

NOTICE
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2016 IL App (5th) 150475-U

NO. 5-15-0475

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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| <i>In re</i> ESTATE OF PHILLIP R. SLAYDEN, |) | Appeal from the |
| Deceased |) | Circuit Court of |
| |) | Massac County. |
| (Leah Slayden, |) | |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 12-P-48 |
| |) | |
| Sally Ann Slayden-Berry and Sandra Kay Slayden- |) | |
| Ketchledge, |) | Honorable |
| |) | James R. Williamson, |
| Defendants-Appellants). |) | Judge, presiding. |

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying decedent's daughters' request for payment of attorney fees and reimbursement of travel expenses.

¶ 2 This case arises from a dispute between the coexecutors of an estate regarding the payment of attorney fees and reimbursement of travel expenses. Decedent, Phillip Slayden, died on September 25, 2012. At the time of his death, decedent operated a cattle farm on land he owned in Massac County. Surviving are decedent's wife, Leah Slayden (widow), and two daughters, Sally Ann Slayden-Berry and Sandra Kay Slayden-

Ketchledge (daughters). In his last will and testament dated December 22, 1993, decedent devised and bequeathed his farming equipment and farmland to his daughters and the residue of his estate to his widow. Decedent's will provides that his daughters and widow serve as coexecutors of the estate.

¶ 3 On October 24, 2012, the widow filed a petition for probate of will, for appointment of independent executor, and for letters of office to issue. In her petition, the widow requested that she be appointed the sole executor of decedent's estate. In the alternative, if either or both daughters qualified to act as an executor, the widow requested that she be appointed joint executor. On October 30, 2012, the court entered an order admitting decedent's will into probate and appointing the widow as the independent executor to the estate.

¶ 4 On November 20, 2012, the daughters filed a petition requesting to be appointed coexecutors of decedent's estate pursuant to the directions of decedent's will. The petition asserted the daughters were qualified and willing to act as coexecutors to the estate. On January 9, 2013, the widow filed a renunciation of decedent's will and elected to take the portion to which a surviving spouse is entitled. The widow also filed a response to the daughters' petition objecting to their appointment as coexecutors. After a hearing on the daughters' petition was held, the court granted the daughters' request to be appointed coexecutors, and letters of office were issued to the daughters.

¶ 5 Thereafter, the parties engaged in the administration of decedent's estate. On July 24, 2015, a hearing on the final report was held, with two of the issues concerning the daughters' request for payment of their attorney fees and reimbursement of their travel

expenses. The daughters' attorney, Mark Johnson, testified that he incurred attorney fees in the amount of approximately \$17,000. Johnson further testified that the work he performed was necessary and beneficial to the estate. Regarding the daughters' travel expenses, Sally, who lives in Nashville, Tennessee, testified she incurred travel expenses in the amount of \$2,246 in the course of the administration of decedent's estate. Sandra, who lives in Conifer, Colorado, testified she incurred travel expenses in the amount of \$5,011.

¶ 6 On August 20, 2015, the court entered an order on final count which indicated no coexecutor would be reimbursed for travel expenses. The order further indicated that the widow shall pay the attorney fees of her attorney, Richard Kruger, and the daughters shall pay the attorney fees of their attorney, Johnson. On September 14, 2015, the daughters filed a motion to modify order on final account objecting to the court's denial of their request for payment of attorney fees and reimbursement of travel expenses. The trial court denied the daughters' posttrial motion. On October 29, 2015, the daughters timely filed a notice of appeal. The issues raised on appeal concern payment of the daughters' attorney fees and reimbursement of the daughters' travel expenses.

¶ 7 ANALYSIS

¶ 8 I. Attorney Fees

¶ 9 The daughters first allege that the trial court erred in denying their request for payment of their attorney fees. The widow contends the trial court's determination that the daughters shall be responsible for payment of their own attorney fees should be affirmed. For the following reasons, we affirm.

¶ 10 The trial court's decision regarding attorney fees will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Shinn*, 313 Ill. App. 3d 317, 323, 729 N.E.2d 546, 551 (2000). The abuse of discretion standard has been defined as "palpably erroneous, contrary to the manifest weight of the evidence, or manifestly unjust." (Internal quotation marks omitted.) *In re Petition of Village of Kildeer to Annex Certain Property*, 162 Ill. App. 3d 262, 276-77, 514 N.E.2d 1020, 1029 (1987). An abuse of discretion exists where the court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *In re Marriage of Johnson*, 2016 IL App (5th) 140479, ¶ 93, 47 N.E.3d 1061.

¶ 11 Pursuant to the Probate Act of 1975 (Probate Act), executors and their attorneys are entitled to reasonable compensation for their administration of the estate. 755 ILCS 5/27-1, 27-2 (West 2012); *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1109, 950 N.E.2d 280, 287 (2011). What constitutes reasonable compensation in relation to the value of the services rendered turns upon the facts of each particular case. *Weeks*, 409 Ill. App. 3d at 1109, 950 N.E.2d at 287. "The factors to be considered include the size of the estate, the work involved, the skill evidenced by the work, [the] time expended, the success of the efforts involved, and the good faith and efficiency with which the estate was administered." (Internal quotation marks omitted.) *Weeks*, 409 Ill. App. 3d at 1109, 950 N.E.2d at 287.

