IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PAUL MASHNI, *Appellant/Cross-Appellee*,

v.

SUNNYSLOPE HOUSING LIMITED PARTNERSHIP, *Appellee/Cross-Appellant*.

No. 1 CA-CV 18-0513
FILED 2-6-2020

Appeal from the Superior Court in Maricopa County
No. CV2010-028618
The Honorable Connie Contes, Judge

AFFIRMED; REMANDED

COUNSEL

Quarles & Brady LLP, Phoenix
By John Maston O'Neal, Kristen M. Arredondo
Counsel for Appellant/Cross-Appellee

Lewis Roca Rothgerber Christie LLP, Phoenix
By Susan M. Freeman, Justin James Henderson
Counsel for Appellee/Cross-Appellant

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Kent E. Cattani joined.

W E I N Z W E I G, Judge:

¶1 Both parties appeal the superior court's ruling on Paul Mashni's four applications for attorneys' fees. Mashni appeals the court's denial of his Original and First Supplemental Applications for Attorneys' Fees, while Sunnyslope Housing Limited Partnership ("Sunnyslope") cross-appeals the grant of Mashni's Second and Third Supplemental Applications for Attorneys' Fees. Because we find no reversible error, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Sunnyslope developed a Phoenix apartment complex between 2005 and 2007, which it intended to qualify for low-income housing tax credits. Sunnyslope financed construction with three loans—a senior loan and two junior loans. The senior loan was guaranteed by the federal government and secured by a deed of trust on the apartment complex. Sunnyslope defaulted on the senior loan after construction was finished in 2009. The federal government fulfilled its loan guarantee obligation and sold the senior loan to First Southern National Bank ("FSNB") in 2010. FSNB then sued Sunnyslope for breach of contract and asked the superior court to appoint a receiver to protect FSNB's interest in the complex.

¶3 The superior court appointed Paul Mashni as receiver in October 2010 and required him to post a $500 receiver's bond. The appointment order was "broadly written," *Mashni v. Foster*, 234 Ariz. 522, 527, ¶ 17 (App. 2014) ("*Mashni I*"), and "gave [Mashni] broad powers," *First S. Nat'l Bank v. Sunnyslope*, 1 CA-CV 15-0562, 2016 WL 7209660, at *1, ¶ 3 (Ariz. App. 2016) ("*Mashni II*"). Sunnyslope did not appear at the hearing or contest the appointment of a receiver, and never sought to amend the appointment order or change the bond amount.

¶4 Among other things, the appointment order authorized Mashni to "market and rent [the apartments], as [he] believes is in the best

interests of the Receivership Estate," "hire, employ, and retain attorneys [he] deems necessary to assist it in the discharge of its duties," "pay and discharge out of the funds coming into its hands all the expenses of the receivership," "prepare periodic statements reflecting the Receiver's fees," and "pay [the fees] from receivership estate funds, if any" upon court approval. It further instructed Mashni to submit claims for fees and administrative expenses "to the Court for approval and confirmation."

¶5 After his appointment, Mashni decided to lease the apartments at market value, which Sunnyslope condemned as jeopardizing the project's low-income tax credit status. Apart from raising rent, Mashni settled an insurance claim for hail damage, paid past-due property taxes and rehabilitated the apartment buildings.

¶6 Mashni was exploring a potential sale of the complex through foreclosure in January 2011 when Sunnyslope filed for Chapter 11 bankruptcy in the United States Bankruptcy Court. The bankruptcy court entered an automatic stay under 11 U.S.C. § 362. The bankruptcy court later directed Mashni to operate the complex in compliance with the low-income tax credit program and ordered that possession of the complex be returned to Sunnyslope's designee in June 2011. About six months later, the bankruptcy court lifted the stay, enabling Mashni to "take any and all steps in the Superior Court (or otherwise) to wind up the affairs of [and] terminate the receivership," exonerate the receiver's bond and secure a "final allowance and approval of the Receiver's final accounting." The bankruptcy court also approved Sunnyslope's reorganization plan.

¶7 The parties returned to the superior court in January 2012, where Mashni moved for "an Order approving the Receiver's Final Report, exonerating the Receiver's bond, discharging the Receiver from all duties, obligations, and liability under the Receivership Order," authorizing payment of about $90,000 in attorneys' fees and $14,600 in receiver's fees, and "confirming that the Receiver acted at all times during the Receivership in accordance with, and within the scope of the Receivership Order and all other orders of the Court." Sunnyslope objected, claiming that Mashni mismanaged the project and low-income tax credit status, and arguing the attorneys' fees request was "excessive and unreasonable."

