

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE GUARDIANSHIP AND CONSERVATORSHIP OF
LINDA GENE QUINN

DAVID LANFOR,
Guardian/Conservator/Appellant,

v.

MELLISSA WELDON BRYDGES,
Appellee.

No. 2 CA-CV 2017-0060
Filed December 29, 2017

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. GC20160361
The Honorable Wayne Yehling, Judge

AFFIRMED

COUNSEL

David Lanfor, Tucson
In Propria Persona

Stephen J. Gonzalez, Tucson
Counsel for Appellee

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

ESPINOSA, Judge:

¶1 David Lanfor, individually and as guardian and conservator of the estate of Linda Quinn, appeals from the trial court's award of compensation to a court-appointed investigator, Mellisse Brydges, for her work in the case, along with costs and attorney fees Brydges expended defending her compensation request against Lanfor's challenge.¹ For the following reasons, we affirm.

Factual and Procedural Background

¶2 Our review of the issues presented on appeal requires a detailed recitation of the procedural history of this case.² In July 2016, Lanfor petitioned the Pima County Superior Court to appoint him Quinn's guardian and conservator on both a temporary and permanent basis. The trial court set a hearing for August 11, 2016, on Lanfor's petition and in the interim appointed Brydges as investigator in Quinn's case.³ The court also

¹Lanfor filed two notices of appeal, one on behalf of the estate and another stating he was appealing "personally and separately." Two case numbers were generated on appeal, No. 2 CA-CV 2017-0060 and No. 2 CA-CV 2017-0078, but because the briefs in this case address the trial court's judgment as to both the estate and Lanfor personally, we consider both issues in this appeal. Additionally, although the transcript of the hearing on Brydges's petition for compensation was filed in No. 2 CA-CV 2017-0078, we have made it a part of the record in the case before us.

²Because Lanfor's statement of facts does not include citations to the record as required by Rule 13(a)(4), Ariz. R. Civ. App. P., we have disregarded it and relied on Brydges's statement of facts as well as our own review of the record. See *Sholes v. Fernando*, 228 Ariz. 455, n.2 (App. 2011).

³Pursuant to A.R.S. § 14-5303(C), upon a petition for appointment of guardian, "[t]he alleged incapacitated person shall be interviewed by an investigator appointed by the court" who "also shall interview the person

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granted the portion of Lanfor's petition asking for his emergency appointment as temporary guardian and conservator.

¶3 In July 2016, less than two weeks after Brydges's appointment, Lanfor petitioned the trial court to remove her as investigator and appoint another. In his petition, he asserted that "Brydges was extremely rude and demanding" when he contacted her regarding her appointment and displayed "[a] pushy, bullish Gestapo type personality." He further complained that Brydges had trespassed by going to Quinn's home without notifying him and "asking for [Quinn's] consent to [take] her to the court," prompting Lanfor to contact the police.

¶4 A few days later, the trial court held a status conference to address concerns raised by Brydges and Quinn's court-appointed attorney after Lanfor called the police and accused them of attempted kidnapping when they visited Quinn. The court questioned Lanfor to gauge his understanding of the investigator's role and then permitted him to explain his concerns about Brydges and Quinn's attorney. When the issue of their fees arose, the court told Lanfor, "it's not for you to decide what [they do] because you think they're overcharged," and warned he "may be doubling what [Quinn] [would] ha[ve] to pay out" if the court needed to replace them. The court also noted that Lanfor was "standing in the way of a process that if . . . allowed to go smoothly, would get [him] what [he] want[ed] without all of these problems." Finally, the court arranged a date for Lanfor to bring Quinn to the courthouse for Brydges to interview her and directed Lanfor to provide contact information for anyone Brydges wanted to speak with as part of her investigation.

¶5 The minute entry for that status conference stated, "The Court admonishe[d] David Lanfor not to interfere with the duties of the Court-appointed Investigator or the Court-appointed Attorney." Lanfor filed a "motion to correct" the minute entry by removing the admonition, asserting "he did never interfere with the duties of the counsel or the court investigator and the statement that suggests he did[] [wa]s unfair and

seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person . . . and submit a report in writing to the court." Section 14-5407(B), A.R.S., similarly provides for the appointment of an investigator upon a petition for conservatorship.

