

No. 1-14-3456

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
FIRST JUDICIAL DISTRICT

IN RE THE ESTATE OF:)	Appeal from the
DJORDJE PELIVANOVIC, a Disabled Person,)	Circuit Court of
)	Cook County
(Robert F. Harris, Plenary Guardian of)	
Djordje Pelivanovic's Person and Estate,)	
)	
Petitioner, Appellant,)	
)	
v.)	No. 12 P 2039
)	
Djordje Pelivanovic,)	
)	
Respondent,)	
)	The Honorable
(Kathleen M. Gross,)	Kathleen M. McGury,
)	Judge, presiding.
Appellee)).)	

JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in allowing attorney fees to be paid from the estate where the court found that the fees were incurred for the benefit of the estate. Affirmed.

¶ 2 This appeal arises from an emergency petition to freeze assets filed under the Elder Abuse and Neglect Act (320 ILCS 20/1 et seq. (West 2012)) on behalf of respondent Djordje Pelivanovic. On appeal, petitioner Robert F. Harris, Plenary Guardian of Djordje Pelivanovic's Person and Estate (hereinafter the Public Guardian) contends that the trial court abused its discretion in awarding Kathleen M. Gros, attorney for Pelivanovic's son, attorney fees. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. On April 5, 2012, the Catholic Charities filed an emergency petition to freeze assets under the Elder Abuse and Neglect Act (320 ILCS 20/1 et seq. (West 2012)) on behalf of 87-year-old Pelivanovic. The petition alleged that Pelivanovic and his wife Fanija were being financially exploited by two neighbors. The trial court granted the petition and appointed Steven Mihajlovic guardian ad litem (GAL), who then determined that the appointment of a plenary guardian was necessary as Pelivanovic suffered from a delusional disorder and was unable to make personal and financial decisions. Pelivanovic initially resisted, but when he withdrew his objection, the trial court appointed the Public Guardian as plenary guardian of Pelivanovic's person and estate. In addition, the court appointed the Public Guardian as plenary guardian of Fanija in a separate action and the couple's assets were held jointly in one account.

¶ 5 Shortly thereafter, Pelivanovic and Fanija were relocated to the Norridge Health Care and Rehabilitation Centre (Norridge). The Public Guardian filed an initial inventory of assets and a petition for approval of an investment plan, including the prospect of listing the couple's home for sale. In October, Pelivanovic confided in his case manager Sadeta Kalamperovic that he had a son named Aleksander (Alex) from his first marriage and the Public Guardian conducted a

LEXIS search to ascertain his whereabouts. The Public Guardian easily reached Alex by phone, advising him that he had rights pursuant to the guardianship and encouraged him to retain counsel.

¶ 6 On December 5, attorney Kathleen M. Gros filed an appearance on behalf of Alex, regarding concerns about refused visitation and guardianship. At the hearing, Dr. Dusan Vucicevic, Pelivanovic's former attorney, informed the court that Pelivanovic and Fanija were being mistreated at Norridge because of their Serbian descent. Specifically, the primarily Muslim staff allegedly called Pelivanovic derogatory names and disposed of his veteran's hat, which was eventually located. Gros also indicated that she attended visits with Alex and witnessed the defamatory treatment firsthand. This alleged treatment was extremely problematic because Pelivanovic and Fanija were prisoners of war before arriving in the United States with the help of the U.S. Military and Government. The Public Guardian, however, alleged that according to Norridge staff members Alex behaved inappropriately. Gros then moved for an emergency motion to relocate Pelivanovic and Fanija to another facility and the trial court ordered the Public Guardian and GAL to investigate the allegations. In addition, the court ordered the Public Guardian to arrange a supervised visit between Pelivanovic and Alex. The GAL supervised the successful visit and noted that Pelivanovic was happy with his new caregiver (Gero Solutions) and there had been no incidents at Norridge since the new caregiver was in place. Thus, the GAL concluded that supervised visits between Alex and Pelivanovic should continue as well as the addition of a 12-hour caregiver. The GAL also recommended looking at an alternative placement where the administrators were of Serbian decent.

¶ 7 In January 2013, the GAL, Public Guardian and Gros continued to look for alternative placement for Pelivanovic and Fanija. In addition, Alex informed the trial court that Pelivanovic

allegedly thought the Norridge staff was going to kill him with medication. Finally, at a March 28 hearing, all parties agreed on placement at Alden Northmoor and a visitation schedule for Alex was established. Visits commenced twice a week and were increased. The Public Guardian, however, did temporarily suspend visits in May/June due to Alex's alleged disruptive behavior.

¶ 8 At a June 17 hearing, the Public Guardian sought approval of its investment plan and indicated that it would be putting the couple's home up for sale, adding the proceeds to the estate. The issues concerning visitation were continued. In July, the Public Guardian indicated that it did not wish to terminate visitation and the issue was being resolved through the GAL and counsel. Gros reported that visitation was again going well and no incidents had occurred since Pelivanovic and Fanija were transferred to Alden Northmoor. Motions continued amongst the parties regarding Alex's visitation and the financial management of the Pelivanovic estate. Following the sale of the home, the total estate was worth well over \$500,000.

