

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2008 CA 1782

**DEANO & DEANO, INC.
AND ROBERT M. GREEN**

VERSUS

**SUCCESSION OF NOEL RICKS
AND ALETA RICKS**



Judgment Rendered: **APR 14 2010**

**Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Case No. 2003-10578**

The Honorable Richard A. Schwartz, Judge Presiding

**Malcolm B. Robinson, Jr.
Metairie, Louisiana**

**Counsel for Plaintiffs/Appellees
Deano & Deano, Inc. and
Robert M. Green**

**William M. Magee
Patrice W. Oppenheim
Covington, Louisiana**

**Counsel for Defendant/Appellant
Succession of Noel Ricks**

BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Guidry, JJ. concurs.

GAIDRY, J.

In this suit on open account, the Succession of Noel Ricks appeals a judgment ordering it to pay for legal services purportedly provided to it by plaintiffs. We affirm.

FACTS AND PROCEDURAL HISTORY

On February 4, 2003, the law firm of Deano & Deano and Robert M. Green (collectively "plaintiffs") filed a suit on an open account against the Succession of Noel Ricks ("the Succession") through its testamentary executrix, Aleta Ricks, and also against Aleta Ricks individually. The petition alleged that the Succession owed plaintiffs \$32,761.94, plus interest and attorney's fees, for legal services rendered by plaintiffs for the benefit of the estate. The petition alternatively averred that Aleta Ricks was personally liable to plaintiffs for any portion of the debt that was not a succession debt.

Aleta Ricks filed a reconventional demand on September 25, 2003, in which she stated that as executrix of the Succession, she hired the plaintiffs to perform legal work for the Succession.

On March 2, 2005, the plaintiffs filed a Petition for Declaratory Judgment seeking to have the court declare which of the professional legal services rendered by the plaintiffs were rendered for the benefit of the Succession and the testamentary executrix and which services were rendered for the benefit of Aleta Ricks personally.

On December 21, 2006, plaintiffs filed a motion to determine the status of the succession debt, seeking to have the court "determine what percentage of the services performed by [plaintiffs] are debts of the Succession of Noel Ricks incurred by Aleta Ricks in her capacity as Executrix." A hearing was held on this motion on November 12, 2007, after which the court rendered judgment on April 23, 2008 in favor of plaintiffs

and against the Succession, decreeing that the Succession was indebted to the plaintiffs for all of the professional legal services rendered by plaintiffs, with the exception of the charges associated with the filing of the motion to withdraw.

The Succession appealed, assigning the following trial court errors:

The Trial Court erred in failing to recognize that plaintiffs failed to prove a written contract existed with a duly authorized representative of the Succession.

The Trial Court erred in failing to recognize that plaintiffs failed to prove the existence of an oral contract in excess of \$500.00 existed with a duly authorized representative of the Succession.

The Trial Court erred in holding that Aleta Ricks was authorized to incur debts on behalf of the Succession during the entirety of the time for which plaintiff sought recovery of fees and expenses.

The Trial Court erred in holding that the actions of the plaintiffs benefited the Succession without evidence of same.

In an unpublished decision rendered July 31, 2009, we held that the plaintiffs carried their burden of proving an oral contract in excess of five hundred dollars by the testimony of Robert Green and the statement in Aleta Rick's reconventional demand that she hired the plaintiffs to perform legal work for the benefit of the Succession. However, because the judgment appealed from was not precise, definite, and certain, the matter was remanded to the trial court so that a proper judgment could be rendered. *See Deano & Deano, Inc. v. Succession of Ricks*, 2008-1782 (La.App. 1 Cir. 7/31/09); 2009 WL 2351717. An amended judgment was rendered on September 10, 2009 in favor of the plaintiffs and against the Succession in the amount of \$32,586.94 plus legal interest. We now address the remaining assignments of error: i.e., whether the court erred in holding that Aleta Ricks

was authorized to incur debts on behalf of the Succession during the entirety of the time for which the plaintiffs sought recovery of fees and expenses, and whether the court erred in holding that the actions of the plaintiffs benefited the Succession.

DISCUSSION

According to the testimony of Mr. Green at the hearing on this matter, Aleta Ricks was initially appointed executrix in accordance with the terms of the will in 2001. When she was removed as executrix in 2002 by default judgment, she hired Mr. Green to have her reinstated as testamentary executrix, which he accomplished through his representation.¹

Where legal representation is primarily for the personal benefit of the executor and not the estate, attorney's fees may not be paid from the property of the succession. Whether or not an attorney's work was for the benefit of the succession is a question of fact that cannot be set aside absent manifest error. *In re Succession of Brazan*, 07-566 p.8 (La.App. 5 Cir. 12/27/07); 975 So.2d 53, 57. The trial court obviously determined that the legal services required to have the testamentary executrix restored to the position were performed for the benefit of the Succession. After a thorough review of the record, we cannot say that the trial court's conclusion was manifestly erroneous.

CONCLUSION

The amended judgment in favor of Deano and Deano, Inc. and Robert M. Green and against the Succession of Noel Ricks is affirmed. This memorandum opinion is issued in compliance with La. URCA Rule 2-

¹ Mr. Green testified that after he succeeded in having Aleta Ricks reinstated as testamentary executrix, he withdrew from the representation due to nonpayment of his fees. Some time after his withdrawal, Aleta Ricks was again removed as testamentary executrix.

16.1.B. Costs of this appeal are to be borne by the Succession of Noel Ricks.

AFFIRMED.