

2012 IL App (2d) 110778-U
No. 2-11-0778
Order filed March 26, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ESTATE OF GARY CRAWFORD,)	Appeal from the Circuit Court
Deceased,)	of Lake County.
)	
)	No. 10-P-891
(Keith West, Public Adm'r of Lake County,)	
Lesser, Lutrey & McGlynn, LLP, Petitioners-)	Honorable
Appellees, v. Nancy Schaul, Successor Adm'r,)	Diane E. Winter,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

Held: The trial court's award of attorney fees for services provided to administrator of estate was not manifestly erroneous where (1) appellant failed to provide report of proceedings from evidentiary hearing on attorney's fee petitions, (2) the court reduced the fees to the extent that they were for duplicative services, and (3) the fee petitions included detailed time records describing the services performed.

¶1 Respondent, Nancy Schaul, successor administrator of the estate of Gary Crawford, deceased, appeals from the trial court's order granting petitioner Lesser, Lutrey & McGlynn, LLP's (Lesser Firm) petitions for attorney fees. Although Schaul also appealed from the trial court's order granting petitions for fees filed by Keith West, public administrator of Lake County, Schaul has conceded on

appeal that West was entitled to the fees he received. For the following reasons, we affirm the order granting the Lesser Firm's petitions for attorney fees.

¶ 2 BACKGROUND

¶ 3 Gary Crawford died on September 6, 2010. On October 8, 2010, West filed an emergency petition for letters of office. West alleged in the petition that Crawford had died intestate and, based upon information available at the time, had left no heirs. The petition concluded, "Investigation Pending." The court appointed West independent administrator of the estate that day.

¶ 4 On February 14, 2011, Jonathan Fraser filed his appearance in the probate case. Shortly thereafter, Fraser filed a petition for leave to file a counterpetition for letters of office with will annexed and to revoke the letters of office issued to West. Fraser alleged that he was Crawford's son and sole heir. He further alleged that Crawford had left a will naming Fraser the sole beneficiary of his estate. Fraser alleged on information and belief that, on December 1, 2010, West had filed Crawford's will with the clerk of the circuit court. The court entered a briefing schedule on Fraser's petition and set the matter for hearing on March 24, 2011.

¶ 5 Meanwhile, on March 22, 2011, West filed his inventory of the estate and first current account. The record reflects that the inventory and the first current account were prepared by attorney Rupam Davé,¹ and signed and verified by West. However, the notice of filing and the proof of service of the inventory and current account were prepared by the Lesser Firm. The inventory included a residence in Highland Park, Illinois, which was held in joint tenancy with Crawford's ex-wife and in which "the Estate may have no interest," as well as a 2003 Harley Davidson motorcycle,

¹In her brief, Schaul refers to attorney Davé as West's in-house counsel.

various items of personal property, cash and investment accounts totaling \$44,283.36, and liabilities totaling \$40,832.21.²

¶ 6 On March 24, 2011, the Lesser Firm filed its first petition for attorney fees. The firm alleged that it represented West as administrator of the estate and had provided 6.9 hours of services on behalf of the estate between February 23, 2011, and March 23, 2011. The firm sought compensation at the rate of \$395 per hour, for a total fee of \$2,725.50. Attached to the petition were itemized time records, as well as a document signed by West stating that he consented to the petition for attorney fees. The time records consisted of entries for telephone conferences and correspondence with West, with Fraser's attorney, and with the attorney for Crawford's ex-wife, who allegedly held the Highland Park residence in joint tenancy with Crawford. Also included was time for review of the inventory and current account and of Crawford's divorce decree, time for preparation and revision of the inventory and current account, and time for a court appearance.

¶ 7 At the hearing on March 24, the court revoked the letters of office issued to West and issued letters of office to Nancy Schaul as successor independent administrator of the estate with will annexed. The record contains a copy of Crawford's Last Will and Testament, dated September 9, 1992. The page in the record just prior to the will is a cryptic computer printout that appears to state that West filed a copy of the will with the clerk of the circuit court on December 1, 2010. The last page of the will is stamped, "Will Proved and Admitted to Record Mar 24 2011."

²The liabilities included a home equity loan on the Highland Park residence with a balance of \$29,753.38.

¶ 8 Also at the hearing on March 24, the court entered and continued the Lesser Firm's fee petition for hearing on April 26. On that date, the court granted the Lesser Firm leave to file a supplemental petition for attorney fees and set the matter for hearing on June 7.