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unjust” and he was being “defam[ed]” for “doing his rightful[] duty to protect the ward.” The trial court denied that motion.

¶6 On August 2, 2016, Brydges interviewed Quinn at the courthouse. On that day but prior to the interview, she filed an interim report recommending that Lanfor “not be appointed as guardian or conservator.” (Emphasis omitted.) Lanfor subsequently filed a motion for reconsideration of his petition to remove and replace Brydges based on various objections to her interim report. Brydges submitted a final report on August 9, 2016, similarly recommending against Lanfor’s appointment, and he in turn filed a motion to strike portions of both reports as “redundant, immaterial, impertinent, and/or scandalous” and “contain[ing] segments which were apparently obtained illegally, and/or, without authority and/or by way of negligent investigation.”

¶7 At the August 11, 2016, hearing, the trial court determined it was “unable to appoint a permanent guardian” “[g]iven the current circumstance of the matter and the issues that ha[d] presented themselves.” The court continued Lanfor’s appointment as “temporary guardian only,” directed him to “prepare and file an accounting” for the time period he had been temporary conservator, and limited his ability to use Quinn’s bank accounts and income. The court also set a hearing for September 2016 to “review the accounting and consider the appointment of [a] permanent guardian and conservator.” Finally, upon their request, the court dismissed Brydges and Quinn’s appointed attorney, directing that new counsel and a new investigator would be appointed, Brydges and the attorney were to “file their claims for fees against the estate and provide notice to David Lanfor,” and Lanfor was “to file an objection to the fees and a request for hearing as to [the] same if he deem[ed] it . . . appropriate.”⁴

¶8 The trial court denied Lanfor’s earlier motion to strike portions of Brydges’s reports and Lanfor filed a motion for reconsideration, which the court also denied. The latter motion included objections to

⁴Upon receiving a request for instructions from the newly appointed investigator, the trial court directed her to “conduct an investigation as she would any other” “[g]iven [Lanfor]’s strong objection to the reports submitted by [Brydges].” The court also “directed [Lanfor] not to interfere with or limit the investigation without Court approval.” The new investigator ultimately recommended Lanfor’s appointment as Quinn’s permanent guardian and conservator, and the court appointed him.

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Brydges's fees, alleging she had committed "gross negligence" and "crimes" in her investigation, which did not benefit Quinn or the case. The court's denial of Lanfor's motion noted that the fee request had not been filed with the court and "directed [Lanfor] to file an Amended Objection with a copy of the Investigator's invoice and specific objections to the fees claimed," and, if he wanted "to have a hearing on the Objection, [to] submit a Notice of Hearing along with the Objection."

¶9 After Brydges filed her claim for \$2,917.53, Lanfor filed a notice disallowing the claim in full. The trial court set a hearing on the claim for January 2017. In response to an email Lanfor sent to a member of the court's staff, the court clarified that the hearing was "to allow in whole or part the claims for compensation" of Brydges and Quinn's first court-appointed attorney. The court also "direct[ed] [Lanfor] to Rule 33(D), Arizona Rules of Probate Procedure[,] with respect to the proper manner in which to contest a claim for compensation or fees."

¶10 In November 2016, Lanfor served two subpoenas on Brydges, another on her attorney, one on Quinn's first attorney, and three more on various county employees, directing them to produce "[c]opies of all email communications" between Brydges, the attorney, and members of the trial court's staff, plus "[c]opies of all contracts for employment or services, and/or any other documents regarding appointments of court investigator made between . . . Brydges and Pima [County] Superior Court." Brydges filed a motion to quash the subpoenas served on her and her attorney, arguing that "[d]iscovery [wa]s not warranted or appropriate" and the subpoenas "w[ould] not lead to admissible evidence" and were "simply a tool to harass." She also requested "a protective order against any discovery" and "a double damage attorney fees award against . . . Lanfor personally pursuant to A.R.S. § 12-349" for abuse of discovery. The trial court granted Brydges's motion in part as to portions of the subpoenas.⁵

¶11 Lanfor subsequently filed a motion to dismiss Brydges's claim for compensation, arguing she "ha[d] not complied with the subpoena or the rules of discovery" and was an "incompeten[t]" investigator who spent an excessive amount of time on the case and committed various crimes or other wrongs such that "[s]he must not be allowed to ever again be

⁵ Eventually Brydges sought and obtained an injunction against harassment against Lanfor, which we affirmed on appeal. *Brydges v. Lanfor*, No. 2 CA-CV 2017-0085, ¶ 1, 2017 WL 4548058 (Ariz. App. Oct. 11, 2017).

