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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

Estate of BUD HERMAN KRUSI,
Deceased.

BARBARA “BOBBIE” SIMI et al.,
Petitioners and Appellants,

v.

PETER KRUSI et al.,
Objectors and Respondents.

A128956

(Alameda County
Super. Ct. No. RP08375495)

I.

INTRODUCTION

This is the latest chapter in a contentious probate proceeding concerning the disposition of Bud Herman Krusi’s estate (decedent).¹ In this case, attorney Thomas V. Roland (Roland), counsel for executor Barbara “Bobbie” Simi (Simi), refused to answer any questions propounded during his deposition to support the executor’s request for \$94,500 in extraordinary services rendered by Roland to the estate. In response, the estate beneficiaries brought a motion for an order compelling answers to deposition questions and a request for sanctions. The court granted the motion to compel and

¹ On May 6, 2010, we issued a nonpublished opinion in *Simi v. Krusi* (A126071), in which we affirmed the trial court’s decision that the decedent’s 2007 will did not contain a clear and unambiguous manifestation of his intent to revoke a previously created 2002 trust. On July 21, 2010, the California Supreme Court denied review and denied a request for publication of this court’s opinion (S183250).

ordered Roland to answer all questions regarding the executor's request for extraordinary compensation. Additionally, the court ordered Roland to pay \$6,187.50 in sanctions, which represented the cost of preparing the motion to compel. Roland and executor Simi have appealed, claiming the trial court "should have denied the motion in its entirety and hence the sanctions award should fail completely" We disagree and affirm.

II.

FACTS AND PROCEDURAL HISTORY

The record reflects that on August 14, 2009, executor Simi filed a "Combined First and Final Account and Report of Special Administrator and First Account and Report of Executor and Petition for Its Settlement" (the Accounting) prepared by Roland. Among other things, the Accounting prays for an order that "compensation to petitioner's attorney, Thomas V. Roland, for extraordinary services to the estate during this accounting period be allowed in the amount of \$94,500[.]" Schedule H of the Accounting contains 10 pages entitled "Itemization of Legal Services Rendered by Thomas V. Roland." On October 14, 2009, Roland filed a declaration supporting his request for extraordinary compensation.²

Peter Krusi, Karl Krusi, and Joan Gardner (estate beneficiaries) challenged the executor's request for extraordinary fees. They argued that the request failed to provide the basic information required in California Rules of Court, rule 7.702.³ Specifically, the estate beneficiaries claimed the fee request failed to show the nature and difficulty of the tasks performed, the results achieved, and the benefit conferred to the estate. Because the

² We note that the Accounting and the documents supporting the request for extraordinary fees do not appear in the record filed on appeal. Our description of these documents is taken from the parties' motions.

³ California Rules of Court, rule 7.702 requires a petition for extraordinary compensation to state facts which, in relevant part: "(1) Show the nature and difficulty of the tasks performed; (2) Show the results achieved; (3) Show the benefit of the services to the estate; (4) Specify the amount requested for each category of service performed; (5) State the hourly rate of each person who performed services and the hours spent by each of them; [and] (6) Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent. . . ."

executor had not provided adequate information, they believed Roland's deposition was necessary.

On March 15, 2010, Roland was served with a notice of deposition. On April 9, 2010, counsel for the estate beneficiaries commenced taking Roland's deposition. Roland was asked a series of questions regarding the legal services he rendered to the estate. He made a blanket refusal to answer any questions related to his extraordinary fee request. Illustrative of Roland's refusal to answer basic questions was his refusal to answer, "[W]hat is your hourly rate?"

Counsel for the estate beneficiaries suspended the deposition. Estate beneficiaries then filed a "Motion for Order Compelling Answers to Deposition Questions and Request for Sanctions" (the motion). In the motion, the estate beneficiaries moved the court for an order requiring Roland to answer all questions reasonably calculated to lead to the discovery of admissible evidence relating to Roland's request for extraordinary compensation, among other things. They claimed that "Roland's unreasonable blanket refusal to answer crucial questions of which he is the only witness and which is [*sic*] not privileged or work product is part of his continued strategy to make this case as expensive as possible for Beneficiaries." They also claimed that they had incurred \$6,187.50 in bringing the motion, which they requested be awarded as a sanction.

