

2012 IL App (2d) 120568-U  
No. 2-12-0568  
Order filed December 27, 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> ESTATE OF ROY BETHKE, Deceased	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 10-P-627
	)	
	)	
(Wayne Weiler, Petitioner-Appellee, v.	)	
Lorina Kucynda and Rima Todorovich,	)	Honorable
Respondents-Appellants; Christine Adelman,	)	Joseph M. Grady,
Petitioner).	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err in granting the claim for attorney fees filed against the estate.
- ¶ 2 The petitioner, Attorney Wayne Weiler, filed a claim against the estate of Roy Bethke for attorney fees. The respondents, Lorina Kucynda and Rima Todorovich, filed a motion to deny the petition for attorney fees on the basis that certain fees were not incurred in good faith. On April 24, 2011, following a hearing, the trial court granted Attorney Weiler's claim for attorney fees. The respondents filed a timely notice of appeal from that order. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 On February 23, 2010, Christine Adelman, the Kane County Public Guardian and Administrator, was appointed as the temporary guardian of Roy Bethke. On March 23, 2010, Adelman was appointed as the plenary guardian. The trial court had found that Bethke was unable to manage his personal and business affairs due to Parkinson's disease and that he was being financially exploited by his caregivers. Bethke died intestate on November 27, 2010. On December 16, 2010, Adelman petitioned for letters of administration. On December 17, 2010, Adelman was appointed as the independent administrator of Bethke's estate. The cause was later converted to supervised administration.

¶ 5 On January 27, 2011, the respondents filed a claim against the estate alleging that since December 2006 they had had a verbal agreement with Bethke to provide him 24-hour home care in his home in Huntley. They further alleged that 24-hour home care was reasonable and necessary because Bethke suffered from Parkinson's disease and required medication every two hours. Additionally, the respondents made meals, fed him, cleaned and maintained his home, took him to doctor appointments, and filled his medical prescriptions. Pursuant to the alleged verbal agreement, Kucynda was to be paid \$20 per hour and Todorovich was to be paid \$15 per hour. They were to provide care to Bethke in rotating 12-hour shifts.

¶ 6 The respondents' claim further alleged that on February 28, 2010, Adelman, as Bethke's guardian, asked them to provide her with an invoice for unpaid services through February 28, 2010. Shortly thereafter, they provided an invoice showing that, as of February 28, 2010, they were owed \$19,555 for the home care service provided to Bethke. The respondents alleged that Adelman did not object or contest that invoice. They continued to provide Bethke with home care services until November 8, 2010. The respondents alleged that they were owed \$103,305 for services provided

to Bethke between February 28 and November 8, 2010. In total, they alleged they were owed \$122,860.

¶ 7 On March 17, 2011, Adelman filed an answer denying the claims and asserting three affirmative defenses. Adelman argued that Bethke lacked the capacity to have formed any contracts with the respondents. She further argued that any oral contracts with Bethke were void once she became plenary guardian on March 23, 2010. Finally, Adelman argued that the claims were insufficient as a matter of law because they failed to specify the services performed, by whom they were performed, the time expended thereon, and the date of each incidence of service.

¶ 8 On May 24, 2011, the petitioner, Attorney Wayne Weiler, filed a claim against Bethke's estate for attorney fees. Attorney Weiler alleged that Adelman had employed him to provide legal services for Bethke's estate. He further alleged that between February 25, 2010, and April 25, 2011, he had expended 34 hours of time and had billed Adelman at a rate of \$250 per hour. He was owed \$8,500 in attorney fees and \$42.25 in expenses. Finally, Attorney Weiler noted that he had been awarded no fees to date, that his claim was a first class claim against the estate, and that Adelman had no objection to the claim. Attorney Weiler attached copies of his itemized bills for the legal services provided.

