
IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEAH WEISBERGER,)	
)	
Plaintiff-Appellee,)	Appeal from the
)	Circuit Court of
)	Cook County.
v.)	
)	
SUZANNE WEISBERGER, Individually and as)	No. 08 CH 025989
Trustee of the Amended and Restated Jacob)	
Brotman M.D. Declaration of Trust and Brotman)	
Family Trust Jacob Brotman, M.D., Grantor, and)	Honorable
WILLIAM WEISBERGER, Individually,)	Richard J. Billik, Jr.,
)	Judge Presiding.
Defendants-Appellants.)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Lampkin and Palmer concurred in the judgment.

ORDER

- ¶ 1 *Held:* A trustee of a trust must provide a detailed accounting of monies paid from trust funds for a defense of the trust in litigation, especially when other members of her family were also involved in the litigation.
- ¶ 2 In this appeal, defendants William Weisberger and Suzanne Weisberger, individually and as a trustee, dispute the amount of attorney fees of \$62,633.50 the trial court ordered to be paid from certain trust accounts after years of contentious litigation between themselves and their daughter, plaintiff Leah Weisberger.

¶ 3

BACKGROUND

¶ 4 Plaintiff Leah Weisberger is the daughter of defendants William and Suzanne Weisberger. Suzanne's father (Leah's grandfather) was Jacob Brotman, who was the grantor of two trusts: (1) the Amended and Restated Jacob Brotman M.D. Declaration of Trust and (2) the Brotman Family Trust Jacob Brotman M.D., Grantor (collectively, the Brotman trusts). Suzanne Weisberger was trustee for both trusts, and Leah was a beneficiary. Leah established the Leah Weisberger Living Trust (living trust) in July 2001 separately from the Brotman trusts in a Harris Bank account she held jointly with her father. Leah originally brought suit against her parents seeking an accounting of the Brotman trusts, and a return of funds removed from the living trust.

¶ 5 On July 18, 2008, Leah filed suit against her parents, alleging, in part, that her father withdrew funds, without authorization, from the accounts of the living trust that Leah executed in which she was named as the sole trustee and beneficiary. On September 23, 2009, the trial court entered partial summary judgment for Leah, finding that the funds belonged to Leah's living trust, regardless of the fact that those funds may have come originally from her father.

¶ 6 On September 23, 2009, the trial court ordered William to deposit the funds he withdrew from the living trust's Harris Bank account with the clerk of the court and he refused to do so. After extensive court proceedings, the trial court entered a judgment for Leah against William for \$99,858.76. William appealed, claiming that the trial court erred in granting summary judgment in her favor. We rejected William's claims, and affirmed the trial court's grant of summary judgment. *Weisberger v. Weisberger*, 2011 IL App (1st) 101557.

¶ 7 Leah originally brought suit against her parents because the Brotman trust instrument mandated distributions based on Leah's age which Suzanne refused to make. In her original

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complaint, Leah sought mandatory distributions of the principal, an accounting, and removal of her mother as trustee from the Brotman trust accounts. After filing suit, Leah learned that her mother executed two checks payable from these trusts to her father in August 2008 totaling \$100,000. Leah amended her complaint to include new allegations regarding the checks executed by her mother as trustee from the trust accounts.

¶ 8 On April 20, 2010, Leah filed a motion for partial summary judgment on count I of her amended complaint, in which she requested an accounting from her mother, defendant Suzanne Weisberger, and the return of a claimed unauthorized \$100,000 in checks written in August 2008. The trial court ordered Suzanne to account for the withdrawals by providing an accounting for each payment.

¶ 9 On September 28, 2010, Suzanne filed a one-page accounting in which she stated that the funds were used to pay attorney fees incurred in defending the trust in the litigation brought by Leah. Suzanne's attorney supplemented the filing of the one-page accounting by providing copies of the checks issued to the attorneys for her parents' legal fees. There were seven checks issued to their attorneys totaling \$136,500. Suzanne's attorney also provided copies of invoices containing entries for the services and costs in connection with Leah's parents' legal representation.

¶ 10 The trial court ordered Suzanne to reimburse the Brotman trust accounts in the amount of \$62,633.50, finding that: (1) Suzanne failed to properly account for \$25,267, and (2) \$37,366.50 was designated as the amount for the defense of the trust and represented half of the \$74,733 that she initially withdrew from the trust for attorney fees for legal services and costs. The other half of the funds represented the fees attributed to William's individual defense. The \$74,733

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represents the combined figure for attorney fees and costs for the combined defense of the trust and William. The trial court held that:

“the removal of funds from the account of the trusts for the benefit of William, including to pay for his prospective attorneys’ fees in this action, is not an expenditure that is consistent with the proper management of the trusts or preservation of the trusts’ assets. *** The invoices that are submitted for review do not adequately separate the services and costs that pertain to William and Suzanne since many of the entries would appear to reference both of them and the invoices do not support any contention that the Trusts benefitted from all the services rendered and the costs incurred based upon the entries. Suzanne has not made a sufficient showing in the accounting and in her other submissions that the entire \$100,000 is properly accounted for and that the funds have been properly disbursed for use by Suzanne in accordance with her duties as a fiduciary, especially in the Trusts’ funds that are claimed to have been used to pay for the legal services and costs of William.”

