

96PR562 (9/7/98)

PROBATE COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 96PR562

IN THE MATTER OF

The Estate of Spicer H. Breeden, Deceased

ORDER ON BILL OF COSTS

This matter comes before the Court on Petitioner's Bill of Costs. A hearing was held on September 9, 1998. After listening to the parties' oral arguments, and upon review of the file, the Court finds as follows:

Petitioner filed the Bill of Costs outside the statutory timeframe for doing so. "A party claiming costs shall file a Bill of Costs within 15 days of the entry of order or judgment, or within such greater time as the court may allow." C.R.C.P. 121 §1-22. Petitioner's failure to file within 15 days of the entry of order places the granting of the Bill of Costs within the discretion of the Court.

Petitioner presented no justifiable reason for the 18-month delay in filing the Bill of Costs. The purpose of limiting the time period for filing is to bring a timely end to the litigation and all related matters. In this case, however, matters before the Court have not ceased. Respondents have appealed the Court's judgment to the Colorado Supreme Court. In addition, other matters relating to this case continue to be brought before this Court.

Respondents argue that because Petitioner did not file a motion for extension of time to file a Bill of Costs, her claim should be barred. Colorado case law does not support that contention. See *Borquez v. Robert C. Ocer, P.C.*, 923 P.2d 166, 178-79 (Colo.App. 1995); *In Re the Marriage of Wright*, 841 P.2d 358, 361 (Colo.App. 1992). Therefore, because the purpose of the rule will not be frustrated, in its discretion the Court will consider the Bill of Costs to have been timely filed.

In considering the Bill of Costs, the Court must determine 1) whether adequate documentation was supplied to support the costs; and 2) the reasonableness of the costs. Respondents argue that Petitioner has failed to provide sufficient documentation to support her claimed costs and object specifically to two costs itemized by Petitioner: the expenses of Petitioner's expert Dr. Dana Cogan, and the expenses charged by Petitioner's trial counsel.

Because of Petitioner's 18-month delay in submitting the Bill of Costs, it is necessary to scrutinize the support for and reasonableness of the costs even more closely than the Court

normally would. Upon its heightened review, the Court finds the following expenses to be sufficiently detailed and reasonable in amount: Dr. James Ruth-service, travel and expert fees (\$500.00), Andrew Bradley- service, travel, and expert fees (\$950.00), Conni George-services and transcription charges (\$120.00), Avery Woods Reporting Service - services and transcription cost (\$273.30), Richardson Reporting Service-service, fees mileage, and costs (\$313.00), and Belcaro house video (\$96.41). The total of these costs equals \$3,182.01.

The Court DENIES Petitioner the costs of Gelt Fleishman & Sterling for office costs of \$3,282.28 connected with trial preparation. Petitioner provided no supporting documentation to itemize these costs and in light of the individual costs paid by Petitioner for transcripts, service of process and experts; it is hard to imagine what other costs were involved.

Award of the above costs in this case is proper. Respondents argue that the awarding of costs in this case would be improper because, upon the death of Spicer Breeden, Respondents were required by statute to lodge a prior executed will of Spicer Breeden, and to resist the will offered by Petitioner. The Court disagrees. Respondents were not acting merely to protect the prior will of Spicer Breeden. Respondents were actively contesting the validity of the holographic will in order to prevent Petitioner from being named sole devisee. At the time of this trial, no other will was at issue. Respondents' interests in the outcome of this case were beyond those of an economically disinterested, prospective personal representative in protecting the estate. See Estate of Van Dyne, Denver Probate Court, www.cobar.org/probate.ct/index.htm. The award of costs to Petitioner is proper.

Based on this reasoning, the Court finds that the Bill of Costs shall be awarded to Petitioner in the amount of \$3, 182.01. All defending parties shall be held jointly and severally liable for this amount.

September 7, 1998

C. Jean Stewart
Judge, Probate Court