

NOTICE

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2013 IL App (5th) 120545-U
NO. 5-12-0545
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).

<i>In re</i> ESTATE OF JACQUELINE J. STAFFORD, Deceased)	Appeal from the Circuit Court of St. Clair County.
)	
(David Stafford, Objector-Appellant, and Robert Morton, Executor-Appellee).)	No. 06-P-771
)	
)	Honorable Robert B. Haida, Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Spomer and Justice Wexstten 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.
- ¶ 2 On October 7, 2006, Jacqueline Stafford died. Her will bequeathed 75% of her estate to her daughter, Charla Morton, and the remaining 25% to her son, David Stafford. David filed a complaint to contest the will. On September 24, 2009, he amended his complaint. In his amended complaint he abandoned the will contest and added a claim for conversion of estate assets against Charla in her individual capacity, a claim of fraud against Charla and her husband Robert in their individual capacities, and a claim for replevin against Charla, Robert, their two sons, Matthew and Mark, and against Jacqueline's sister, Karen Surman, in their individual capacities. On June 14, 2010, David filed a second amended complaint adding a count against Charla in her individual capacity for intentional interference with the expectancy of inheritance. The case settled. A final settlement report was filed in Jacqueline's estate. In the report, the attorney for the estate sought attorney fees of

\$52,175.50. David objected to the request for attorney fees for time spent defending the suit against the family in their individual capacities. The court approved the request for attorney fees to be paid by the estate finding that the fees were incurred for the benefit of the estate. David filed a timely notice of appeal.

¶ 3

BACKGROUND

¶ 4 On January 5, 2006, Jacqueline Stafford executed a power of attorney appointing her daughter Charla to act as her attorney-in-fact. On January 20, 2006, Charla, as Jacqueline's power of attorney, signed a transfer on death beneficiary designation form for Jacqueline's Edward Jones accounts. On death, Jacqueline's Edward Jones accounts were to be divided 60% to Charla, 15% to Jacqueline's son David, 8% to Charla's son Matthew, 8% to Charla's son Mark, 5% to Charla's husband Robert, and 4% to Jacqueline's sister Karen Surman. At the time these designations were made, Jacqueline's Edward Jones accounts totaled \$2,006,322.40.

¶ 5 On October 7, 2006, Jacqueline Stafford died. Her will dated December 29, 2005, left 75% of her estate to Charla and 25% of her estate to David. It included a clause that "if either child challenges the validity of my Will and is unsuccessful, that child shall take nothing under my Will." Jacqueline nominated Charla to act as the executor of her estate and Charla's husband Robert to act as her successor if Charla was unable or unwilling to serve. On November 20, 2006, Charla was appointed executor of Jacqueline's estate.

¶ 6 On May 16, 2007, David filed a complaint to contest Jacqueline's will alleging that the will should be rescinded due to lack of testamentary capacity at the time the will was made, and that the will should be rescinded because Charla exercised undue influence over Jacqueline. David asserted that Jacqueline had cancer and had suffered a stroke, that she was dependent on Charla for food, medical attention, hygienic care, and help with her financial and business affairs, and that she lacked the capacity to transact ordinary business or to know

and appreciate the act of creating a will or the effect of transferring property. He argued that through Charla's undue influence, she substituted her own intent and desires for the intent and desires of Jacqueline and was involved in the procurement of a will that substantially benefitted herself to the detriment of David. Finally, David alleged tortious interference with an inheritance expectancy. He asserted that prior to the execution of the will, Jacqueline had expressed an intent to divide her property equally between her children, thereby providing him with an inheritance expectancy. He argued that Charla intentionally interfered with his expectancy by unduly influencing Jacqueline in regard to the procurement and execution of the will. He stated that but for Charla's tortious conduct, he would have realized his inheritance expectancy.

