

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ERICA JILL NEGEDLY, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF GREGORY DEAN SMITH,

Appellant,

v.

Case No. 5D18-1905

MARY E. SMITH,

Appellee.

_____ /

Opinion filed November 22, 2019

Appeal from the Circuit Court
for Volusia County,
Margaret W. Hudson, Judge.

Robert H. Bailey, Jr., of Bailey & Trumbo,
P.A., New Smyrna Beach, for Appellant.

David L. Ferguson, of Woodard & Ferguson,
P.A., Ormond Beach, for Appellee.

PER CURIAM.

In this probate case, Appellant challenges a final order awarding funeral and medical expenses to Appellee. We agree with Appellant that the amount of medical expenses awarded to Appellee was not supported by competent, substantial evidence. Accordingly, we reverse as to this issue but affirm in all other respects.

Appellee entered into a payor agreement with a rehabilitation center for the care of Gregory Smith. Following Mr. Smith's death, the rehabilitation center sought to enforce the agreement by suing Appellee for unpaid medical expenses. Ultimately, the rehabilitation center settled the claim with Appellee for \$15,000. As part of the mediated settlement agreement, the rehabilitation center assigned its claim to Appellee. Subsequently, Appellee filed a claim with the estate of Mr. Smith, seeking reimbursement for the full amount of medical expenses incurred by the rehabilitation center.

Following an evidentiary hearing, the trial court found that Appellee was entitled, under the assignment, to recover the total amount of the rehabilitation center's claim for Mr. Smith's medical care. The trial court then entered an order reflecting the total amount of medical expenses as detailed in the rehabilitation center's billing history attached to Appellee's complaint. This appeal timely followed.

This Court will not disturb a trial court's findings in a probate matter so long as they are supported by competent, substantial evidence. See Lurio v. Lurio By and Through Rosenthal, 443 So. 2d 197, 198 (Fla. 3d DCA 1984) (citing In re Yost's Estate, 117 So. 2d 753, 754 (Fla. 3d DCA 1960)). Appellant argues that competent, substantial evidence does not support the amount of medical expenses awarded to Appellee. We agree.

Here, although the trial court properly analyzed Appellee's claims pursuant to section 733.707(1)(d) and (h), Florida Statutes (2018), it erroneously relied on the rehabilitation center's billing history, which had not been admitted into evidence. The only evidence as to the amount of medical expenses consisted of Appellee's testimony that she resolved the rehabilitation center's claim for \$15,000 and the properly admitted

mediated settlement agreement. However, this evidence only supported Appellee's payment of \$15,000 in medical expenses.

Accordingly, we reverse and remand for the trial court to enter an amended order reducing the award of medical expenses to \$15,000.¹

AFFIRMED in part; REVERSED in part; and REMANDED for further proceedings.
WALLIS, HARRIS and GROSSHANS, JJ., concur.

¹ The trial court also relied on the rehabilitation center's billing history to establish the dates the medical expenses were incurred. As that evidence was not properly admitted, Appellee's claim for \$15,000 should be categorized as a Class 8 claim pursuant to section 733.707(1)(d) and (h).