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appointed investigator” in Arizona. Brydges responded that she had complied with the discovery requests and Lanfor’s motion was “yet another example of his harassment, of unreasonable expansion of the proceedings and of abuse of discovery procedures,” warranting attorney fees as a sanction under § 12-349. Lanfor’s reply cited as examples of Brydges’s “abuse of her position” her charges for emails to the trial court’s staff requesting permission to spend more time on the case. He also objected to Brydges’s investigation of his Motor Vehicle Department and court records, along with Quinn’s bank records, and her communications with Quinn’s first attorney, claiming she “had no authority under law or court order to work or confer with the court appointed attorney.”

¶12 The day of the January 2017 hearing, Brydges filed a memorandum arguing that Lanfor had “failed to file or provide the required specific objections” to her fee request even after the trial court directed him to do so, and no conservator had “disallow[ed] [the] claim within the required time” under A.R.S. § 14-5428(A)(2). Brydges further asserted Lanfor’s claims were without merit, his conduct was “objectively unreasonable” and intended to harass, and he had abused the discovery process, again warranting sanctions in the form of attorney fees under § 12-349 against both Lanfor and the estate. During the hearing, Brydges expounded upon these arguments, maintaining that “the claim ha[d] been allowed by operation of law.” Based on that argument, the trial court decided to not hold an evidentiary hearing at that time and instead offered Lanfor the opportunity to respond in writing. Lanfor orally argued he had properly and timely disallowed Brydges’s claim and “her billing in full [wa]s inappropriate.”

¶13 Following the hearing, Lanfor filed another motion to dismiss Brydges’s claims “as premature and defective” because they had been presented prior to the appointment of a permanent guardian and conservator but not again after his appointment. He further asserted he had timely disallowed the claims and “dispute[d] many of the charges and the format of the billing, which cause[d] confusion with all the decimals preceding the times, and contain[ed] ‘Block Billing[,]’ ‘time spent on billing activities’ and ‘time and expenses for misfeasance and/or malfeasance[.]’”

¶14 Lanfor also separately responded to the hearing memorandum, asserting that Brydges had expanded the proceedings through “her determination to unjustly destroy Lanfor’s credibility through her insane work as a court appointed investigator.” He also argued that Brydges had billed “over 40 unreasonable and unnecessary hours,”

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including “ridiculous investigations of Lanfor” himself. As for Brydges’s legal arguments, he again asserted he had properly objected to the claim and the statute only permits payment of “just” claims against the estate. Lanfor later filed a notice allowing \$35 of Brydges’s claim.

¶15 Finally, in February 2017, the trial court denied Lanfor’s earlier motions to dismiss Brydges’s compensation request, finding that Brydges had “substantially compli[ed]” with the court’s order regarding the subpoenas, and her claims “were neither premature nor defective.” The court also determined that “A.R.S. §§ 14-5314(A), 14-5414(A), and 14-5428 should be read in concert,” “payment of an appointed investigator’s reasonable fees [is] mandatory,” and “a guardian’s or conservator’s disallowance of a claim without explanation is contrary to the Probate Code’s intent that court-appointees be compensated.” The court allowed Brydges’s claim in full as “reasonable,” finding Lanfor’s “disallowance of claim . . . fatally defective for its failure to follow th[e] Court’s August 30, 2016, Order requiring specific objections to the fees claimed,” and directed Brydges to file an affidavit of costs and attorney fees, stating it would then “determine the costs to be assessed under A.R.S. § 12-341 and whether any fees or costs should be assessed under A.R.S. § 12-349.”

