigned as co-personal representatives and the Court ordered the public administrator to act as the personal representative. The Court also ordered the public administrator in his discretion to employ Hughes, Thorsness to perform legal services to assist with the administration of the estate. The public administrator did hire Hughes, Thorsness for their legal services in administering the estate. Part of the work assigned to Hughes, Thorsness was to sell the property/businesses in the estate, collect on a small claims owed to the estate, amongst other activities. Years later, Hughes, Thorsness submitted a petition to the court for final accounting on the estate. This petition included fees and costs to Hughes, Thorsness of approximately \$167,000.00. The accounting was approved by the court. Maynard requested a breakdown of professional fees, including attorneys fees. Hughes, Thorsness provided Maynard with a computerized printout of the firm's work but the printouts did not state which matter the firm was working on at the time (i.e. research on title without specifying which title to which property). Maynard filed a motion to review the legal fees. Maynard's motion was denied by the court. As the motion was denied, Maynard appealed. During the pendency of the appeal, Hughes, Thorsness withdrew funds to pay part of its legal fees from the estate.

Issue: (1) Whether the probate court abused its discretion when it denied Maynard's request to reopen the proceedings in regard to Hughes, Thorsness' billing. (2) Whether the burden is on the personal representative or the law firm to demonstrate the reasonableness of their attorney's fees.

Holding: (1) The probate court did abuse its discretion. (2) The burden is on the personal representative or the law firm to demonstrate the reasonableness of their attorney's fees.

Reasoning: When assessing an award of attorney fees, the factors to be weighed by the court include "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly." As the billing records prepared by Hughes, Thorsness did not contain the matter they were working on at the time, the court cannot properly assess the factors. There needs to be some level of specificity in regard to billing records.

The lower court incorrectly placed the burden of proving the reasonableness of the attorney's fees on Maynard. The reasonable and necessary standard requires the personal representative or the attorney to prove the reasonableness of their attorneys' fees award. Hughes, Thorsness should have

been on notice that their fees were going to be challenged and that the firm would need to present evidence that their fees were reasonable. Additionally, Hughes, Thorsness should have been aware that their fees were a substantial percentage of the overall estate's value. Courts typically consider the attorney's fee amount in relation to the size of the estate when determining reasonableness of the attorney fees. Although the court does not state a bright line rule, the court provides examples of other jurisdictions where for instance the attorney fees amounted to 25% of the estate as unreasonable.