In opposing the motion, Roland acknowledged that when he was deposed, he refused to answer questions related to his extraordinary fee request. However, he claimed he was justified in doing so because the estate beneficiaries failed "to show the extreme good cause required by law as a predicate to taking the deposition of opposing counsel." He claimed, "[a]ll of the discoverable information concerning extraordinary fees is available to them without taking the attorney's deposition." Roland requested \$7,100 in sanctions for opposing the motion.

The motion was heard on April 26, 2010. The court issued an order on April 29, 2010, granting the estate beneficiaries' request that Roland be ordered "to answer all questions . . . regarding his request for extraordinary compensation." Later, on May 24, 2010, the court ordered Roland to pay \$6,187.50 into the trust account of the estate

beneficiaries' attorney "to be applied to Beneficiaries' future invoice for the cost of this Motion."

Roland and executor Simi (hereafter appellants) filed this appeal.⁴ The estate beneficiaries (hereafter respondents) have notified this court of their decision not to file a brief "based on a cost-benefit analysis" in not wanting to further drain the estate's resources.

III. DISCUSSION

Appellants contend that the trial court erred in compelling Roland to answer questions he justifiably refused to answer at his deposition regarding the executor's request for \$94,500 in compensation for the alleged extraordinary services he rendered to the estate. Discovery orders are reviewed under an abuse of discretion standard. (*National Steel Products Co. v. Superior Court* (1985) 164 Cal.App.3d 476, 492 ["The trial court has broad discretion in ruling on discovery, and will only be overturned for an abuse of discretion."].) The same standard applies to whether sanctions should be imposed for discovery misuse as well as their amount. (*Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1176 ["The propriety of a discovery sanction award is ordinarily reviewed using the abuse of discretion standard"].)

By way of background, extraordinary probate services are those warranting compensation in addition to the ordinary services that are compensable under Probate Code section 10810. (*Estate of Fulcher* (1965) 234 Cal.App.2d 710, 717 (*Fulcher*).) An award of attorney fees for extraordinary services is not a fee-shifting mechanism; the fees

⁴ The sanction order is independently appealable. " " "A necessary exception to the one final judgment rule is recognized where there is a final determination of some collateral matter distinct and severable from the general subject of the litigation. If, e.g., this determination requires the aggrieved party immediately to pay money or perform some other act, he is entitled to appeal even though litigation of the main issues continues. The determination is substantially the same as a final judgment in an independent proceeding." ' [Citations.]" (*Muller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 898.)

are paid from the estate for which the services were performed, not from a litigation foe. (See *Estate of Trynin* (1989) 49 Cal.3d 868, 876.) Probate Code section 10811 authorizes the court to award “compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable.” (See *Estate of Downing* (1982) 134 Cal.App.3d 256, 266-267; *Estate of Turino* (1970) 8 Cal.App.3d 642, 649 [stating that the probate court has wide discretion to award extraordinary fees that are “just and reasonable”].)

The burden of proof showing need for extraordinary services and their extent and value is on the attorney and the executor of a decedent’s estate, even when there is no objection. (*Fulcher, supra*, 234 Cal.App.2d at p. 718; *Estate of Gopcevic* (1964) 228 Cal.App.2d 280, 282; *Estate of Miller* (1968) 259 Cal.App.2d 536, 549-550.) The executor should make a full and complete disclosure of the extent and character of the extraordinary services from which the court may properly determine the just and reasonable amount to be allowed. (*Estate of Herbst* (1938) 26 Cal.App.2d 249, 251; *Fulcher, supra*, 234 Cal.App.2d at p. 717.)