¶8 Sunnyslope then filed a third-party complaint against Mashni, pressing the same claims of mismanagement and misconduct. Mashni argued he was immune from personal liability as a court-appointed receiver. The superior court dismissed the third-party complaint in February 2013 because Sunnyslope never secured "leave of Court" to sue

Mashni but found that Sunnyslope was entitled to an evidentiary hearing on Mashni's motion to exonerate the bond and allowed limited discovery.

¶9 During this period, Mashni moved the superior court to approve two applications for fees and costs. In March 2013, Mashni filed an original application for attorneys' fees and receiver compensation incurred between May 2011 and January 2013 ("First Application"), seeking $218,060.50 in attorneys' fees, $18,153.64 in costs and $18,200 in receiver fees. The superior court then held the evidentiary hearing and oral argument on the First Application in May 2013. A month later, Mashni filed a second application for fees and costs incurred between February 2013 and June 2013 ("Second Application"), seeking $115,516.50 in attorneys' fees, $2,404.86 in costs and $4,000 in receiver fees.

¶10 The superior court issued a comprehensive minute entry in August 2013 on Sunnyslope's third-party complaint and the First Application ("August 2013 Order"). The court granted leave for Sunnyslope to refile its "third[-]party complaint against the Receiver," denied the motion to exonerate, and refused "to release the Receiver." The court found Mashni had a fiduciary duty "to protect the rights of the all [sic] parties to the transaction, including [Sunnyslope]," and was not immune because "there is sufficient evidence in the record that [he] did not faithfully discharge his duties." Most significant here, however, the court denied the First Application "for approval and payment of professional compensation to Receiver and approval of payment of professional compensation and reimbursement of expenses to Quarles and Brady as Counsel to the Receiver through January 31, 2013."

¶11 Mashni then petitioned our court for special action relief on both fronts—arguing that (1) he was immune "from suit for alleged mismanagement of the receivership," *Mashni I*, 234 Ariz. at 526, ¶ 13, and (2) the superior court abused its discretion in denying the First Application. We agreed that Mashni was immune from suit "unless the appointing court specifically [found he] acted outside the scope of the appointment order." As a result, we "vacate[d] the superior court's ruling denying Mashni immunity from suit and remand[ed] this case for further proceedings consistent with this opinion." *Id.* at 527, ¶¶ 16, 18. We did not, however, address or reverse the court's denial of the First Application: "In the exercise of our discretion, we decline to address the remaining issues raised in Mashni's petition for special action." *Id.* at 528, ¶ 21.

¶12 On remand, Mashni renewed his January 2012 motion to approve his final report, discharge the receiver and exonerate his bond. In

April 2015, Mashni also filed his third application for fees and costs ("Third Application"), seeking $61,835 in attorneys' fees and $2,547.23 in costs—all incurred between July 2013 and March 2015. Sunnyslope objected on various grounds.

¶13 In July 2015, the superior court approved Mashni's final report and exonerated his bond ("July 2015 Order"). The court also examined Mashni's "Renewed Application" for fees and compensation under the First Application and Second Application, which the court described as "the Receiver's request for compensation ($22,000.00), and the Receiver's request for reimbursement of attorney's fees and costs ($418,000.00-plus) attributable to work that he authorized." Based on its review, the court found the requests were insufficient:

> Both requests are flawed: the compensation request is unsupported by any evidence, and the request for attorney's fees and costs is unsupported by persuasive evidence.

¶14 On the receiver's request for compensation, the court stressed that Mashni made "no showing that the amount requested is reasonable," and "'[n]o showing' is no exaggeration." The court underscored that Mashni provided ". . . no declaration stating, much less explaining, that the amount is reasonable, . . . no records that allow one to know how much time is reflected in the compensation request and for what, and . . . nothing of any sort establishing an appropriate rate or other measure for calculating a reasonable amount." The court also rebuffed Mashni's minimal evidence of reasonableness:

> [T]he entire record regarding the reasonableness of the Receiver's compensation request consists of two unsworn, conclusory assertions in a legal memorandum. At the risk of stating the obvious, the court is compelled to note the long-standing principle that unsupported, self-interested assertions made by hired advocates in legal memoranda are not treated as established facts.