¶ 9 On July 29, 2011, an order was entered continuing a pretrial conference on the respondents' claim until August 26, 2011. On August 15, 2011, the respondents filed a pretrial memorandum. In the memorandum, the respondents alleged that on June 5, 2010, Adelman acknowledged the fee arrangement with them. In support, they attached a June 5, 2010, inventory report that indicated that the respondents were being paid for in-home care for Bethke. The respondents further alleged that on June 8, 2010, Adelman promised them that they would be paid for their services when the money was available. In support, they attached a letter Adelman had sent them dated June 8, 2010. In that

letter, Adelman indicated that, although she was grateful for their services, there was no way she could pay them now or any time in the foreseeable future. She requested that they submit a final invoice and inform her when their services would cease.

¶ 10 The respondents further alleged that, after Bethke's attorney filed a petition to obtain court approval for a reverse mortgage on Bethke's home, Adelman agreed that the respondents would continue to provide care for the foreseeable future. Attached in support was a June 16, 2010, letter indicating that Adelman would not take steps to change Bethke's placement until the hearing scheduled for June 22, 2010. The respondents alleged that they continued to provide services based on the understanding that they would be paid once Bethke received a reverse mortgage. They alleged that Adelman continued to pay their expenses as a good faith gesture to encourage them to continue to provide home care to Bethke. Attached in support was an accounting showing that Adelman had written some checks to the respondents to cover Bethke's expenses. The respondents alleged that they were owed \$122,860 in unpaid services.

¶ 11 On August 23, 2011, Adelman, as the administrator of Bethke's estate, filed a petition for citation for discovery and recovery of assets against the respondents. Adelman alleged that in June 2006, Bethke's mental facilities had become so impaired that he was easily influenced by those in whom he placed his confidence. In 2006, Bethke made the respondents his caregivers. There existed an attachment between Bethke and Kucynda that was induced by "unnatural flattery and attentions" from Kucynda. Adelman alleged that the respondents abused Bethke's trust and confidence by misusing his finances for their own purposes. During the time that the respondents cared for Bethke, over \$700,000 in assets had been liquidated. Furthermore, the respondents took Bethke to the casino numerous times and during the course of his gambling, Bethke won \$577,000 playing slot machines. By the time a guardian was appointed in 2010, all of Bethke's assets were exhausted with the

exception of his residential real estate. The respondents then attempted to get a reverse mortgage on Bethke's home. Adelman further alleged that Bethke's check registers and bank records indicated that between 2006 and 2010, the respondents had distributed to themselves the sum of \$457,953. This amount was in excess of any reasonable cost of service provided to Bethke and was the result of undue influence.

¶ 12 On September 16, 2011, the respondents filed a motion to deny the petition for attorney fees. The respondents alleged that after Adelman was appointed plenary guardian she continued to accept their services rather than discharge them. Additionally, Adelman promised to pay them when the funds were available. The respondents further alleged that Attorney Weiler had expended time denying their claim without good cause. They argued that Attorney Weiler was not entitled to attorney fees for work related to the estate that was conducted in bad faith and that his request for fees should be denied as premature.

¶ 13 On the same day, the respondents filed a motion to strike the petition for citation. The respondents alleged that the petition for citation was a claim for breach of fiduciary duty and that Adelman had failed to allege any legal or factual basis for the existence of a fiduciary duty between the respondents and Bethke.

¶ 14 On February 2, 2012, Attorney Weiler withdrew his appearance as attorney for the estate and a new attorney entered an appearance. On March 23, 2012, Attorney Weiler filed a supplemental petition for attorney fees against the estate in the amount of \$5,537.50 for the period commencing August 25, 2011, and ending January 19, 2012. Attorney Weiler requested that his fee petitions, totaling \$30,388.44, be determined to be first class claims against the estate and be approved.

¶ 15 On April 5, 2012, Adelman filed a motion for payment of administrator fees in the amount of \$36,306.34. She alleged she had expended 138 hours on the estate over the past year. She filed

an amended motion on April 10, 2012, stating that she had also expended 223 hours working on the guardianship of Bethke.