¶ 9 In its supplemental petition for attorney fees, the Lesser Firm alleged that it had provided an additional 6.5 hours of services on behalf of the estate between March 24, 2011, and June 7, 2011. Again, the petition included itemized time records and a document signed by West stating that he consented to the petition for attorney fees. The time records consisted of entries for the court appearance on March 24, for drafting an e-mail to Schaul's attorney on March 24, for correspondence with West and with Schaul's attorney on April 25, for the court appearance on April 26, and for an "anticipated court appearance" on June 7. Between its original fee petition and its supplemental fee petition, the Lesser Firm sought attorney fees totaling \$5,293.00 for 13.4 hours of services.

¶ 10 On June 7, 2011, the court held an evidentiary hearing on the Lesser Firm's petitions for attorney fees. The record does not contain the report of proceedings for the hearing. Following the hearing, the court awarded the Lesser Firm reduced fees in the amount of \$3,105.00. The order does not contain the court's findings, but states that the court entered the order "having heard testimony and being fully advised in the premises."

¶ 11 Schaul filed a timely motion to reconsider. In the motion, Schaul asserted that the Lesser Firm had argued at the June 7 hearing that "the primary; *sic* if not the sole, basis for [its] alleged representation of Mr. West was to respond to the 'threats' made by [Fraser's attorney] in his separate letters to Mr. West." The letters, both dated February 10, 2011, were attached to the motion, and

Schaul contended that they were not threatening in any way.³ Schaul further argued that the Lesser Firm had admitted at the June 7 hearing that it had never filed an appearance in the probate case. Schaul maintained that the Lesser Firm's fees were all incurred after Fraser had filed his petition to revoke the letters of office issued to West, and that the services were duplicative of services provided by West and attorney Davé and did not benefit the estate.

¶ 12 The court conducted a hearing on Schaul's motion to reconsider on July 14, 2011. The record contains the report of proceedings for the hearing. The court ruled as follows:

“In reviewing the order written June 7, 2011, I see that it does not contain the Court's findings. The Court did make findings and rulings. So, I am going to the best that I can remember recreate [*sic*] those findings for the record.

As to Mr. Lesser's fees, while it would have been preferable that he filed an appearance in accordance with the rules of procedure, I do not find the fact of no appearance being filed to be a basis to award no fees. It is my recollection that I did make a finding that the public administrator certainly can hire counsel, even though he himself holds a law degree, as long as there is not duplication of efforts.

³One of the letters stated that Fraser was represented by an attorney and requested copies of documents related to West's administration of the estate. The other letter, in part, directed West to “kindly advise under what authority you claim to be acting on behalf of the Estate” and stated that “[i]f it turns out that letters of office were improperly issued to you, we will be seeking to have such letters immediately vacated, and if appropriate sanctions awarded.”

In looking at Mr. Lesser's fee petition, I did reduce his fee petition rather substantially for those inventory items. Efforts of two attorneys to get an inventory on file. So, he was reduced. I did reduce his hourly rate, as well. So, I am also denying the motion with respect to Mr. Lesser's fees. ***"

¶ 13 This timely appeal followed.

¶ 14 ANALYSIS

¶ 15 Schaul argues on appeal that it was reversible error for the trial court to award fees to the Lesser Firm because (1) the court made no finding that the firm's services benefitted the estate, (2) the firm merely duplicated services performed by West and his staff, (3) attorney fees must be scrutinized where the administrator himself is an attorney, (4) the fees were "extreme" in relation to the size of the estate, and (5) the Lesser Firm's petitions did not comply with the standards for fee petitions as outlined in *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978 (1987). We address each argument in turn.

¶ 16 Section 27-2(a) of the Probate Act of 1975 (Act) provides that "[t]he attorney for a representative is entitled to reasonable compensation for his services." 755 ILCS 5/27-2(a) (West 2010). The trial court has broad discretion in determining the amount of fees to be awarded to an attorney under the Act. *In re Estate of Bitoy*, 395 Ill. App. 3d 262, 272 (2009). " 'The factors to be considered include the size of the estate, the work done and the skill with which it was performed, the time required, and the advantages gained or sought by the services or litigation.' " *Bitoy*, 395 Ill. App. 3d at 272 (quoting *In re Estate of Marks*, 74 Ill. App. 3d 599, 604 (1979)). A reviewing court will overturn an award of attorney fees only where the court's determination is manifestly erroneous or a clear abuse of discretion. *Bitoy*, 395 Ill. App. 3d at 272; *Weiss v. Weiss*, 113 Ill. App. 3d 793,

802 (1983). “A plain case of wrongful exercise of judgment would be necessary to justify a reversal.” *Marks*, 74 Ill. App. 3d at 604.

