

In the United States Bankruptcy Court

for the

Southern District of Georgia

Savannah Division

FILED

at 1 O'clock & 40 min P M
Date 4/12/00

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia *MS*

In the matter of:)

DONALD R. WILLIAMSON)

Debtor)

Chapter 7 Case

Number 98-42603

ORDER ON APPLICATION FOR COMPENSATION
BY TRUSTEE AND ATTORNEY FOR THE TRUSTEE

The above-captioned case was filed on August 28, 1998. Wiley A. Wasden, III, was duly appointed Trustee to administer the estate and the firm of Brennan and Wasden was appointed to serve as counsel to the Trustee. At the creditors' meeting held on October 5, 1998, the Trustee examined the Debtor concerning a piece of real estate on Wilmington Island to determine whether there was sufficient equity to justify the Trustee's marketing of the property or, alternatively, its abandonment. After discussion between the Trustee, the Debtor, and counsel for creditors in the case, including counsel for the Debtor's ex-wife, Carol Williamson, the Trustee concluded, and there was apparently no dispute with his conclusion, that the property should be sold. Pursuant to that decision the Trustee obtained an Order of this Court appointing Tina Norris as realtor to list and sell the property. The property was listed at a price of \$122,000.00. The Trustee requested Adam Cerbone, who had served as counsel to Mrs. Williamson in her domestic relations proceeding, to provide the Trustee with an abstract of title and Mr.

Cerbone complied, forwarding to Mr. Wasden copies of four separate writs of fieri facias filed in the Superior Court of Chatham County, Georgia, by or on behalf of Mrs. Williamson and her counsel, John R. Calhoun.

On December 21, 1998, the Trustee filed an application seeking authority to sell the subject real estate for \$119,000.00. An Order and Notice of Sale issued from the Clerk's Office on December 22, 1998, ordering all parties to show cause in writing on or before January 22, 1999, indicating why the motion for leave to sell should not be granted. Objections were scheduled to be heard at a hearing held on January 28. The notice further provided "any creditor claiming a lien shall appear with records sufficient to document said claim." At the hearing on January 28, 1999, there was no appearance by any party in interest opposing the sale. Indeed it was represented to the Court that the sale price of \$119,000.00 was considered to be very favorable. Accordingly, the Court ordered the private sale of the real estate for \$119,000.00.

In an effort to determine the exact payoff on the first mortgage on various liens filed by taxing authorities, and by Mrs. Williamson and her counsel, the Trustee communicated with persons whom he believed had the access and authority to provide said information. He was unable to clarify with any precision the then current balance on the fi fa's filed on behalf of Mrs. Williamson and her domestic relations counsel. Accordingly, because the sale had been approved free and clear of all liens with valid liens

to attach, the Trustee instructed the closing attorney to proceed and to pay off the first mortgage and the federal tax lien of record, together with usual and customary closing costs, holding the balance pending final distribution. The closing statement reveals that the closing attorney did as instructed and remitted the sum of \$76,793.00 to the Trustee.

Through the spring, summer, and fall of 1999, the Trustee and parties representing the remaining claimants communicated on numerous occasions and ultimately reached a stipulation as to the amount and the priority of all remaining liens. The matter was scheduled for a final meeting in order to approve final distribution, conducted on December 16, 1999. At that time Mrs. Williamson interposed an objection to the compensation proposed for the Trustee and counsel for the Trustee. By this time it was clear that Mrs. Williamson's judgment liens for pre-petition alimony and support would not be paid in full if the Trustee's compensation were allowed in the amount requested. It also became clear that there would be no distribution to unsecured creditors in the case even though the Trustee and counsel for the Trustee had agreed to waive a portion of their fees. The Court ordered that the Trustee file an amended application to fully document the amount which the Trustee sought for professional compensation and directed that a continued hearing be held.

Mr. Wasden previously offered to compromise his fee and be paid only the statutory trustee's commission of \$9,200.00 in order to settle all issues. Mr. Wasden

testified that, at his usual and customary hourly rates, his "attorney only" time would exceed \$9,500.00. Thus, if he sought one hundred percent maximum compensation in this case his total fees would amount to over \$18,500.00. As directed by the Court, Mr. Wasden recomputed the fees and expenses for which he seeks compensation. Taking all the time devoted to the case by Mr. Wasden and members of his firm and applying the usual and customary hourly rate for work of this type, total compensation sought by Mr. Wasden and his firm for both Trustee services and counsel services is \$14,394.29. He seeks to recover not his statutory trustee commission plus attorney's fees, but rather his usual and customary hourly rate for all services rendered as Trustee and attorney in the lesser amount of \$14,394.29 plus expenses advanced.

His application was derived from records maintained on a contemporary basis by Mr. Wasden and members of his firm and is sufficiently detailed to support a finding that the services were actually rendered. The hourly rate for which he seeks compensation falls within the established lodestar rate for attorneys regularly practicing in this District of comparable experience, education, and reputation. Mr. Wasden's testimony was uncontradicted that he or members of his firm had actually spent the time which was set forth in the application and that all services were reasonable and necessary to the prosecution of this Chapter 7 case. Thus, he has made out a *prima facie* basis for compensation in the amount sought under the authority of Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292, 1299 (11th Cir. 1988)(requiring that attorneys

present satisfactory evidence to justify compensation for services) .

