STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of MARGARET LANGLAND,
Deceased.

CAROL MORRIS, Former Personal Representative and Trustee of the Estate of MARGARET LANGLAND, Deceased,

Petitioner-Appellee,

v

STEVEN G. COHEN, Successor Personal Representative and Trustee of the Estate of MARGARET LANGLAND, Deceased, MARION BROWN, JOHN MARTIN, THERESA HUGHES and ELIZABETH MAZELL,

Respondents-Appellants,

and

MICHAEL MARTIN,

Respondent-Appellee,

and

MARIO PARLETTA and THOMAS NORRIS,

Respondents.

UNPUBLISHED
April 17, 2008

No. 276543
Wayne Probate Court
LC No. 2002-653718-TV

Before: Murray, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Respondents-Appellants (hereinafter identified as "respondents")[1] appeal as of right the Judgment against the estate, in the amount of $27,259.05, representing attorney fees incurred by Carol A. Morris in her capacity as the former Personal Representative and Trustee of the Estate of Margaret Langland, Deceased, in this probate action. Respondents argue that the award of appellate attorney fees to Morris should be reversed as being unauthorized by law, and that this Court should assign this case to another probate judge on remand. We affirm.[2]

Fiduciaries, under MCL 700.3719(a) and MCL 700.7503(2), and attorneys, pursuant to MCR 5.313(A), MCL 700.3720, MCL 700.3715(v) and MCL 700.7401(2)(v), are entitled to recover reasonable compensation for legal and administrative services necessarily performed on behalf of the estate or a personal representative. A probate court is vested with considerable discretion in ascertaining the amount of reasonable compensation. *In re Kreuger Estate*, 176 Mich App 241, 248; 438 NW2d 898 (1989). However, there are recognized parameters to the probate court's discretion in determining the amount of compensation; specifically, the probate court must review a fee petition in light of the factors set forth in MRPC 1.5(a). MCR 5.313(A).[3] The probate court is required to assess the reasonableness of the attorney fees sought with a concurrent focus on preservation of the assets of the estate for the beneficiaries. *In re Sloan Estate*, 212 Mich App 357, 364; 538 NW2d 47 (1995). Where the legal services performed on behalf of the estate benefit the estate by increasing or preserving the estate's assets, compensation for such legal expenses is recoverable. *Id.*

We conclude that the law of the case doctrine supported the probate court's decision that Morris was entitled to her appellate attorney fees.[4] In the prior appeal this Court affirmed the probate court's finding that a settlement agreement required the estate to pay all of Morris' administrative costs, including attorney fees:

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[1] Respondent-Appellee Michael Martin, although represented by counsel, has not filed a brief in this matter.

[2] For an overview of the facts, see *In re Langland Estate*, unpublished opinion per curiam of the Court of Appeals, issued June 27, 2006 (Docket Nos. 255287, 256134 and 258476).

[3] The factors set forth by MRPC 1.5(a) include: "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent."

[4] The judgment indicates that the probate court ruled in favor of Morris because of *inter alia*, "the prior rulings of this Court, which represent law of the case." A trial court's prior opinion does not constitute law of this case, as a trial court is free to review its prior decisions. *Prentis Family Foundation v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 53; 698 NW2d 900 (2005).

> Review of the documentation reveals that the attorney for the heirs,[5] Cohen, sent a letter to opposing counsel delineating the terms of the settlement between the parties. This letter stated that: 'Administrative costs relating to this matter, including those relating to the successor trustee, Ms. Morris, are to be paid by Petitioners.' When a dispute arose regarding the extent of the payment of costs and attorney fees, the probate court concluded that administrative costs involving an estate matter include attorney fees and costs. Therefore, the probate court entered a written order providing that '[a]ll administrative costs shall be paid by the estate.'
>
> We cannot conclude that the probate court erred in its interpretation of the contract based on the terms expressed in the counter offer. The documents comprising the settlement agreement, while specifically including the administrative costs incurred by Morris, neither limit nor restrict payment to only those administrative costs. The use of the term 'all' indicates an intent that any administrative costs incurred 'relating to this matter' are to be paid by 'petitioners [heirs].' [*In re Langland Estate, supra*, slip op at 2 (citation omitted and footnote added).]