¶ 7 On March 3, 2008, Charla filed a motion to change the executor of the estate. She stated that she no longer wished to served in her capacity as executor of Jacqueline's estate and asked that Robert be appointed as her successor. The motion was granted on May 13, 2008. On September 15, 2008, Robert was added as a defendant in the will contest.

¶ 8 On September 24, 2009, David filed an amended complaint. In this complaint he abandoned the charges against the estate and instead charged Charla with conversion, charged Charla and Robert with fraud, and brought a claim in replevin against Charla, Robert, Matthew, Mark, and Karen. None of the claims in the amended complaint were against any party as executor, but were claims against the defendants in their individual capacities.

¶ 9 On June 14, 2010, David filed a second amended complaint. He alleged that Charla forged Jacqueline's signature and made withdrawals from Jacqueline's Edward Jones account, then gave the proceeds to herself, Robert, Matthew, Mark, and Karen. He further claimed that on January 9, 2006, Charla forged Jacqueline's signature on a letter of authorization for the withdrawal of \$2,500 per month from the Edward Jones account. He alleged that Charla

took money from Jacqueline's accounts to purchase a 2006 Buick Lacrosse CX and titled it in her name as a joint tenant with Jacqueline, even though Jacqueline was diagnosed with terminal cancer. He claimed that Charla forged Jacqueline's signature on a transfer on death agreement at Edward Jones naming herself, Robert, Matthew, Mark, and Karen as beneficiaries. He alleged that Charla forged her mother's name on certificates of deposit making them payable to her on death. David asserted that Charla forged her mother's signature to transfer real estate and mineral rights worth \$60,140 to Matthew and Mark. He claimed that these transfers of cash and property during Jacqueline's lifetime were done by the fraudulent conduct of Charla for the purpose of removing assets from Jacqueline's estate and depriving David of the funds he should have received under the will. Matthew, Mark, Robert, and Karen were not beneficiaries under the will.

¶ 10 David's second amended complaint contained four counts. The first count was against Charla for conversion. The second count alleged fraud against Charla and Robert. He alleged that Robert aided and abetted Charla in fraudulently converting Jacqueline's assets to his own use, and that of Charla, Matthew, Mark, and Karen. He asserted that Charla forged Jacqueline's signature or fraudulently used the power of attorney for the benefit of herself and her family. The third count was for replevin against Charla, Robert, Matthew, Mark, and Karen, in the amount the nonbeneficiaries of the will received and in an amount from Charla necessary to place him in possession of 25% of the total value of Jacqueline's estate had no funds been converted prior to her death.

¶ 11 David's final count was against Charla for intentional interference with the expectancy of an inheritance. He alleged that Jacqueline's will bequeathed 25% of her estate to him; therefore, he had a reasonable expectation that he would receive 25% of his mother's estate when she died. He argued that the intentional and fraudulent conduct of Charla was for the purpose of removing assets from Jacqueline's estate thereby depriving him of the funds he

should have received under Jacqueline's will. He asserted that Charla used the funds for the benefit of herself and her family and not for Jacqueline.

¶ 12 The civil case settled on January 31, 2012. David signed a release which included the following language:

" FOR AND IN CONSIDERATION of \$213,000.00, approved as if the funds were paid directly by the Estate, and, in addition, should the estate taxes, inheritance taxes and court approved expenses of estate administration in the Estate of Jacqueline J. Stafford be less than a total of \$269,468.00, Defendants shall pay to Plaintiff 25% of the difference between \$269,468.00 and the actual total estate taxes, inheritance taxes and court approved expenses of estate administration in the Estate of Jacqueline J. Stafford, the receipt of which is hereby acknowledged, I the undersigned, David Stafford do hereby fully, completely and forever release, acquit and discharge Charla Morton, Robert Morton, Matthew Morton, Mark Morton, Karen Surman and the Estate of Jacqueline Stafford, from any and all claims, demands and choses in action, of whatever nature which I may have or assert against them, arising out of, or to arise or grow out of the administration of the Estate of Jacqueline Stafford, allegedly causing damages to the undersigned, and any and all damages allegedly sustained as a result of said occurrence."