¶ 9 Thereafter, Alex filed a motion to vacate the order appointing a Public Guardian, which was denied by the trial court after a hearing. On October 21, the Public Guardian petitioned the trial court and was granted attorney fees from the period of April 6, 2012 to July 30, 2013 in the amount of \$14,561. The GAL also successfully petitioned the court for fees and was granted a total of \$15,000. On July 22, 2014, Gros filed a verified petition for \$19,519.58 in attorney fees from the period December 3, 2012 to March 31, 2014, which included \$469.58 in costs, subtracted a \$2,000 retainer and for a total of 90.20 hours at \$250 per hour. Specifically, she argued that the legal work was the direct result of the Public Guardian's failure to give Alex notice of the guardianship proceedings which "resulted in a flurry of legal activity benefitting the Estate." In turn, the Public Guardian contended that Gros' services did not benefit the estate and

that he had to defend against numerous unnecessary petitions filed by Alex, including an emergency petition to remove Pelivanovic from Norridge. After a hearing, the trial court awarded Gros \$14,500 in attorney fees. The court concluded that although Alex was unsuccessful he did not act in bad faith and was continuing on with the interest of the estate. The Public Guardian then filed its timely notice of appeal.

¶ 10

ANALYSIS

¶ 11 Respondent contends that the trial court abused its discretion in awarding Gros attorney fees from Pelivanovic's estate because Gros' legal services did not directly benefit the estate. Under section 27-2 of the Probate Act of 1975 (755 ILCS 5/27-2(a) (West 2014)), the trial court has broad discretion in determining the amount to be awarded to representatives and their attorneys. *In re Estate of Shull*, 295 Ill. App. 3d 687, 691 (1998). What constitutes reasonable compensation in relation to the value of the services rendered must be determined on a case-by-case basis. *In re Estate of Thorp*, 282 Ill. App. 3d 612, 619 (1996). Factors to be considered include "good faith, diligence and reasonable prudence used by the attorneys; time expended; the size of the estate; the work which was done; the skills and qualifications of counsel; the novelty and complexity of the issues confronted; and the benefits conferred on the client by the legal services rendered." *In re Estate of Halas*, 159 Ill. App. 3d 818, 832 (1987). Illinois law mandates that in order for a representative to be granted attorney fees, the legal services rendered must benefit the estate. *Estate of Minsky*, 59 Ill. App. 3d 974, 979 (1987). Fees are justified even for an unsuccessful representative "because by bringing the suit he has benefited the estate." *In re Estate of Byrd*, 227 Ill. App. 3d 632, 640 (1992). This court will overturn the award only where the court's determination is manifestly erroneous. *In re Estate of Shull*, 295 Ill. App. 3d at 691.

¶ 12 Here, the trial court determined that although Alex's petitions were unsuccessful he "acted in good faith" and the legal services Gros performed directly benefitted the estate. For instance, Gros filed a petition to relocate Pelivanovic and Fajia to an alternative facility free of alleged discriminatory treatment. The trial court further ordered Gros to attend visitations with Alex, where she witnessed the mistreatment firsthand. The GAL also agreed with Alex's concerns and the trial court noted that although "it was never convinced one way or the other" about the Norridge allegations, it felt Alex's behavior may have been caused by "some wrong impressions of what goes on there" given Pelivanovic's history. In addition, Gros' involvement lead to a significant increase in the amount of hours of companion care Pelivanovic received. Further, Gros toured the Alden Northmoor facility and was able to negotiate and secure a \$1,250 monthly discount for Pelivanovic for his care and continued to negotiate an identical discount for Fanjia. All of the aforementioned instances directly benefitted the estate and the case law the Public Guardian relies on is not analogous to the circumstances before us. *Cf. In re Estate of Riordan*, 351 Ill. App. 3d 594, 598 (2004) (the reviewing court rejected the award for attorney fees because "[w]hile the objecting heirs may have been prudent in hiring their own counsel to protect their interests, [it] discern[ed] no benefit accruing to the estate from that decision"); *In re Lundahl*, 200 Ill. App. 3d 108, 111 (1990) (the trial court abused its discretion in awarding attorney fees to the adult children's attorney where there was no conflict of interest and the ward's interests were already adequately protected); *Matter of Estate of Kutchins*, 169 Ill. App. 3d 641, 646 (1988) (law firm was not entitled to compensation for work relating to the sale of stock or settlement with family, where law firm neither requested nor received express permission to represent incompetent from the guardian or the court).

¶ 13 We also observe that it is unclear why the Public Guardian did not initially conduct a Lexis search to locate possible relatives, such as Alex, when he was found quite easily. Further, the Public Guardian did advise Alex that he had rights pursuant to the guardianship and suggested he retain counsel. And although the Public Guardian seems to imply that Alex only inserted himself in the litigation for his own financial benefit, there is no conclusive evidence in the record and the trial court found Alex's actions to be in good faith. See *Chicago Province of Society of Jesus v. Clark and Dickens, L.L.C.*, 383 Ill. App. 3d 435, 442 (2008) (a reviewing court may not look beyond the appellate record to "speculate on what may have occurred in the trial court," and thus, we "will reverse a trial court's good-faith determination only if the trial court abused its discretion"). Moreover, the trial court did reduce the requested amount of attorney fees "somewhat based on the size of the estate" and legal work it concluded benefited the estate. See *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1109 (2011). ("[w]hat constitutes reasonable compensation in relation to the value of the services rendered must be determined on a case-by-case basis"); *In re Estate of Bitoy*, 395 Ill. App. 3d 262, 272 (2009) ("[t]he probate court has the necessary skill and knowledge to decide what is fair and reasonable compensation for legal services"). Accordingly, on the record before us, we cannot say that the trial court abused his discretion in the award of attorney fees. See *Estate of Byrd*, 227 Ill. App. 3d 632, 640 (1992) (in order for a reviewing court to reverse a decision made by a trial court, the trial court must have abused its discretion to such an extent that its decision was manifestly and palpably erroneous); *Rennacker v. Rennacker*, 156 Ill. App. 3d 712, 715-16 (1987) (same).

¶ 14

CONCLUSION

¶ 15 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