¶ 16 On April 9, 2012, the respondents filed another objection to Attorney Weiler's petitions for attorney fees. The respondents alleged that the petitions included fees for a substantial amount of time spent defending the estate from the respondents' claim for services provided to Bethke. The respondents alleged that the defense of their claims and the citations to discover assets had been made in bad faith. They noted that their claim against the estate was set for trial on September 17, 2012, and that it would be premature to grant Attorney Weiler's petition for fees until they had a chance to litigate their claim. They alleged that of Attorney Weiler's fees, \$11,212.50 were for time spent defending the respondents' claim and that those fees should be denied because they were unreasonable and provided no benefit to the estate.

¶ 17 On April 24, 2012, the respondents filed an objection to Adelman's guardian and administrator fees. The respondents argued that the administrative services provided by Adelman were not in the best interest of the estate, wasted assets of the estate, and that the fees incurred in defending their home care claims were not incurred in good faith.

¶ 18 Also on April 24, 2012, a hearing was held on the fee petitions. At the commencement of the proceeding, Attorney Weiler indicated that there was \$119,480.62 in the estate and that the administrator had been directed to pay fees to an Attorney Dan Parsons in the amount of \$14,422 and to pay funeral expenses of \$10,617. Accordingly, there was \$95,000 remaining in the estate. The parties addressed Attorney Weiler's fee petition first. Attorney Weiler testified that all the charges he was claiming were reasonable and necessary.

¶ 19 On cross-examination, Attorney Weiler acknowledged that he had prepared the objection to the respondents' claim for home care services. When asked whether Attorney Weiler was aware that

court file indicated that Bethke's guardian had stated that Bethke had an agreement with the respondents to pay them for providing home care, Adelman's counsel objected on the basis of relevance. The respondents' counsel indicated that the questioning went to the good faith nature of the services provided by Attorney Weiler. He further argued that the trial court could not gauge whether it was good faith or not until the hearing on the respondents' claim. He argued that the guardian had made statements encouraging the respondents to continue providing care and indicating that they would be eventually paid. However, when the respondents filed their claim, the administrator denied the claim. The trial court sustained the objection.

¶ 20 The respondents' counsel made an offer of proof asking the trial court to take judicial notice of the March 23, 2010, report of the guardian, the guardian's June 5, 2010, report to the trial court, the guardian's June 16, 2010, response to the respondents' petition to approve the reverse mortgage, and the motion for leave to place Bethke in a long-term care facility. He argued that within all those documents was evidence showing that the guardian promised to pay the respondents in order to induce them to continue providing care. The guardian ultimately did not pay them and depleted the estate so there was nothing left. The respondents' counsel contended that about \$10,000 of Attorney Weiler's claim for fees was for time spent defending against the respondents' claim, which was not done in good faith. In response, Attorney Weiler stated that the guardian had expected that the claim would be for an amount closer to \$50,000, not the \$122,000 requested. He also noted the outstanding citation to discover assets and argued that there were indications that the respondents were not entitled to any more money. Following this offer of proof, the cross-examination resumed.

¶ 21 On cross-examination, Attorney Weiler acknowledged that the Strohschein firm had filed a claim against the estate for \$24,000. The firm represented Bethke in working to obtain the reverse mortgage. Attorney Weiler settled the claim for \$14,000. The respondents' counsel then asked

Attorney Weiler whether he was aware that Adelman had provided a letter to the home care providers regarding payment. Adelman's counsel objected on the basis of relevance. The trial court sustained the objection. The respondents' counsel made an offer of proof. He stated that Adelman sent a letter dated June 8, 2010, to the respondents. Adelman requested an invoice for the amount owed to them and indicated that she would try to make arrangements for them to be paid.