David also received \$300,948.36 as a transfer on death beneficiary from Jacqueline's Edward Jones account

¶ 13 On April 2, 2012, Charla, Robert, Matthew, and Mark filed a motion to approve the settlement, and the trial court approved the settlement. Upon stipulation for dismissal, the court dismissed David's complaint with prejudice.

¶ 14 On November 7, 2012, Robert filed a final settlement report in Jacqueline's estate. He requested approval of the report, authorization to execute and record the deed to mineral

rights and real property, approval of the attorney fees in the amount of \$52,175.50 and accountant fees in the sum of \$3,591, approval of total other expenses of \$54,069.52, and an order discharging him as executor. On the same day a hearing was held on the final settlement report. David appeared by counsel and objected to the request for attorney fees in part. He did not object to the hourly rate or to the fees for representing the executor in the will contest. He objected to any fees charged for defending Charla, Robert, Mark, and Matthew in the civil suit after the amended complaint was filed on September 24, 2009, and the will was no longer challenged. He argued that those fees were not expenses of the estate but were the expense of the individuals being sued. The attorney for the estate argued that much of the work was discovery regarding Jacqueline's mental capacity including depositions taken from several of Jacqueline's doctors. None of these depositions are included in the record. He argued that he had to represent the estate to make sure that there was not going to be an attack against the estate on the basis of testamentary capacity. He further argued that the release signed by David extinguished any claims against the estate. No itemized bill for the fees was placed in evidence, but David's attorney acknowledged that he had received one.

¶ 15 On November 8, 2012, the trial court entered an order approving the final settlement report. Robert was authorized to pay the final attorney fees. The court found that the "fees were incurred for the benefit of the estate."

¶ 16 David filed a timely notice of appeal.

¶ 17 ANALYSIS

¶ 18 David argues that Jacqueline's estate should not have been charged for the attorney fees incurred by Charla, Robert, Matthew, and Mark for the defense of the civil suit against them after the amended complaint was filed on September 24, 2009, because they were sued in their individual capacities and the executor of the estate was no longer a party to the suit.

¶ 19 Under the Probate Act of 1975, the attorney for an executor is entitled to reasonable

compensation for his services. 755 ILCS 5/27-2(a) (West 2012). "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 Weeks*, 409 Ill. App. 3d 1101, 1109 (2011). "The probate court has the necessary skill and knowledge to decide what is fair and reasonable compensation for legal services." (Internal quotation marks omitted.) *In re Estate of Bitoy*, 395 Ill. App. 3d 262, 272 (2009). "Counsel fees will be rejected when the legal services rendered are not in the interest of or do not benefit the estate." *In re Estate of Elias*, 408 Ill. App. 3d 301, 322 (2011). The amount of the award of attorney fees is determined by the probate court and is within the ambit of judicial discretion. *In re Estate of Bitoy*, 395 Ill. App. 3d at 272. "An abuse of discretion may be found only where the trial court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the trial court." *People ex rel. Department of Transportation v. Kotara, L.L.C.*, 379 Ill. App. 3d 276, 286 (2008). A reviewing court will only alter a fee allowance made by a trial court if it finds that the trial court's determination was manifestly or palpably erroneous. *In re Estate of Bitoy*, 395 Ill. App. 3d at 273.

¶ 20 In the instant case, both attorneys agreed at the hearing on the final settlement report that the issue was whether the attorney fees incurred after the amended complaint was filed were payable from the estate. The total of the attorney fees requested was \$52,175.50. Despite the fact that attorneys for both parties had a copy of the itemized bill for attorney fees, neither side submitted a copy to the court. The court asked what amount of the fees was incurred after the amended complaint was filed, and the attorney for the estate responded that it was approximately one-half of the fees. David admitted that some of the fees incurred after the amended complaint was filed would be for the benefit of the estate.