¶ 12 We observe that although the Illinois Probate Act compels payment for the reasonable services of attorneys for executors, there is no provision in the Probate Act requiring that the executor's attorney fees and costs be paid exclusively from the estate.

In re Estate of Elias, 408 Ill. App. 3d 301, 323, 946 N.E.2d 1015, 1035 (2011). The Probate Act merely provides that "[t]he attorney for a representative is entitled to reasonable compensation for his services." 755 ILCS 5/27-2(a) (West 2008); *Elias*, 408 Ill. App. 3d at 323, 946 N.E.2d at 1035. "Executors and attorneys representing executors *shall* be allowed reasonable compensation for their services [citation], but the court *may* authorize reasonable attorney's fees to be paid from the assets of the estate [citation]." (Emphasis in original; internal quotation marks omitted.) *Elias*, 408 Ill. App. 3d at 323, 946 N.E.2d at 1036.

¶ 13 Generally, the attorney has the burden of proof to establish the value of his services; an appropriate fee consists of reasonable charges for reasonable services. *Shinn*, 313 Ill. App. 3d at 323, 729 N.E.2d at 551. Further, the attorney must specify the services performed, by whom they were performed, the time expended, and the hourly rate charged. *Shinn*, 313 Ill. App. 3d at 323, 729 N.E.2d at 551. The most important factor to be considered by the court is the amount of time spent on the estate. *Weeks*, 409 Ill. App. 3d at 1110, 950 N.E.2d at 287. However, while contemporaneous records typically ensure greater accuracy, the attorney need not keep precise time records contemporaneously with the litigation if the attorney presents sufficient evidence to allow the trial court to determine a reasonable fee for his or her services. *Shinn*, 313 Ill. App. 3d at 323, 729 N.E.2d at 551.

¶ 14 Here, the trial court ordered as follows regarding payment of attorney fees:

"[The widow] shall pay the attorney's fees of Richard Kruger not previously paid in this estate. [The daughters] shall pay the attorney's fees of Mark Johnson. This finding as to Mark Johnson's attorney's fees is based primarily on the following:

- (a) Mark Johnson represented the personal interests of [the daughters].
- (b) Mark Johnson represented to [the widow] on several occasions that his clients were [the daughters].
- (c) The presence of multiple attorneys in this estate.
- (d) There is a legal presumption that Attorney Johnson acted for the protection and interests of his clients [the daughters].
- (e) Mark Johnson never talked to [the widow] outside questions on the witness stand.
- ([f]) The burden of proof is on the attorney or party seeking the fee."

¶ 15 After careful consideration, we cannot say the trial court abused its discretion in ordering the daughters to pay attorney fees for their own attorney. Attorney fees are generally the primary responsibility of the person for whom the services are rendered. *In re Marriage of Werries*, 247 Ill. App. 3d 639, 655, 616 N.E.2d 1379, 1392 (1993). We acknowledge it is well settled that courts may authorize attorney fees to be paid from the assets of the estate. *In re Estate of Lipchik*, 27 Ill. App. 3d 331, 336, 326 N.E.2d 464, 468 (1975). However, counsel fees must be rejected where the legal services are not in the interest of the estate. *Lipchik*, 27 Ill. App. 3d at 336, 326 N.E.2d at 468.

¶ 16 Here, the trial court determined the daughters' attorney, Mark Johnson, represented, at least in part, the daughters' personal interests. After review, we find this

determination is supported by the record. Johnson's statements of attorney fees contain several examples which indicate his services benefitted the individual interests of the daughters rather than the estate. For instance, the statements indicate Johnson spent several hours drafting and editing the final report and account for the daughters. In that report and account, the daughters requested travel expenses and decedent's firearms, which benefitted the daughters and not the estate. Johnson's personal representation of the daughters is also evidenced by his characterization of the daughters to the widow as "his clients" rather than an indication that he represented the interests of the estate.

¶ 17 Further, we find the daughters and their attorney failed to differentiate between Johnson's representation to the benefit of the daughters' personal interests and Johnson's representation which was beneficial to the estate. As our Third District eloquently put:

"It is incumbent upon a party petitioning for attorney fees to submit sufficient evidence to support the claim. [Citation.] Where a party can recover attorney fees for some of the claims brought but not on others, the moving party must differentiate what part of the attorney's work was spent on the claims for which recovery is allowed." *GMAC Mortgage Corp. v. Larson*, 232 Ill. App. 3d 697, 703, 597 N.E.2d 1245, 1250 (1992).

¶ 18 In this case, Johnson's statements of attorney fees failed to differentiate between his work performed for the benefit of the daughters and his work performed for the benefit of the estate. As we note above, counsel fees must be rejected where the legal services are not in the interest of the estate. *Lipchik*, 27 Ill. App. 3d at 336, 326 N.E.2d at 468. Further, the burden of proof rests on the attorney in an action to recover

compensation for legal services rendered. *Estate of Healy*, 137 Ill. App. 3d 406, 409, 484 N.E.2d 890, 893 (1985). Thus, the burden of proof was on the daughters to show which work benefitted the estate.