¶ 22 At the conclusion of cross-examination, the trial court noted that it had considered Attorney Weiler's fee petitions. The trial court found that the hourly rate charged was reasonable and that the time expended on the estate appeared "to be reasonable and necessary under the circumstances considering the court file, the amount of litigation, and the issues presented by Mr. Bethke's condition and by his death." The trial court awarded Attorney Weiler his fees of \$30,388.44 and ordered that they be paid by the estate. The parties then addressed Adelman's petition for administrator fees. At the conclusion of the hearing, the trial court awarded Adelman fees in the full amount for which she petitioned, \$36,306.34. Thereafter, the respondents filed a timely notice of appeal.

¶ 23 II. ANALYSIS

¶ 24 On appeal, the respondents argue only that the trial court erred in granting Attorney Weiler's petition for fees. At the outset, we note that a reviewing court has a duty to consider *sua sponte* whether its jurisdiction is proper. *In re Marriage of Link*, 362 Ill. App. 3d 191, 192 (2005). Pursuant to Illinois Supreme Court Rule 304(b)(1) (Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010), a judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party is appealable without a Rule 304(a) finding. The trial court's April 24, 2012, decision was an order entered in the administration of an estate, and it finally determined Attorney Weiler's rights as to his claim for attorney fees against the estate.



Accordingly, Rule 304(b)(1) applies, and we have jurisdiction to address the merits of the respondents' appeal. *In re Trusts of Strange*, 324 Ill. App. 3d 37, 41-42 (2001).

¶ 25 Under the Illinois Probate Act of 1975, an attorney is entitled to reasonable compensation for his services related to the administration of an estate. 755 ILCS 5/27-2 (West 2010). What constitutes reasonable compensation must be determined on a case-by-case basis. *In re Estate of Weeks*, 409 Ill. App. 3d 1101, 1109 (2011). “ ‘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.’ ” *Id.* (quoting *In re Estate of Thorp*, 282 Ill. App. 3d 612, 619 (1996)). Legal fees for services that do not benefit the estate should be rejected. *In re Estate of Bitoy*, 395 Ill. App. 3d 262, 278 (2009). The decision as to what constitutes reasonable compensation lies within the discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion. *Estate of Weeks*, 409 Ill. App. 3d at 1109.

¶ 26 In the present case, the respondents argue that the trial court erred when it refused to consider evidence showing that the attorney fees related to the defense of the respondents' claim against the estate for home care services were not incurred in good faith. Specifically, the respondents argue that the trial court erred in ruling that proffered evidence of good faith was not relevant to the fee petitions.

¶ 27 At the hearing on the claim for attorney fees the trial court sustained objections to questions that, according to the respondents' counsel, went to the good faith nature of the services provided by Attorney Weiler. Based on the respondents' offers of proof, the purpose of the questioning was to bring certain documents into evidence such as March 23 and June 5, 2010, reports completed by Adelman during the guardianship, Adelman's June 16, 2010, response to the petition for a reverse

mortgage, and a June 8, 2010, letter from Adelman to the respondents. The respondents argue that these documents showed that Adelman had promised to pay the respondents in order to induce them to continue providing care for Bethke and, therefore, she challenged their claim against the estate in bad faith. On that basis, they argue that Attorney Weiler's fee petition should have been denied.

¶ 28 The respondents' argument is without merit. Where the result reached in a case is supported by other evidence, a claim of error in the exclusion of certain evidence will not warrant reversal. *Susan E. Loggans & Associates v. Estate of Magid*, 226 Ill. App. 3d 147, 155 (1992). Here, essentially all the documents that the respondents were attempting to bring into evidence through cross-examination of Attorney Weiler were already part of the court file. These documents were attached to the respondents' pretrial memorandum and to their objection to the petition for attorney fees. In its ruling on Attorney Weiler's fee petition, the trial court specifically stated that it considered the court file in making its determination.