¶16 After Brydges filed her affidavit, the trial court awarded her costs in full pursuant to § 12-341 plus \$10,854 in attorney fees pursuant to § 12-349. In a signed judgment, the court noted that rather than filing “any specific objections to Brydges’[s] fees” as the court had directed, Lanfor “conducted extensive discovery including issuing subpoenas to the Court and its staff.” The court further found that Lanfor had violated § 12-349(A)(1)-(4) and awarded Brydges’s investigator fees in full plus her costs and attorney fees against Lanfor as guardian and conservator of Quinn’s estate and against Lanfor personally, “jointly and severally.” We have jurisdiction over Lanfor’s appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Investigator Fees

¶17 On appeal, Lanfor argues the trial court erred in awarding Brydges’s requested investigator fees. Specifically, he asserts that he and the estate were entitled to a hearing “and/or a trial with an opportunity for

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a jury,” and that he could not be held personally responsible for the fees.⁶ We review an award of fees for work done in a guardianship or conservatorship case for an abuse of discretion. *See In re Guardianship of Sleeth*, 226 Ariz. 171, ¶ 12 (App. 2010). Questions of statutory interpretation and other issues of law, however, are reviewed de novo. *Id.*

¶18 Section 14-5303(C), A.R.S., provides that when a petition for appointment of a guardian is made, “[t]he alleged incapacitated person shall be interviewed by an investigator appointed by the court” who “also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person . . . and submit a report in writing to the court.” Regarding conservatorships, A.R.S. § 14-5407(B) similarly provides that when a petition is filed on the basis of “mental illness, mental deficiency, [or] mental disorder[] . . . , the court shall appoint an investigator to interview the person to be protected” and make a recommendation. In accordance with those provisions, upon receiving Lanfor’s petition alleging Quinn’s “mental illness or incapacity,” the trial court appointed Brydges as investigator in the case, and she visited Quinn at her residence and interviewed her prior to filing a written report and recommendation.

¶19 Under A.R.S. §§ 14-5314(A) and 14-5414(A), court-appointed investigators who are “not otherwise compensated for services rendered” are “entitled to reasonable compensation from the estate” if the petition is granted or from the petitioner if it is denied. Furthermore, “[a] conservator must pay from the estate all just claims against the estate . . . arising before or after the conservatorship upon their presentation and allowance.” A.R.S. § 14-5428(A). “A claimant whose claim has not been paid may petition the court for determination of h[er] claim . . . and, upon due proof, procure an order for its allowance and payment from the estate.” § 14-5428(B).

¶20 Lanfor asserts the trial court abused its discretion by “forc[ing] on [him] the burden of proving the fees were unreasonable, unnecessary or unjust, in only pleadings and without a hearing or opportunity to question [Brydges], and/or a trial with an opportunity for a jury.” He does not, however, identify any authority requiring a court presented with a contested fee request to hold a hearing, let alone a jury

⁶Brydges argues that Lanfor “failed to preserve the issue of personal liability by failing to object to the form of judgment.” In our discretion, however, we address Lanfor’s argument in full.

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trial, before determining the reasonableness of the fees, nor are we aware of any. Although §§ 14-5303(C) and 14-5407(D) entitle the alleged incapacitated person to a hearing or a jury trial on the issue of a guardian or conservator's appointment, those provisions do not mention investigator fees or entitle the petitioner to request a hearing or trial.

¶21 Additionally, Lanfor did not request a hearing when the trial court expressly told him he could, and the court nevertheless scheduled one after Brydges filed her compensation request. To the extent Lanfor asserts his due process rights were violated because, "at the hearing set for the issue, the court did not allow [him] to present his case," our supreme court has noted that "[p]rocedural due process . . . requires nothing more than an adequate opportunity to fully present factual and legal claims." *State v. Hidalgo*, 241 Ariz. 543, ¶ 11 (2017), quoting *Kessen v. Stewart*, 195 Ariz. 488, ¶ 16 (App. 1999). Moreover, the trial court specifically directed Lanfor to Rule 33(D), Ariz. R. Prob. P., which provides "[i]f a petition for compensation or fees is contested, the objecting party shall set forth all specific objections in writing" and does not call for evidentiary hearings on contested petitions for compensation. The opportunity to file written objections afforded sufficient due process in this context, and the court even allowed Lanfor to conduct discovery. Cf. *FDIC v. Mallen*, 486 U.S. 230, 247-48 (1988) ("reject[ing] . . . contention that [statute] violates due process because it does not guarantee an opportunity to present oral testimony").