¶ 17 Finding that Services Benefitted the Estate

¶ 18 Schaul argues that the trial court’s decision to grant the Lesser Firm’s petitions for attorney fees was manifestly erroneous because the court made no finding that the firm’s services were in the interest of the estate. Schaul is correct that a court may charge attorney fees to a decedent’s estate only where the fees were for services that were in the interest of, or that benefitted, the estate. *Weiss*, 113 Ill. App. 3d at 801. Based on the record before us, however, we cannot determine whether the court abused its discretion in awarding fees for services that were not in the estate’s interest. “[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch*, 99 Ill. 2d at 392. We do not have a report of proceedings for the June 7, 2011, evidentiary hearing on the Lesser Firm’s petitions for attorney fees. We also have no bystander’s report for the hearing, which is authorized under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). Since we are unable to review the evidence and testimony on which the trial court based its decision, or to review the trial court’s findings made at the conclusion of the hearing, we will presume that the court’s June 7 order was in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 19 Although the trial court stated at the hearing on July 14, 2011, that it would attempt to “recreate” its findings from the June 7 hearing for the record, we cannot determine whether or not

the court did so completely. To the extent that we cannot determine how completely the court “recreated” its findings for the record, we must resolve this doubt against Schaul. See *Foutch*, 99 Ill. 2d at 392. Moreover, even given the court’s “recreated” findings, we still have no way to determine what evidence and testimony was presented at the June 7 hearing. We continue to presume that the court’s June 7 order was in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 20 To the extent that we can determine the services that the Lesser Firm provided based on its itemized time records attached to its fee petitions, we see no basis for concluding that the court’s fee award was manifestly erroneous. It appears that the Lesser Firm corresponded with the attorney for Fraser and with the attorney for Crawford’s ex-wife. Each of these parties, at least initially, was an adversary to the estate—Fraser was seeking to have West removed, and Crawford’s ex-wife was claiming that she owned the Highland Park residence—and each of these matters required investigation. It appears from the billing records that West retained the Lesser Firm to conduct this investigation. Moreover, although the record reflects that West knew of Crawford’s will as early as December 1, 2010, the will was not admitted to probate until March 24, 2011, the same day the court removed West and appointed Schaul successor administrator. Until that time, West remained the administrator, and the Lesser Firm’s duty was to West and the estate, not to Fraser, even though he was the sole beneficiary named in the will. See *In re Estate of Kirk*, 292 Ill. App. 3d 914, 919 (1997) (“An attorney representing an estate must give his first and only allegiance to the estate ***. Even though the beneficiaries of a decedent’s estate are intended to benefit from the estate, an attorney [representing an estate] cannot be held to have a duty to those beneficiaries ***.”)

¶ 21 Finally with respect to Schaul’s first argument that the firm’s services did not benefit the estate, although it appears that the court may have granted the Lesser Firm attorney fees for services provided after March 24, at which point West was no longer administrator of the estate, we decline to reverse the fee award on this basis alone. “[B]ecause the determination of reasonable attorney fees rests in the sound discretion of the trial court, [e]ven where the trial court has, in its calculations, included improper fees or excluded recoverable fees, this court will not disturb the judgment unless the total fees and costs awarded *** was [so excessive or] so inadequate as to amount to a clear abuse of discretion by the court.” (Internal quotation marks omitted.) *Bitoy*, 395 Ill. App. 3d at 281. Given that the trial court substantially reduced the Lesser Firm’s requested fees of \$5,293.00 and awarded fees totaling only \$3,105.00—an amount that we cannot say was so “excessive” as to be an abuse of discretion—we decline to reverse the fee award on this basis.

¶ 22 Duplication of Legal Services

¶ 23 Schaul next argues that the trial court’s decision to grant the Lesser Firm’s petitions for attorney fees was manifestly erroneous because the firm’s petitions establish that the firm did nothing but duplicate the services performed by West and his staff. Schaul maintains that attorney Fredric Lesser admitted at the July 14 hearing that the Lesser Firm did nothing more than “function as a post office box for transmitting the work performed by Mr. West and his staff,” because Lesser stated that the firm “represented Mr. West as the administrator and in particular in connection with wrapping up his work as the administrator and handing it over to the successor administrator.”

¶ 24 We decline to infer from Lesser’s statement made during argument on Schaul’s motion to reconsider that the Lesser Firm merely “function[ed] as a post office box” and duplicated the services provided by West and his staff. Again, without the ability to review the evidence and testimony that

51 Ill. App. 3d at 478. The court further stated “that very often it may be desirable to have both a representative and an attorney.” *Hackett*, 51 Ill. App. 3d at 478. Thus, *Hackett* provides no support for Schaul’s contention that “the Court expected the legal services to be performed by the legal representative, not by outside counsel,” and in fact supports the opposition conclusion. Without the ability to review the evidence and testimony presented at the June 7 hearing, we will not speculate concerning West’s need for the Lesser Firm’s legal services, and we decline to reverse the fee award on this basis.