¶15 On the receiver's request for attorneys' fees and expenses, the superior court determined the bankruptcy court would make any final decision "through the prism" of bankruptcy law, which "means that the Receiver's request fails unless it is shown that the work to be compensated 'preserved the (bankruptcy) estate for the benefit of its creditors.'" Even so, the court still evaluated the request and found it "beyond fair dispute that

the Receiver's submissions do not show how the bankruptcy estate was preserved" and "the contention that not less than $418,000.00 was indispensable to the preservation of the receivership estate is unconvincing." The superior court also recognized:

> [T]he application, on its face, is insufficient in not insignificant ways. For example, more than $67,000.00 in time and expense charges, amounting to more than 15 percent of the requested attorney's fees and costs, is described only as "research," "analysis," "consideration," and "review," along with "Westlaw and Lexis," making it impossible for the court to determine what, if any, benefit the bankruptcy estate (or even the receivership estate) experienced from that work. [It] also requests fees incurred for the preparation of the fee request, even though those fees are generally denied (and neither the Receiver's renewed motion nor reply identify contrary authority).

¶16 In the end, however, the superior court denied all three applications as moot because "[the superior] court is not the appropriate court to decide whether either request should be honored," leaving the bankruptcy court to decide the issue.

¶17 Mashni appealed the superior court's decision and we "reversed and remanded for further proceedings" because "the superior court was not only authorized but required to rule on Mashni's fee application." *Mashni II*, 1 CA-CV 15-0562, at *4-5, ¶¶ 16, 19. Our decision stressed the superior court's unparalleled knowledge and qualifications to consider and decide the reasonableness of Mashni's fee applications. *Id.*

¶18 On remand, Mashni filed his fourth and final fee application ("Fourth Application"), seeking $2,824 in attorneys' fees and $6 in costs related to the appeal, but withdrawing his request for receiver compensation. Sunnyslope opposed the fee application and restated its objections, including that Mashni did not incur the requested fees and expenses to benefit the receivership estate, but instead incurred them to prosecute his fee requests and defend himself against claims of misconduct. Sunnyslope also stressed the difference between a receiver's immunity and whether the receiver is entitled to any fees and costs he requests.

¶19 After yet more motion practice and oral argument, the superior court decided all four applications in May 2018— denying the First and Second Applications (for $180,175.50 in fees and $20,558.50 in costs)

and granting the Third and Fourth Applications (for $64,659 in fees and $2,553.23 in costs). Among other things, the court relied on the August 2013 Order and July 2015 Order, adding that "many time and cost entries are vague generalizations of 'research,' 'analysis,' 'consideration,' 'review,' and 'Westlaw and Lexis,'" and "[m]any block billings have redacted portions, preventing Sunnyslope from challenging the appropriateness of the amounts." The court also held that "fees claimed for preparing, and defending objections to, fee applications should be denied."

¶20 Mashni and Sunnyslope timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

¶21 Mashni argues the superior court erred in completely denying the First and Second Applications, while Sunnyslope argues the court erred in granting the Third and Fourth Applications.

¶22 We review the grant or denial of an award of attorneys' fees for an abuse of discretion, but our review of legal issues is de novo. *In re Indenture of Tr. Dated January 13, 1964*, 235 Ariz. 40, 51, ¶ 41 (App. 2014). We view the record in the light most favorable to sustaining the decision and will not disturb the court's decision if supported by any reasonable basis. *Rowland v. Great States Ins. Co.*, 199 Ariz. 577, 587 (App. 2001).

¶23 We also emphasize that "the superior court [is] uniquely qualified to determine the reasonableness of the fee claim, having appointed the receiver and having presided over proceedings involving the receiver," plus having "the opportunity to view the receiver's work." *Mashni II*, 1 CA-CV 15-0562, at *4, ¶ 16.

1. First and Second Applications

¶24 The record contains reasonable evidence and reflects a reasonable basis for the superior court's denial of Mashni's First and Second Applications. The court identified three "persuasive" sources in denying the applications, including "the objections by Sunnyslope to the applications for fees and costs, the trial court's denial in [the] August 2013 [Order] of the renewed fee application, and the rationale in the [July 2015 Order] regarding the lack of sufficient showing of reasonableness of certain fees and costs."