¶ 21 David argued that any attorney fees for dealing with the defense of the amended complaint were not an expense of the estate, but were expenses of the individuals being sued.

He asserted that the attorney services were of personal benefit to the individuals. The attorney for the estate argued that the cases were intertwined. He argued that the release signed by David benefitted the estate by extinguishing any claims against it.

¶ 22 David signed a release that states in pertinent part:

"I, the undersigned, David Stafford do hereby fully, completely and forever release, acquit and discharge *** the Estate of Jacqueline Stafford, from any and all claims, demands and choses in action, of whatever nature which I may have or assert against them, arising out of, or to arise or grow out of the administration of the Estate of Jacqueline Stafford, allegedly causing damages to the undersigned, and any and all damages allegedly sustained as a result of said occurrences.

I, the undersigned, further forever agree to indemnify and hold harmless *** the Estate of Jacqueline Stafford, for any and all claims or demands which may be asserted on account of my said loss, damages and expenses."

¶ 23 "A release is a contract whereby a party abandons a claim to the person against whom the claim exists." *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605, 614 (2007). The interpretation of a release is governed by general contract law. *Id.* The court applies general principles of contract interpretation to release provisions, giving clear and unambiguous terms their plain and ordinary meaning. *In re Estate of Gallagher*, 383 Ill. App. 3d 901, 905 (2008). "Where the terms of the release are clear and explicit, the court must enforce them as written, and construction of the instrument is a question of law." *Fuller Family Holdings, LLC*, 371 Ill. App. 3d at 614. The parties' intent controls the scope and effect of a release. *In re Estate of Gallagher*, 383 Ill. App. 3d at 905. The intent can be discerned from the express language of the release as well as the circumstances surrounding the agreement. *Id.* "[A] release will not be construed to defeat a valid claim that was not

within the contemplation of the parties at the time the agreement was executed, and general words of release are inapplicable to unknown claims." *Fuller Family Holdings, LLC*, 371 Ill. App. 3d at 614.

¶ 24 In the instant case, the language of the release is clear and unambiguous. In settling his civil suit against the defendants individually, David released Jacqueline's estate from any and all claims, demands, and choses in action which he might assert against the estate arising out of or to arise out of the administration of the estate. He further agreed to forever hold the estate harmless for any demands which he might assert.

¶ 25 The need for attorney fees and the amount of the fees are matters of discretion for the trial court. *In re Estate of Knott*, 245 Ill. App. 3d 736, 739 (1993). In determining attorney fees, each case rests on its own facts and circumstances. *Weiss v. Weiss*, 113 Ill. App. 3d 793, 802 (1983). The trial court has broad discretionary powers in awarding an executor's attorney fees and may fashion remedies and grant such relief as equity requires to remedy a wrong. *In re Estate of Elias*, 408 Ill. App. 3d at 323. Attorney fees have been authorized in cases where the attorney represented someone other than an administrator. *In re Estate of Knott*, 245 Ill. App. 3d at 739. For attorney fees to be charged to the estate, they must have been incurred in such a manner as to be in the interest of or for the benefit of the estate. *Weiss*, 113 Ill. App. 3d at 801; *In re Estate of Goffinet*, 318 Ill. App. 3d 152, 159 (2001).

¶ 26 No evidence was introduced at the hearing on the final settlement report and the case was submitted based on the arguments. The trial court found that all the attorney fees benefitted the estate. The language of the release supports the finding. The trial court knew the total of the fees and knew that the amount alleged to be related to defending Charla, Robert, Matthew, and Mark individually amounted to approximately one-half of the total. The parties had engaged in extensive litigation that ranged from a will contest to claims against the parties individually. Eventually the matter was settled and David signed a release.

David released Jacqueline's estate from any demands he might assert against it. This brought an end to the litigation, which benefitted the estate. We cannot say that the trial court's decision was arbitrary, fanciful, or unreasonable, or that no reasonable person would adopt its view.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 29 Affirmed