¶ 19 Here, the daughters have not met their burden. This is evidenced by Johnson's statements of attorney fees, which combine services performed on behalf of the daughters' personal interests and services arguably performed on behalf of the estate. For these reasons, we cannot say the court's decision denying the daughters' request for attorney fees was manifestly or palpably erroneous. Accordingly, we reject the daughters' argument.

¶ 20 The daughters assert that the trial court's finding in subparagraph (e) of its order, "Mark Johnson never talked to Leah Slayden outside questions on the witness stand," is contrary to the provisions of Rule 4.2 of the Illinois Rules of Professional Conduct (eff. Aug. 1, 1990), which prohibits an attorney from having contact with another attorney's client. The daughters argue this finding is clearly in error. Although we acknowledge the daughters make a valid argument on this point, a reviewing court may affirm for any reason warranted by the record, regardless of the reasons relied on by the trial court. *People v. Nash*, 173 Ill. 2d 423, 432, 672 N.E.2d 1166, 1170 (1996). Because we affirm the trial court's denial of the daughters' request for attorney fees for the reasons stated above, we need not address this argument.

¶ 21 The daughters further cite to several examples of services performed by Johnson which they allege benefitted the estate and were "necessary to complete the administration of the estate." The daughters argue the trial court abused its discretion in

not awarding attorney fees for Johnson's services that did not serve their personal interest. We disagree. The daughters' argument ignores the fact that they failed to differentiate between Johnson's services performed for the benefit of the estate and his services performed for the daughters' personal interests. As stated above, the daughters failed to meet their burden to show which work benefitted the estate. For this reason, we reject the daughters' argument.

¶ 22

II. Travel Expenses

¶ 23 The daughters next allege the trial court erred in denying their request for reimbursement of their travel expenses. At the hearing on the final account, the daughters asserted these expenses were "necessary for them to travel to and from Massac County to attend their duties as Co-Executors." As we previously indicated, Sally resides in Nashville, Tennessee, while Sandra resides in Conifer, Colorado. It is undisputed the daughters incurred travel expenses while traveling to and from Massac County in the course of the administration of decedent's estate. The trial court ordered that no coexecutor shall be reimbursed for travel expenses. For the following reasons, we affirm.

¶ 24 Pursuant to the Probate Act, an executor is entitled to reasonable compensation for his or her services. 755 ILCS 5/27-1 (West 2012). The legitimate expenses of administration are properly chargeable against the assets of the estate, despite the fact they are not considered debts of the estate. *Puhrman v. Ver Vynck*, 99 Ill. App. 3d 1130, 1133, 426 N.E.2d 921, 924 (1981). Expenses of administration stem from the action of the personal representative and consist of those expenses which the representative incurs incident to the disposition of a decedent's property. *Puhrman*, 99 Ill. App. 3d at 1133,

426 N.E.2d at 924. The trial court must make the determination of which charges are subject to reimbursement as expenses of administration. *Puhrman*, 99 Ill. App. 3d at 1134, 426 N.E.2d at 924.

¶ 25 "[I]n order to qualify as an expense of administration, the personal representative must demonstrate to the satisfaction of the trial court that the charge was reasonably necessary for the preservation and benefit of the estate." *Puhrman*, 99 Ill. App. 3d at 1134, 426 N.E.2d at 924. The burden of proof is on the party requesting reimbursement. *Werries*, 247 Ill. App. 3d at 644, 616 N.E.2d at 1385.

¶ 26 Here, the daughters concede that section 27-1 of the Illinois Probate Act does not specifically mention reimbursement of travel expenses. Nevertheless, they argue Illinois case law supports their request for the reimbursement of those expenses. In support of their argument, the daughters cite to the *Puhrman* case we reference above, which held that personal representatives are subject to reimbursement as expenses of the administration. *Puhrman* indicated such expenses include those incurred incident to the disposition of a decedent's property and expenditures incurred in discovering and preserving assets. *Puhrman*, 99 Ill. App. 3d at 1133-34, 426 N.E.2d at 921.

¶ 27 After a careful review of the record, we find the daughters failed to meet their burden. Although the daughters testified that they incurred travel expenses by way of mileage, airfare, car rental, and hotels, they failed to submit any other evidence concerning these expenses to the trial court. Neither daughter provided information regarding the date the expenses were incurred or why the expenses were justified as an expense of the estate. Sandra failed to provide details of her mileage, such as the rates of

mileage on particular dates and total number of mileage, and Sally failed to provide details of her airfare, car rental, and hotel expenses.

¶ 28 Furthermore, after careful review of decedent's will, we find no provision pertaining to travel expense reimbursement. For these reasons, the daughters failed to meet their burden. Accordingly, we reject the daughters' argument.

¶ 29 **CONCLUSION**

¶ 30 For the foregoing reasons, the judgment of the circuit court of Massac County is affirmed.

¶ 31 Affirmed.