¶ 29 Moreover, these documents and other documents in the court file support the trial court's determination as to the reasonableness of the fees. The August 23, 2011, petition for citation for discovery and recovery of assets indicates that substantial amounts of Bethke's estate had been expended during the time that the respondents had provided care for them. Adelman noted that (1) over \$700,000 in investment accounts and life insurance proceeds had been liquidated; (2) over \$450,000 worth of checks made out to the respondents, written in their own handwriting, were cashed; and (3) slot machine winnings totaling \$577,176.50 had been unaccounted for. In support, Adelman attached federal form W2-G showing Bethke's gambling winnings and a list of all the checks written to the respondents out of Bethke's account from June 2006 through August 2010. Additionally, the February 23, 2010, order appointing Adelman temporary guardian indicated that the basis was that Bethke was being "financially exploited" by his caregivers. Although we make

no determination as to the ultimate merit of the respondents' claim against the estate or the challenge thereto, the foregoing evidence was sufficient to demonstrate that the challenge to the respondents' claim was made in good faith.

¶ 30 Furthermore, none of the documents relied on by the respondents support their assertion that the efforts to challenge their claim were not done in good faith. Although Adelman's June 5, 2010, report to the court acknowledged the fee arrangement between Bethke and the respondents, it in no way approved of that arrangement. Adelman's June 8, 2010, letter to the respondents indicated that the estate could no longer pay them, the respondents should inform her of when they would stop providing services, and that they should submit an invoice. Adelman did state that she would try to make arrangements to pay them. Nonetheless, this letter was written only a few months after Adelman was appointed guardian and likely prior to any knowledge of Bethke's alleged missing assets. Accordingly, it does not evidence any bad faith.

¶ 31 The respondents also rely on a June 16, 2010, letter written by Bethke's attorney to Adelman's attorney for the estate. The letter indicated that, based on a phone conversation between the attorneys, the respondents would continue to provide care for Bethke until a hearing on June 22, 2010, at which Adelman would address the issue of changing Bethke's placement to a long term care facility. The letter further stated that it was the respondents' understanding that they would continue to provide care to Bethke "for the foreseeable future." This letter indicates only an understanding that the respondents would continue to provide care for four more days. There is no indication that Adelman concurred with the respondents' understanding that they would continue to provide care "for the foreseeable future." The letter also does not show any inducement to continue providing care.

¶ 32 In a June 16, 2010, response to the respondents' petition to approve a reverse mortgage, Adelman acknowledged that the respondents were owed at least \$50,000 for services rendered and that the respondents' fees for care were \$12,000 per month. Nonetheless, this does not prohibit Adelman from challenging a claim against the estate for over two and a half times that amount. This response was written only a few months after Adelman was appointed guardian and well before the respondents' claim filed against the estate. Accordingly, it does not support an allegation of bad faith.

¶ 33 Finally, in Adelman's August 25, 2010, motion for leave to place Bethke in a long term care facility, she stated that it "would be unfair and unethical to expect the caregivers to work without the resources to pay them." The respondents argue that this statement was an admission that they were entitled to compensation. Nonetheless, this statement in no way implies that Adelman approved of the amounts charged for their services. Once again, this letter was written during Adelman's guardianship of Bethke's estate. Her petition for citation for discovery and recovery of assets was filed in her capacity as administrator in August 2011. It is unclear when exactly Adelman became aware of Bethke's allegedly missing assets. Accordingly, this document also does not support an inference of bad faith.

¶ 34 In so ruling, we note that the respondents argue that the trial court judge who ruled on the attorney fees petition was not assigned to the case until December 2011, and was therefore not familiar with the underlying litigation. This fact in no way warrants reversal. As noted by the respondents, "[i]n fee petition cases, because the trial court is familiar with the underlying litigation, the court may independently assess the necessity and reasonableness of the legal services rendered." *Trust of Strange*, 324 Ill. App. 3d at 42. Even though the trial court did not preside over the guardianship proceedings or all of the probate proceedings, all the documents addressed above were

contained within the trial court record, which the trial court expressly stated that it considered when it rendered its ruling. The record demonstrates that the trial court did not abuse its discretion in finding Attorney Weiler's fee petition to be reasonable and approving it.

¶ 35

### III. CONCLUSION

¶ 36 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 37 Affirmed.