

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

IN THE MATTER OF THE ESTATE OF:)

ZEPHANIAH O. WALCOTT,)

Deceased.)

PROBATE NO. SX-07-PB-20

ORDER

THIS MATTER is before this Court on the Guardian *ad litem*'s appeal of the Magistrate's December 30, 2010 Order. This Court will also review the Magistrate's accompanying February 17, 2011 Order issued in response to the Guardian *ad litem*'s Motion to Vacate Order of December 30, 2010 and/or Motion for Reconsideration. For the reasons which follow, this Court vacates the December 30, 2010 Order, reverses the February 17, 2011 Order in part, and remands the matter to the Magistrate Division for further determination in accordance with this Order.

Factual and Procedural Background

On February 27, 2007, a petition for the administration of this intestate Estate was filed with the Court. It was later determined that the original parties failed to include Nicole Walcott, an heir to the Estate. Upon submission of the fourth amended petition for administration, Ms. Walcott's 20% share was properly included.

The Magistrate was concerned that Ms. Walcott might not have been competent to protect her legal interests with respect to the Estate, and on November 5, 2009, appointed a Guardian *ad litem*, Attorney Felice M. Quigley, to ensure that Ms. Walcott received her share of the Estate. On November 23, 2010, Attorney Quigley's appointment as Guardian *ad litem* to Ms. Walcott was vacated.

On December 7, 2010, Attorney Quigley submitted an invoice for services performed as Guardian *ad litem*. Attorney Quigley's fees were based on her private practice rates. On December 21, 2010, Attorney Mark L. Milligan, counsel for heir Nilda Walcott, submitted his opposition to Attorney Quigley's invoice. On December 30, 2010, the Magistrate ordered Attorney Quigley to amend her invoice to reflect the customary rate for court appointed counsel of \$45.00 per hour for out of court services, and \$65.00 per hour for services before the court.

On January 19, 2011, Attorney Quigley filed a Motion to Vacate Order of December 30, 2010 and/or Motion for Reconsideration. On the same date, Attorney Quigley also filed a petition for review by a Superior Court Judge. On February 17, 2011, the Magistrate denied Attorney Quigley's Motion for Reconsideration and directed her to resubmit her invoice at the customary rates for court appointed counsel.

Standard of Review

The standard of review of the Magistrate's application of law is plenary, while the Magistrate's findings of fact are reviewed for clear error. *St. Thomas-St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007).

Discussion

Title 5 V.I.C. § 73 provides:

A guardian ad litem appointed for an infant or incompetent person under Rule 17(c) of the Federal Rules of Civil Procedure shall not be liable to pay costs of action; and he shall be allowed a reasonable sum for his charges as such guardian, to be fixed by the court, and taxed in the bill of costs.

Simply stated, 5 V.I.C. § 73 allows reasonable fees for the services rendered and gives the Court the statutory right to fix such fees. Nothing in 5 V.I.C. § 73 suggests that said fees are inextricably tethered to the customary fees allowed for court appointed counsel for indigent clients or minors and allows the Superior Court to promulgate rules that fixes the fees for such

non-indigent appointments to the customary fees for indigent appointments, or to fix a fee at the time of appointment.

In the case at bar, the Magistrate appointed Attorney Quigley to protect Ms. Walcott's legal interests in a private matter. The basis of the appointment was not made by dint of indigency. As stated in the Motion to Vacate Order of December 30, 2010 and/or Motion for Reconsideration, Attorney Quigley does not take issue with the customary fees for indigent clients or "clients in juvenile and neglect and abuse cases...." She further has stated that she has practiced law in the Virgin Islands for almost twenty years and "has accepted appointments well in excess of fifty (50) cases and has done so freely and gladly."

Attorney Quigley "takes issue with the fact that, now, after having been required to represent a party's interest in a private matter...the Court, without any justification or legal support,...decides that it is more expedient to base compensation on the same scale as is paid by the Government in a totally unrelated type of case where the case is being prosecuted by the Government and involves a minor or insane person."

On page 3 of the February 17, 2011 Order, the Magistrate counters that "Attorney Quigley cites to no evidence indicating that the customary rate is limited to such cases, and the Court has also been unable to locate such authority." This Court, however, notes that the Magistrate has failed to cite relevant evidence that inseparably links the customary rate to the case at hand. The Magistrate has cited *In re Renique Francis* for the proposition that court-appointed counsel is not compensated at the same rates as counsel's private practice. 51 V.I. 947 (D.V.I. 2009). However, *In re Renique Francis* is distinguishable because counsel was appointed as Guardian *ad litem* to a minor. In the present case, counsel was appointed to represent an adult, who was not indigent.

Although this Court finds certain portions of Attorney Quigley's argument cogent, her argument is not entirely correct. Pursuant to the provision of 5 V.I.C. § 73, the Magistrate clearly had the legal and statutory basis to fix or set the Guardian *ad litem*'s fees at the time of her appointment. Given the plain meaning of 5 V.I.C. § 73, this Court is not able to conclude that the court must fix fees at the amount currently charged by private practitioners, but the Guardian *ad litem* "shall be allowed a reasonable sum for his charges."

Because there currently is no Court rule that fixes the fee for a court appointed Guardian *ad litem* for a non-indigent adult client, and the Magistrate did not fix the fees upon appointing Attorney Quigley, it is necessary to review her invoice to determine whether the fees charged are reasonable. As the Magistrate stated on page 4 of her February 17, 2011 Order, "A guardian who has faithfully and honestly discharged the duties of his or her trust is usually entitled to reasonable compensation for executing the terms of his or her appointment." (internal citation omitted).

In order to determine reasonable compensation, the following criteria must be employed: "the time and labor required, the uniqueness of the questions involved, the legal skill demanded, the customary charges for such services, the amount involved in the dispute, the benefits resulting to the client, and the contingency or certainty of payment." *Melendez v. Rivera*, 24 V.I. 63 (Terr. Ct. 1988)¹, citing *Trailer Marine Trans. Corp. v. Charley's Trucking, Inc.*, 20 V.I. 286 (Terr. Ct. 1984). Guided by these criteria, the Magistrate is thus charged with the duty of determining the reasonableness of the fees or any portion thereof charged by Attorney Quigley.

¹ It should be noted that this Court uses *Melendez v. Rivera*, which establishes the standards for an award of and reasonableness of attorney fees for prevailing parties in the context of 5 V.I.C. § 541. This Court adopts this standard for determining the reasonableness of fees in the present case.

Conclusion

Upon review of the record, this Court finds that the Magistrate's December 30, 2010 Order and February 17, 2011 Order are contrary to law. Attorney Quigley is entitled to reasonable compensation to be determined by the Magistrate in accordance with the guidelines established in *Melendez v. Rivera, supra*. Therefore, it is hereby

ORDERED that the Magistrate's February 17, 2011 Order is reversed in part and remanded to the Magistrate to determine the reasonableness of the fees charged by Attorney Quigley for services rendered as Guardian *ad litem*; it is further

ORDERED that the Magistrate's December 30, 2010 Order is vacated; and it is finally

ORDERED that a copy of this Order be served on the parties.

DONE SO AND ORDERED this 30th day of March, 2011.


_____, JUDGE

ATTEST:
VENETIA H. VELAZQUEZ, Esq.
Clerk of the Court

By: 

Court Clerk Supervisor

4/1/11