Appellants’ claim for \$94,500 in attorney fees for extraordinary services allegedly rendered to the estate was directly put in issue in this case. After examining the supporting documents for the claimed fees, respondents had numerous, straightforward and legitimate questions. They sought to depose Roland to “answer[] questions about your rates, the nature of the tasks performed (legal or not), the difficulty of the tasks, abbreviations used in your time records, discrepancies in your time records, the manner in which you keep track of your time, [and] whether each entry is actually for extraordinary services.” The estate beneficiaries had a right to inquire about what Roland did to earn this fee and whether it was reasonable under the circumstances. (See, e.g., *Fulcher, supra*, 234 Cal.App.2d at p. 717 [counsel’s description of extraordinary services rendered to the estate “lend little toward informing of the extent of the extraordinary services performed, without the taking of evidence to substantiate with particularity the actual services, item by item, for which compensation is sought”].)

On appeal, appellants do not attempt to defend the adequacy of their documentation supporting the fee request. Nor do they claim that Roland's refusal to answer questions regarding his attorney fees was based on the ground of privilege or work product. The only legal basis now cited by Roland supporting his unilateral decision not to answer deposition questions about his fees is *Carehouse Convalescent Hospital v. Superior Court* (2006) 143 Cal.App.4th 1558 (*Carehouse*).

Carehouse stands for the proposition that the deposition of opposing counsel is disfavored for public policy reasons and permitted only in very limited circumstances. (143 Cal.App.4th at p. 1562.) In the words of *Carehouse*, "The adversarial system of justice presumes that the attorneys for each side oppose one another, not depose one another." (*Id.* at p. 1560.) Consequently, in California, "[t]he circumstances under which opposing counsel may be deposed are limited to those where (1) no other means exist to obtain the information than to depose opposing counsel, (2) the information sought is relevant and not privileged, and (3) the information is crucial to preparation of the case. [Citations.]" (*Spectra-Physics, Inc. v. Superior Court* (1988) 198 Cal.App.3d 1487, 1496; accord, *Carehouse, supra*, 143 Cal.App.4th at p. 1563.)

The trial court did not abuse its discretion in finding that this three-part test was met in this case, thereby allowing respondents to depose Roland on the extraordinary fee request submitted to the court. Roland is obviously the person with personal knowledge of the services rendered, the time expended, and the amounts requested for extraordinary compensation. On appeal, appellants claim that "[a]ll of the discoverable information concerning extraordinary fees was available . . . without taking the attorney's deposition." However, the trial court, which had the documents supporting the extraordinary fee request before it, obviously believed the respondents had a sufficient basis to challenge the trustworthiness and evidentiary sufficiency of the time summaries submitted by appellants. In compelling Roland to be deposed, the court could legitimately expect that the fruits of discovery would shed light on such critical issues as the nature of the services provided, Roland's billing practices, his time-keeping practices, any discrepancies in the court filings, and the benefit the legal services conferred on the

estate. Thus, the trial court acted within its discretion in allowing Roland to be deposed with respect to the executor's request for \$94,500 in extraordinary fees.

We next consider appellant's challenge to the \$6,187.50 awarded as a sanction. This amount represented the attorney fees incurred by respondents in connection with their motion to compel. "The court's discretion to impose discovery sanctions is broad, subject to reversal only for manifest abuse exceeding the bounds of reason. [Citations.]" (*American Home Assurance Co. v. Société Commerciale Toutélectric* (2002) 104 Cal.App.4th 406, 435.) We believe the court acted within its discretion in finding that a monetary sanction was warranted in this case. Undoubtedly, Roland's unjustified refusal to answer any questions propounded at his deposition about the request for extraordinary fees has unduly impeded discovery and has prevented the timely and effective disposition of decedent's estate.

IV. DISPOSITION

The challenged orders are affirmed.

RUVOLO, P. J.

We concur:

SEPULVEDA, J.

RIVERA, J.