¶25 Mashni insists the superior court abused its discretion because the decision "rested entirely" on its earlier August 2013 Order,

which the Arizona Court of Appeals "reversed" and "deemed invalid" in *Mashni I.* But we did not reverse the August 2013 Order in that special action. Our opinion "vacate[d]" only the "ruling denying Mashni immunity from suit," and we "decline[d] to address the remaining issues raised in Mashni's petition for special action." 234 Ariz. at 528, ¶ 21. And this makes sense. After all, Mashni had an adequate remedy on direct appeal. *AEA Fed. Credit Union v. Yuma Funding, Inc.*, 237 Ariz. 105, 111-12, ¶ 22 (App. 2015) (declining special action jurisdiction where "adequate remedy by appeal exists"). Beyond that, Mashni continued to incur fees and costs, and his request for fees and costs continued to grow and evolve, making special action relief particularly unsuitable. The superior court thus did not abuse its discretion in considering the August 2013 Order.

¶26 Mashni's remaining argument flows from his unsuccessful first argument—namely, assuming it was "improper" for the superior court to consider the August 2013 Order, the record contains no other basis to deny the First and Second Applications in full. But even outside the August 2013 Order, the court had a reasonable basis in the record for its decision. For instance, the superior court found the requests "unconvincing" and "unpersuasive" in its earlier comprehensive assessment of both Applications—as detailed in the July 2015 Order. To be sure, that court ultimately punted for procedural reasons, but we reversed and directed the court to rule on Mashni's fee application. *Mashni II*, 1 CA-CV 15-0562, at *4-5, ¶¶ 16, 19. In doing so, we stressed the superior court's superior position to consider and decide "the reasonableness of the fee claim, having appointed the receiver and having presided over proceedings involving the receiver," and having "the opportunity to view the receiver's work." *Id.* at *4, ¶ 16. The superior court did not commit reversible error when it relied on its prior comprehensive evaluation.

¶27 Lastly, it was not reversible error for the court to subtract those fees or costs that it determined were not incurred to benefit the receivership estate. *Cf. Matter of Estes' Estate*, 134 Ariz. 70, 80 (App. 1982) ("An executor is entitled to reimbursement for attorneys' fees only for services rendered to benefit the estate, not if the services were rendered to protect the executor's personal interest."). We find no reversible error on the denial of the first two applications.

2. Third and Fourth Applications

¶28 Sunnyslope argues the court erroneously granted Mashni's Third and Fourth Applications because those fees and costs were incurred to defend claims of receiver misconduct and to pursue fees. Furthermore,

Sunnyslope argues the requests should have been denied because the time entries were block-billed, generic, vague and redacted.

¶29 The record contains ample evidence to support the court's award of fees under the Third and Fourth Applications. The Appointment Order is "broadly written," authorizing Mashni to hire attorneys and seek fees that he "deems necessary to assist in the discharge of [his] duties." *Mashni I*, 234 Ariz. at 527, ¶ 17; *Mashni II*, 1 CA-CV 15-0562, at *1, ¶ 3. The court heard evidence and argument from both sides on whether the requested fees were permissible under the appointment order, and it ultimately awarded some but not all fees. And the superior court "is in the best position" to define and clarify the scope of its appointment order. *Mashni I*, 234 Ariz. at 528, ¶ 20 (quoting *S.E.C. v. Lincoln Thrift Ass'n*, 557 F.2d 1274, 1280 (9th Cir. 1977)). We find no reversible error on this record.

¶30 As for Sunnyslope's general challenge to "vague" and inadequate time entries, the superior court had substantial discretion to award fees. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570-71 (1985). The record shows that Mashni's counsel submitted extensive billing records to support the fee requests. On this record, we cannot find the court abused its discretion.

CONCLUSION

¶31 We affirm the superior court's denial of Mashni's First and Second Applications and its grant of his Third and Fourth Application.

¶32 Mashni requests attorneys' fees and costs incurred on appeal under the Paragraph (C)(27) of the Appointing Order and Arizona Rule of Appellate Procedure 21. But "[t]hat paragraph [of the Appointment Order] describes how Mashni can obtain superior court approval for fees; it does not authorize a fee award on appeal." *Mashni II*, 1 CA-CV 15-0562, at *5, ¶ 18. We therefore decline to award fees without prejudice and remand for the superior court to consider Mashni's request. We also decline to award costs on appeal under ARCAP 21 because neither party was entirely successful.