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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2010-2011

1090414

Kimberly R. Kiker, administratrix of the estate of
Christopher A. Kiker, deceased

v.

Probate Court of Mobile County

Appeal from Mobile Probate Court
(No. 06-2415)

On Return to Remand

SMITH, Justice.

Kimberly R. Kiker, administratrix of the estate of Christopher A. Kiker, deceased, appealed from an order of the Mobile Probate Court insofar as the order awarded attorney

1090414

fees and expenses in the amount of \$73,678.80 to Michael S. McGlothren, P.C. ("McGlothren"), and attorney fees in the amount of \$19,365.80 to the Robson Law Firm ("Robson").¹ On September 17, 2010, we remanded the case with directions, stating:

"In this case, the probate court's December 22, 2009, order awarding attorney fees and expenses in the amount of \$73,678.80 to Michael S. McGlothren, P.C., and attorney fees in the amount of \$19,365.80 to the Robson Law Firm provides no indication as to whether the probate court considered the criteria set forth for determining the reasonableness of an attorney fee as detailed in Pharmacia [Corp. v. McGowan], 915 So. 2d [549,] 552-53 [(Ala. 2004)] (quoting Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala. 1988)). Additionally, the probate court's order neither indicates how the probate court calculated the attorney fees nor provides a basis for ascertaining the exact amount of McGlothren's award specifically attributable to attorney fees. Although the probate court stated in its original order of November 24, 2009, that its decision was based on the 'evidence and argument presented,' the probate court provides no detailed application of the facts regarding the attorney fees to the factors detailed in Pharmacia.

"The probate court may, in its discretion, reduce an agreed-upon attorney fee if it concludes that the attorney fee is unreasonable. See Ex parte Peck, 572 So. 2d 427, 429 (Ala. 1990). However,

¹McGlothren represented Kiker in a wrongful-death action against Christopher's physician; the parties settled the wrongful-death action for \$150,000. Robson, who had represented Kiker in probating Christopher's estate, had referred Kiker's wrongful-death action to McGlothren.

1090414

without a sufficient explanation by the probate court regarding its consideration of the 12 factors outlined in Pharmacia and how it calculated the attorney fees, we cannot ascertain whether the probate court exceeded its discretion in awarding those fees.

". . . .

"Based on the foregoing, we remand this cause to the probate court for the entry of an order explaining its decision and articulating its reasons for that decision. Due return shall be made to this Court within 42 days of the date of this opinion."

Kiker v. Probate Court of Mobile County, [Ms. 1090414, September 17, 2010] ___ So. 3d ____ (Ala. 2010) (footnote omitted; emphasis added).

The probate court has made timely return of the case; however, on remand the probate court exceeded the scope of remand. Specifically, the probate court, on remand, was only to explain its award of attorney fees and expenses. See Kiker, supra. In addition to explaining its award of attorney fees and expenses, however, the probate court modified its prior order both by reducing Robson's attorney-fee award from \$19,365.80 to \$18,793.53 and by increasing McGlothren's total award of attorney fees and expenses from \$73,678.80 to \$74,250.35. The probate court was not free to modify its prior order on remand, and, in so doing, the probate court

1090414

exceeded its limited jurisdiction on remand. This Court did not reverse the probate court's prior order on original submission; this Court remanded the case for the probate court to explain how it reached the conclusions stated in its order. See Ex parte Edwards, 727 So. 2d 792, 794 (Ala. 1998) ("It is well settled that, after remand, the trial court should comply strictly with the mandate of the appellate court by entering and implementing the appropriate judgment." (quoting Auerbach v. Parker, 558 So. 2d 900, 902 (Ala. 1989))); Ex parte Alabama Power Co., 431 So. 2d 151, 155 (Ala. 1983) ("It is the duty of the trial court, on remand, to comply strictly with the mandate of the appellate court according to its true intent and meaning, as determined by the directions given by the reviewing court. No judgment other than that directed or permitted by the reviewing court may be entered" (quoting 5 Am. Jur. 2d Appeal and Error § 991 (1962))); Walker v. Humana Med. Corp., 423 So. 2d 891, 892 (Ala. Civ. App. 1982) ("After an appellate court, in appropriate cases, has directed entry of a judgment, the only function of the trial court is to enter and implement the appropriate judgment." (citing,

1090414

among other authorities, Hames v. Irwin, 256 Ala. 319, 54 So. 2d 293 (1951)).

We have no alternative but to remand this case for a second time, directing the probate court to vacate its order on first remand and to comply with this Court's mandate in Kiker v. Probate Court of Mobile County, supra. Specifically, we direct the probate court to explain its decision awarding attorney fees and expenses in the amount of \$73,678.80 to McGlothren and attorney fees in the amount of \$19,365.80 to Robson and to articulate its reasons for that decision. Due return shall be made to this Court within 42 days of the date of this opinion.

REMANDED WITH DIRECTIONS.

Cobb, C.J., and Woodall, Parker, and Shaw, JJ., concur.