¶ 28 Amount of Fees in Relation to Size of Estate

¶ 29 Schaul contends that the fees awarded to the Lesser Firm were “extreme” in relation to the size of the estate and that the trial court failed to consider this factor. We disagree. In denying Schaul’s motion to reconsider, the court stated:

“The public administrator’s office is frequently called upon to administer small estates and, yes, sometimes the fees do take up an inordinate amount of that estate, but without that position, we would have many estates where no family could be found and the administration would not take place if it had to stay within a certain percentage of the estate.”

Clearly the court addressed the factor of the size of the estate.

¶ 30 Moreover, the authority that Schaul cites provides no meaningful support for her assertion that the court’s fee award was “extreme” in relation to the size of the estate. Schaul cites *In re Estate of Thorp*, 282 Ill. App. 3d 612 (1996), and *In re Estate of Shull*, 295 Ill. App. 3d 687 (1998), in support of her argument. In *Thorp*, although the court stated the basic rule that one factor to be considered in determining a reasonable fee is the size of the estate, the court appeared to place little emphasis on that factor in affirming the trial court’s fee award. *Thorp*, 282 Ill. App. 3d at 619-20.

Similarly, in *Shull*, the size of the estate was one of several factors that the court addressed in holding that the trial court's fee award was too small, but the court did not appear to give that factor any more weight than it gave the other factors in reaching its holding. *Shull*, 295 Ill. App. 3d at 693. In sum, neither *Thorp* nor *Shull* provides any meaningful guidance on the issue of what constitutes a disproportionate fee in relation to the size of the estate, and Schaul cites no other case on this point.

¶ 31 Finally, although Schaul contends in her brief that the inventory “showed total available assets of only \$19,302.00,” the record does not corroborate this. The current account that West filed showed a cash balance in the estate of \$19,302.00, which represented cash from the closing of Crawford's bank account, but that number did not represent the total value of the estate's assets. In addition to the \$19,302.00 in Crawford's bank account, the inventory that West filed included an investment account with a balance of \$24,981.15, a 2003 Harley Davidson motorcycle (value unknown), and various items of personal property (value unknown). Although the inventory listed liabilities totaling \$40,832.21, \$29,753.38 of that represented the balance of a home equity loan on the Highland Park residence. Based on the record before us, the total value of the estate could be anywhere from less than \$4,000.00 to more than \$40,000.00, depending on whether the estate is liable for the balance of the home equity loan and depending on the value of the motorcycle and other personal property.

¶ 32 Based on the foregoing, we cannot say that the trial court's reduced fee award of \$3,105.00 was manifestly erroneous based on its relation to the size of the estate.

¶ 33 *Kaiser Standards*

¶ 34 Schaul's final argument is that the Lesser Firm's petitions for attorney fees did not satisfy the standards for fee petitions as set forth in *Kaiser*. Schaul's argument is wholly without merit. The

court in *Kaiser* held that a law firm’s petition for attorney fees was an inadequate basis on which to predicate a fee award where the petition consisted of 11 photocopied bills that provided sparse, one-to-two word descriptions of services performed—such as “Pleadings” or “Review Doc’s”—and of a summary of charges with entries ranging from 5.25 hours for “telephone calls” to 35 hours for “court appearances.” *Kaiser*, 164 Ill. App. 3d at 985. The fee petitions were “devoid of any meaningful information.” *Kaiser*, 164 Ill. App. 3d at 985. In holding that the fee petitions were inadequate, the court stated the rule that a “petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor.” *Kaiser*, 164 Ill. App. 3d at 984.

¶ 35 Unlike the fee petitions in *Kaiser* that were “too vague and general to have any practical utility” (*Kaiser*, 164 Ill. App. 3d at 986), the Lesser Firm’s fee petitions contained time records broken down into entries as small as 0.3 hours. The entries were specific and descriptive—for example, one entry was for 0.3 hours of services described as follows: “Telephone conference with Hank Marino re: West filing Inventory and Account before resigning; correspondence to Keith West re: Need Inventory and Account next week.” The petitions also indicated who performed the services and the hourly rate charged for the services. Under *Kaiser*, the Lesser Firm’s fee petitions were an adequate basis on which to predicate an award of attorney fees.

¶ 36 CONCLUSION

¶ 37 Based on the foregoing, nothing in the record before us provides a basis for concluding that the trial court abused its discretion in awarding the Lesser Firm attorney fees for services provided to the administrator of the estate. We affirm the judgment of the circuit court of Lake County.

¶ 38 Affirmed.