Mrs. Williamson's objection raises several points. (1) She believes that the result obtained for her is not as beneficial as if the case had never been administered. (2) She believes that the Trustee was negligent in failing to determine in advance that the distribution in this case would not yield any recovery by unsecured creditors. (3) She believes the Trustee has claimed excessive time for services rendered.

1) Results Obtained

If the Trustee's application for compensation is paid in the amount sought, Mrs. Williamson will receive \$32,890.59 on a claim totaling \$53,350.00. In other words, she will receive approximately 61% of her claim for pre-petition accrued alimony and support. All state and federal income taxes and administrative expenses will be paid in full, the ad valorem taxes owed to Chatham County, and the earlier filed liens including that of John R. Calhoun, Mrs. Williamson's domestic relations counsel, will be paid in full. Essentially the outcome is not as favorable as anticipated because the payoff on tax and judgment liens was higher than originally believed at the time of the creditors' meeting and the sale of the property resulted in a capital gains tax payable to the Internal Revenue Service of \$11,691.00. Nonetheless, a trustee is not a guarantor of the outcome in any case. He is to be compensated for actual, necessary services and should not be penalized so long as his services benefitted the estate or were necessary to the proper administration

of a case. *See In re William E. Jarrell*, Ch. 7 Case No. 95-42026 (Bankr. S.D.Ga. Feb. 15, 2000)(holding Trustee's fee reasonable despite fact that no dividend was paid to unsecured creditors). Here the Trustee's services meet both criteria and are allowable.

2) Negligence

With regard to potential negligence of the Trustee, Mrs. Williamson contends that the Trustee should have had a better understanding at the time the decision was made to market the property of what the total lien payoffs amounted to and the potential capital gains liability. Certainly a Trustee who is guilty of negligence may have his fees reduced or surcharged if there is a demonstrable loss to the parties. *See In re Concrete Products, Inc.*, Ch. 11 Case No. 88-20540 (Bankr. S.D.Ga. Feb. 7, 1992)(quoting *Red Carpet Corp. of Panama City Beach v. Miller*, 708 F.2d 1576, 1578 (11th Cir. 1983)("Poor quality [of services] which is the consequence of wrongful conduct or negligence could result in the denial of any fee a debtor's attorney seeks.") . Here, however, I find that there was no negligence on the part of the Trustee.

Based on discussions at the time of the creditors' meeting, he and all of the other participants believed that the marketing of this property was in the interest of the estate in that the property could likely be sold at a price that would satisfy all secured claims and yield an unsecured dividend. If anyone had superior knowledge of the likely outcome of the Trustee's marketing efforts, those persons were either present or

represented at the creditors' meeting and should have brought that information to the attention of the Trustee. At minimum they should have objected to the Trustee's proposed sale of the property at the time the sale was pending before the Court. Neither event occurred and the Trustee cannot be held to be a guarantor of the results of his efforts to administer the estate.

Alternatively, even if neglect on the part of the Trustee could be gleaned from this record, I find that there has been no demonstrable harm to Mrs. Williamson as a result. If the Trustee had not sold this property the only alternative would have been to abandon it and leave creditors free to exercise their state law remedies. Mrs. Williamson, who had a lien foreclosure action anticipated or pending at the time this bankruptcy was filed, would have incurred attorney's fees to prosecute that action, would have been required to pay superior mortgages and tax obligations and would have been obligated to pay capital gains based on the ultimate selling price of the property. While she testified that she believed she would have been paid one hundred percent of her \$53,350.00 claim, on cross examination, she admitted that she had no specific facts to support that belief and I find, as a matter of fact and as a matter of law, that there is no competent evidence on which to base a finding that she would have received any more through the foreclosure of her fi fa than she will receive as a result of these proceedings. In re Engel, 124 F.3d 567 (3rd Cir. 1997), relied upon by opposing counsel, compels no different result. It simply holds that services provided by special counsel did not benefit the estate and thus could not

be paid from the estate where representation was in a matter purely personal to the debtor.

3) Excessive Time

The Court has previously determined that Mr. Wasden has made out a *prima facie* case that all of the time spent by him and members of his firm were actually incurred in the amount set forth in the application. The Court in allowing professional compensation, however, is charged with the responsibility of eliminating excessive or redundant or duplicative work. Norman v. Housing Authority of the City of Montgomery, 836 F.2d at 1301. In reviewing the application I find that the time documented by Mr. Wasden for professional services rendered in the amount of 115.40 hours is allowable except as follows:

Date	Service Rendered	Hours	Disallowance / Explanation
11/18/98	Faxing an Order	0.20	Disallow: Staff / not attorney time
04/02/99	Research	1.10	Disallow: Nature and necessity of research not clear
04/15/99 04/22/99 04/23/99	Research on issue of sale of fully secured collateral	Totaling 5.40	Reduce by 3.0 hours: Excessive time
07/19/99 07/20/99	Working on closing papers	9.20	Reduce by 4.0 hours: Overlapping and duplicative
01/04/00	File Review	5.20	Reduce by 2.20 hours: Excessive time

As a result of the adjustments and reductions set forth above hours of professional services rendered are reduced to 104.90 and the fee is reduced to \$13,112.50.

O R D E R

IT IS THEREFORE ORDERED that compensation for the Trustee and the attorney for the Trustee is allowed in the amount of \$13,112.50, plus expenses advanced in the amount of \$162.82.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 1st day of April, 2000.