¶ 11 On January 5, 2011, Suzanne filed a motion to reconsider, arguing that the trial court erroneously attributed too much of the attorney fees to William’s defense of count IV of Leah’s amended complaint. Suzanne argues that, upon reexamination of the billing statements from the attorneys for the trust, it can be determined that a majority of the fees were used to pay for the defense of the trusts. The parents argued that had the court given the parents time to explain the

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billing and conducted an evidentiary hearing, it would have found that a larger percentage of the fees pertained to the work in defending the trust than it did for William's defense. In response to that argument, the trial court stated,

“In their motion to reconsider, defendants submit that this court should ‘reexamine the billing statements,’ but do not adequately explain how such a reexamination will support a finding of a specific amount that this court has already determined. *** Moreover, even now, in their motion to reconsider, defendants are not presenting any evidentiary basis to support a position that the expenditure of \$100,000 at the time was authorized by the trusts or for the trusts’ benefit, but seem to challenge the amount of the judgment claiming that ‘[i]t is not possible that more [than] approximately two-thirds of the fees paid went to represent William.’ ”

On May 11, 2011, Suzanne and William's motion to reconsider was denied, and they filed this timely appeal.

¶ 12

ANALYSIS

¶ 13 In this appeal, the parents claim that the \$100,000 withdrawn from the Brotman trust accounts was used exclusively for the payment of attorney fees properly spent for defending the trust. They argue that the trial court arbitrarily attributed half the amount of attorney fees to William through a “split the baby” approach. They argue that an evidentiary hearing should be held requiring Leah to sustain her burden as the beneficiary demonstrating that the money withdrawn was not properly expended in defense of the trust and the trustee.

¶ 14

I. Standard of Review

¶ 15 A reviewing court will not disturb the damages assessed by a trial court unless its judgment is against the manifest weight of the evidence or clearly erroneous. *B & Y Heavy Movers, Inc. v. Fluor Constructors, Inc.*, 211 Ill. App. 3d 975, 984 (1991). “A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.” *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). The manifest weight of the evidence standard affords great deference to the trial court, because the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony. *People v. Jones*, 215 Ill. 2d 261, 268 (2005).

¶ 16

II. Burden of Proof

¶ 17 In the proceedings leading up to this appeal, the trial court ordered Suzanne to account for \$100,000 she paid from the trust account to William without Leah's knowledge in August 2008. Suzanne filed a one-page accounting indicating that she used the funds to pay attorney fees directly to the attorneys. Suzanne's attorneys supplemented her accounting by providing invoices of their legal work and copies of checks they received as payment.

¶ 18 Suzanne and William's first argument is that the burden of proving a trustee acted dishonestly or in bad faith remains with the party challenging the fiduciary's conduct, as no presumption against the fiduciary exists. *In re Estate of Halas*, 209 Ill. App. 3d 333, 344 (1991). The *Halas* case is the only case cited in William and Suzanne's brief to substantiate their claims. Suzanne and William argue that the trial court did not issue a finding of bad faith or abuse by Suzanne as trustee. However, the trial court found that removal of the funds from the trust account to pay for William's attorney fees “[was] not an expenditure that is consistent with the

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proper management of the trusts or preservation of the trusts' assets." We cannot say that the trial court's conclusion was against the manifest weight of the evidence.

¶ 19 Next, Suzanne and William argue that the *Halas* court held that a trustee can utilize trust funds to protect herself as long as the trustee acts with "benevolent intentions." *Halas*, 209 Ill. App. 3d at 341-43. Suzanne and William claim that the present litigation "is not about the money, but an effort by Leah to force her parents to recognize her radical change in lifestyle and choice of leaving her long-held religious beliefs. *** Suzanne acted out of concern for her daughter, displaying nothing other than what can only be characterized as the 'benevolent intentions' similar to the trustee in *Halas*."

¶ 20 In *Halas*, the successor executor sued the former executor, alleging a breach of fiduciary duties while acting as executor and trustee by failing to give notice to, and by failing to protect the interests of, the beneficiaries during a corporate reorganization of the Chicago Bears Football Club, Inc. See *Halas*, 209 Ill. App. 3d at 336. The benevolent intentions standard articulated in *Halas* deals with a conflict of interest created by the testator in the instrument itself. It is only when the will itself approves of a conflict of interest that the burden of proof shifts from the fiduciary to the person challenging his or her conduct. See *Halas*, 209 Ill. App. 3d at 343. That is not the issue in the case at bar.