The probate court observed that the law of the case doctrine compelled its decision that respondents' contractual agreement to pay "all administrative costs" relating to this matter encompassed Morris' appellate attorney fees, which were necessary for her to bring this matter to a conclusion.

An appellate court's ruling on a particular question is binding on lower courts and subsequent appellate panels in later appeals of the case under the law of the case doctrine. *Grievance Administrator v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000). The law of the case doctrine governs issues actually decided, either explicitly or implicitly, in the previous appeal. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 209; 568 NW2d 378 (1997). Moreover, the law of the case doctrine applies to "those questions necessary to the court's prior determination." *Kalamazoo v Dept of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998). The doctrine aids in maintaining consistency, and operates to avoid reconsideration of issues decided by an appellate court in the course of a lawsuit. *Kalamazoo, supra* at 135.

As noted, in the prior appeal this Court recognized that the settlement agreement between Mario Parletta, Thomas Norris and respondents specifically provided that respondents would pay all administrative costs "relating to this matter" that were incurred by Morris, which included attorney fees. *In re Langland Estate, supra*, slip op at 5. Accordingly, the trial court properly applied the clear language of this Court's prior ruling to conclude that Morris was entitled to recover all the administrative costs, including her appellate attorney fees, because such costs

[5] "Respondents" in this appeal were referred to as the "heirs" in the prior appeal. *In re Langland, supra*, slip op at p 2 n 1. Moreover, respondents in this appeal were petitioners in the prior appeal.

were related "to this matter." In simple terms, all the trial court did was award the attorney fees incurred by Morris for the appellate work performed on her behalf in the prior appeal. Given that our Court had already affirmed the award of attorney fees for the trial work done on her behalf, and given the controlling language of the agreement that required all of her costs be paid, the trial court had little choice but to award these costs under the agreement. Because the law of the case doctrine applies to issues implicitly decided as well as issues actually decided in the previous appeal, and applies as well to "those questions necessary to the court's prior determination," the probate court correctly relied upon this Court's prior holding in granting Morris's request for appellate attorney fees. *Webb, supra* at 209; *Kalamazoo, supra* at 135.[6]

Respondents argue that the probate court's award of additional attorney fees was unwarranted because Morris was seeking "fees for fees," the recovery of which is precluded under this Court's holding in *In re Sloan Estate, supra* at 360-364.[7] However, we previously held that the fees awarded by the trial court for costs associated in defending allegations in the trial court were not "fees for fees," and so by the same rationale the appellate fees for this same defense are also not "fees for fees."

Respondents' argument that Morris lacked standing to enforce their settlement agreement with Parletta and Norris is without merit. Pursuant to statute, an intended third-party beneficiary may enforce a contract in the same manner as if the promise had been made to the third-party beneficiary directly. MCL 600.1405. Both this Court and the probate court observed that the settlement agreement specifically referred to Morris, and provided that all of the administrative costs she incurred, including attorney fees, would be paid by respondents. *In re Langland Estate, supra*, slip op at 5.

The settlement agreement sufficiently described both Morris and the benefits she was to derive from the contract to entitle her to enforce the settlement agreement as an intended third-party beneficiary. *Koenig v City of South Haven*, 460 Mich 667, 680; 597 NW2d 99 (1999). As such, respondents' argument that Morris was not an intended third-party beneficiary fails. In any event, because respondents advanced their conclusory argument with respect to Morris's third-party beneficiary status without explaining how MCL 600.1405 applies under the circumstances, respondents have abandoned the argument for failure to adequately brief the issue. *Moses Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006).[8]

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[6] With respect to respondents' contention that the probate court lacked authority to award Morris her appellate attorney fees because this Court simply affirmed the probate court's earlier rulings without remanding for further proceedings, jurisdiction to enforce the settlement agreement was vested once again in the probate court following the issuance of this Court's opinion in the prior appeal and the denial of respondents' application for leave to appeal by our Supreme Court. MCR 7.215(F)(1)(a).

[7] As this Court recognized in the prior appeal, under *In re Sloan Estate*, "fees for fees" are costs "'inherent in the normal course of doing business as an attorney, and the estate may not be diminished to pay those fees and costs.'" *In re Langland Estate, supra*, slip op at 5, quoting *In re Sloan Estate, supra* at 363.

[8] Because we do not remand this case for further proceedings, respondents' argument for another

(continued…)

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

(…continued)

judge to hear this case is moot.