NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 18, 2023*
Decided July 19, 2023

Before

JOEL M. FLAUM, *Circuit Judge*

KENNETH F. RIPPLE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 22-1100

DETLEF SOMMERFIELD,
Plaintiff-Appellant,

v.

CHRISTOPHER KNASIAK,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:08-CV-03025

Joan B. Gottschall,
Judge.

O R D E R

After suffering from severe anti-semitic harassment at his workplace, plaintiff Detlef Sommerfield won a $540,000 jury verdict in his discrimination suit against

* This appeal has been submitted to the panel that decided *Sommerfield v. Knasiak*, No. 18-2045 (7th Cir. July 23, 2020), pursuant to Seventh Circuit Internal Operating Procedure 6(b). We have agreed to decide the case without oral argument, because the briefs and record adequately present the facts and legal arguments and oral argument would not significantly aid the court. Fed. R. App. P. 34(a)(2)(C).

defendant Lawrence Knasiak. See *Sommerfield v. Knasiak*, 967 F.3d 617 (7th Cir. 2020). The present appeal concerns the award of fees associated with that case to Sommerfield's attorney, Joseph Longo. After careful consideration, the district court awarded Longo $522,100.76 in fees and costs pursuant to 42 U.S.C § 1988 and 42 U.S.C. § 2000e-5(k). Longo is pursuing this appeal because he believes that he is entitled to more. Finding no legal error or abuse of discretion in the district court's thorough analysis, we affirm.

Longo first complains that the present appellee, Christopher Knasiak, who is the son of the original defendant, Lawrence Knasiak, was inappropriately substituted as a party after his father's death. Longo contends that Christopher's substitution is "wrongful" because he has not been appointed the representative of his father's estate by an Illinois probate court. While this appeal was pending, Longo filed a petition in the Probate Division of the Circuit Court of Cook County to open an estate for Knasiak. Longo nominated Mary Romano to act as the administrator of the estate. On May 16, 2023, the probate court entered an order appointing Romano as "Supervised Administrator to Collect" for Knasiak's estate and specified that her letters of office were to expire on July 14, 2023. Following the probate court's order, Longo filed a motion in this court to substitute Romano, in her capacity as the "supervised administrator" of the estate, for Christopher. Christopher opposes the motion, arguing that he was properly substituted for his father and that Romano is not authorized to act on behalf of his father's estate for purposes of this appeal.

Federal Rule of Appellate Procedure 43(a) governs what should happen when a party dies after a district court has entered its judgment. That rule does not demand formal appointment of a successor. Rule 43(a)(3) instructs that when, as in this case, "a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed," the parties must comply with Rule 43(a)(1). That rule in turn states that if the decedent has no "personal representative," "the court of appeals may then direct appropriate proceedings." We have interpreted this to mean that "we are free to exercise our discretion in substituting a new [party]" unless and until another party is designated as the representative of the decedent's estate in accordance with state law. *Bennett v. Tucker*, 827 F.2d 63, 68 (7th Cir. 1987); accord *Anderson v. Romero*, 42 F.3d 1121, 1124–25 (7th Cir. 1994).

Under Illinois law, the role of "supervised administrator-to-collect" is a limited one that lacks the full powers of an "administrator." An administrator-to-collect "is merely a temporary officer appointed by the court to collect and preserve the estate of

a decedent pending the determination of its proper legal representative, and as such, his or her duties are strictly limited to those prescribed by statute." 1 Horner Probate Prac. & Estates § 4:10, Westlaw (database updated June 2023); accord 18 Ill. Prac., Estate Planning & Admin. § 93:8, Westlaw (database updated October 2022). The statutory "powers and duties" of an administrator-to-collect include only the "power to sue for and collect the personal estate and debts due the decedent or missing person and by leave of court to exercise the powers vested by law in an administrator." 755 ILCS 5/10-4.

The present suit is not an action to "sue for or collect the personal estate and debts due the decedent." Instead, it is a suit *against* the decedent. Therefore, the plain text of the statute requires the administrator-to-collect to obtain "leave of court" to act on the estate's behalf in such an action. As best we can tell, Romano has neither sought nor received permission from the probate court to do so here. In addition, the court order appointing Romano indicates that her letters of office expired on July 14, 2023. Because Romano currently is not authorized under Illinois law to act as Knasiak's "personal representative" in this action, we decline to recognize her as an appropriate substitute party under Rule 43(a).[1]

Because no personal representative has been named, "we are free to exercise our discretion in substituting a new [party]." *Bennett*, 827 F.2d at 68. Apart from arguing that Rule 43(a) precludes his substitution, Longo provides no reason why Christopher is an inappropriate representative in this action. We therefore reject his challenge to the substitution.

Longo next argues that the district court applied the wrong legal framework for the calculation of fees and abused its discretion in determining his fee award. "[S]o long as a district court applies the correct legal standards, we 'give the district court the benefit of the doubt' in exercising its discretion to award fees and determine the size of any award." *Koch v. Jerry W. Bailey Trucking, Inc.*, 51 F.4th 748, 754 (7th Cir. 2022) (quoting *Nichols v. Ill. Dep't of Transp.*, 4 F.4th 437, 443 (7th Cir. 2021)).

The procedure for calculating a fee award is "well established and straightforward." *Nichols*, 4 F.4th at 441. First, the district court determines "the 'lodestar,' which

[1] We note that the defendant has raised some serious questions as to the appropriateness of Longo's actions before the probate court, including the fact that he allegedly claimed to be the "attorney for the estate." While troubling, the questions whether Longo has engaged in misconduct and whether Romano is qualified to serve as the supervised administrator-to-collect are issues for the probate court.

is the attorney's reasonable hourly rate multiplied by the hours the attorney reasonably expended on the litigation." *Id*. Second, the court "may determine whether an adjustment is warranted under the case-specific circumstances." *Id.* That is precisely what the district court did here. It first determined, based on the record evidence, that the reasonable hourly rate for Longo's services was $360 (rather than Longo's suggested $550). It then painstakingly reviewed Longo's submitted billing records and Knasiak's voluminous objections to estimate the number of hours Longo reasonably expended on the case. Finally, it determined that a 25% downward adjustment was warranted because of "time [Longo] unreasonably spent pursuing unsuccessful claims."

Longo's principal argument is that the district court erred in relying on previous district-court decisions that assessed Longo's reasonable hourly rate in other similar litigation to determine his fee award for this case. See *Nichols v. Ill. Dep't of Transp.*, 2019 WL 157915 (N.D. Ill. Jan. 10, 2019) (setting Longo's hourly rate at $360 in an employment discrimination suit); *Smith v. Rosebud Farm, Inc.*, 2018 WL 4030591 (N.D. Ill. Aug. 23, 2018) (setting Longo's hourly rate at $360 in a workplace religious discrimination case). But as we explained in a previous case involving Longo, it is neither legal error nor an abuse of discretion for a district court to consider an attorney's fee awards in other cases. See *Nichols*, 4 F.4th at 442. Indeed, "recent fee awards from an attorney's other cases provide a useful comparison when establishing that attorney's reasonable rate." *Id.* That is especially true here, where the district court emphasized that Longo produced "nearly identical" evidence to support his fee petitions in each case.

We have reviewed Longo's remaining arguments and none has merit. We AFFIRM the district court's award of fees and costs.