¶ 21 Neither party disputes that a trustee is a fiduciary who owes a fiduciary duty to the trust and to its beneficiaries. When questioned by the beneficiary, a trustee must show that the funds were used in proper management of the trust, to preserve the trust estate, and for the benefit of the trust or for the benefit of the beneficiary pursuant to the terms of the trust. *Bangert v. Northern Trust Co.*, 362 Ill. App. 3d 402, 408 (2005). A trustee is required to keep clear, distinct, and accurate accounts. If the trustee does not, all presumptions are against the trustee,

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and all obscurities and doubts are to be taken adversely against the trustee. *Nonnast v. Northern Trust Co.*, 374 Ill. 248, 260-61 (1940). See also *In re Estate of Burger*, 166 Ill. App. 3d 1045, 1056 (1987).

¶ 22 In *Halas*, the trust instrument granted the trustee significant authority and stated “that the executor and trustee may take any such action without court approval and “subject to his or her duty to act fairly, his or her actions in these respects shall be as binding and conclusive upon all of the beneficiaries hereunder as though no such relationship or possible conflict of interest existed.” *Halas*, 209 Ill. App. 3d at 337-38. The present case is distinguishable from *Halas* because the Brotman trust instrument does not contain explicit approval regarding the breadth of Suzanne’s discretion. The Brotman trust instrument does not contain a clause allowing Suzanne to have the same level of discretion as the *Halas* trust instrument; it mandated distributions based on Leah’s age which Suzanne refused to make. Additionally, Leah correctly points out that the *Halas* court did not discuss whether the trustee could pay his attorney fees from the *res*.

¶ 23 A trustee has the burden of establishing by definite proof the manner in which the trustee handled the beneficiary's property, his or her authority for so acting, and that he or she did not violate his or her duties as trustee. *Holyoke v. Continental Illinois National Bank & Trust Co.*, 346 Ill. App. 284, 287 (1952). Because a trustee is obligated to provide a beneficiary with a *detailed* accounting, the burden of proof with respect to the attorney fees properly rests with Suzanne as trustee to properly account for her expenditures and to show what fees were allocated to the trust defense, and what was allocated to William’s individual defense.

¶ 24 The trial court found that the payments of \$87,000 and \$13,000 were not properly accounted for by Suzanne while she served as trustee. Removing funds from the trust account for William’s benefit, including paying for his individual attorney fees, was not an expense

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consistent with proper management or preservation of the trust's assets. The trial court found that the accounting submitted for review did not adequately separate the legal services rendered for the trust and William. Additionally, the trial court noted that copies of invoices submitted include legal services rendered for another lawsuit Suzanne and William filed against Leah in the Law Division of the circuit court of Cook County.¹

¶ 25

III. Evidentiary Hearing

¶ 26 Next, we consider Suzanne and William's request for an evidentiary hearing. In their brief, Suzanne and William claim that the trial judge improperly shifted the burden onto the trustee to demonstrate that attorney fees were not properly expended in defense of the trust. William and Suzanne argue that since Leah "insisted on having this matter proceed as a unitary cause of action against her parents without excluding the issues dealing solely with her father from either her presentation or her proof," she should bear the evidentiary burden. They cite no authority to support their argument and provide no evidence to substantiate this argument before the trial court.

¶ 27 The purpose of a motion to reconsider is to bring to the court's attention (1) any newly discovered evidence which was not available at the time of the hearing; (2) changes in the law; or (3) an error in the court's previous application of existing law. See *Williams v. Dorsey*, 273 Ill. App. 3d 893, 903 (1995). The moving party on a motion to reconsider has the burden of establishing sufficient grounds to prevail on a motion to reconsider a court ruling. *Day v. Curtin*, 192 Ill. App. 3d 251, 254 (1989). Suzanne and William have not sustained their burden here.

¹ Suzanne and William filed a two-count complaint alleging common law fraud and intentional infliction of emotional distress which was dismissed by the trial court and affirmed by this court on June 29, 2012. *Weisberger v. Weisberger*, 2012 IL App (1st) 112950-U.

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They have not shown what invoices the trial court misconstrued, or how the court made a mistake in its calculations.

¶ 28 They conclude without providing specifics that “upon reexamination of the billing statements from the attorneys for the trust *** it can be determined that a majority of the fees were used to pay for the defense of the trusts.” In denying Suzanne and William’s motion to reconsider, the trial court noted that, “[e]ven now, in their motion to reconsider, defendants are not presenting any evidentiary basis to support a position that the entire expenditure of \$100,000 at that time was authorized by the trust or for the trusts’ benefit, but seem to challenge the amount of the judgment.” Because Suzanne and William fail to demonstrate any new evidence, change in the law, or reason for an erroneous application of law, there is no demonstration that an evidentiary hearing was necessary.

¶ 29 **CONCLUSION**

¶ 30 For the foregoing reasons, we affirm the trial court’s allocation of attorney fees to William’s defense of count IV of Leah’s amended complaint.

¶ 31 Affirmed.