¶22 As the trial court pointed out, Lanfor did not provide specific objections to Brydges's compensation request before the scheduled hearing. Rather, he filed numerous subpoenas. The closest Lanfor came to making a specific objection prior to the scheduled hearing was in his first motion to dismiss Brydges's claim, in which he alleged that Brydges had "trespassed illegally" on Quinn's property, "invaded the privacy of the petitioner when she unlawfully, and without court order, requested personal and private records that were not relevant," and "perform[ed] unauthorized work [to] pad her bill." Those could be construed as allegations of "misfeasance or malfeasance," which is not compensable under § 3-303(D)(2)(j), Ariz. Code of Jud. Admin. However, any such allegations were without merit. As noted above, an investigator in a guardianship and conservatorship proceeding is authorized to interview the allegedly incapacitated person and investigate the petitioner. See §§ 14-5303(C), 14-5407(B). And the trial court approved all of Brydges's hours.

¶23 Moreover, even were we to consider Lanfor's untimely objections to Brydges's fees, none of them has merit. His "motion to dismiss

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both [of Brydges's] claims," filed the day after the compensation request hearing, included the objections that Brydges's bill contained "'Block Billing[,] 'time spent on billing activities' and 'time and expenses for misfeasance and/or malfeasance[.]'" Although Lanfor correctly identified these categories as impermissible under § 3-303(D)(2)(c), (f)(1), and (j), we conclude the trial court was nevertheless well within its discretion to award Brydges her requested compensation. As discussed above, Brydges did not commit misfeasance or malfeasance in her investigation. To the extent that by "time spent on billing activities" Lanfor meant Brydges's emails to the court requesting permission to spend more time on the case, we note that those communications involved Brydges explaining to the court difficulties Lanfor himself was causing. Finally, even if some billing entries could be viewed as "block billing," the problem was not so pervasive or severe as to render the requested compensation unreasonable. *Cf. RS Indus., Inc. v. Candrian*, 240 Ariz. 132, ¶ 21 (App. 2016) ("Although the better practice may be to avoid block-billing . . . , no Arizona authority holds that a court abuses its discretion by awarding fees that have been block-billed.").

¶24 As the trial court stated at the July 2016 status conference, Lanfor's behavior toward Brydges was "standing in the way of a process that if . . . allowed to go smoothly, would get [him] what [he] want[ed] without all of these problems." Much of Brydges's time on the case arose from Lanfor's actions preventing her from completing her investigation. The trial court approved Brydges's hours in the case and concluded her fees were reasonable.

¶25 We find no abuse of discretion by the trial court in awarding Brydges her requested fees. Lanfor, however, correctly points out that §§ 14-5314(A) and 14-5414(A) provide for a court-appointed investigator to be paid "from the estate . . . if the petition is granted[,] or from the petitioner if the petition is denied." Nonetheless, A.R.S. § 14-1105(B) provides that if a ward or protected person "incur[s] professional fees or expenses as a result of unreasonable conduct, the court may order the person who engaged in the conduct . . . to pay the ward or protected person for some or all of the fees and expenses as the court deems just under the circumstances." The trial court expressly found Lanfor "unreasonably expand[ed] the proceedings" with regard to Brydges's investigation, which, as previously noted, was largely shaped by Lanfor's conduct. Accordingly, we affirm the award of Brydges's fees against both the estate and Lanfor personally.

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Attorney Fees

¶26 Lanfor additionally challenges the trial court's decision to assess Brydges's attorney fees against both him and the estate as a sanction for his conduct throughout the pendency of Brydges's claim for compensation. When considering a court's decision to impose a sanction under § 12-349, we view the evidence in the light most favorable to upholding the award, reviewing factual findings for clear error and the application of the statute de novo. *Rogone v. Correia*, 236 Ariz. 43, ¶¶ 22-23 (App. 2014). The trial court here found that Lanfor's actions throughout the case fell into each of the four categories of sanctionable conduct enumerated in § 12-349(A)(1) to (4). Because § 12-349(A) states that "the court shall assess reasonable attorney fees . . . against an attorney or party . . . [who] does any of the" four identified "[u]njustified actions," we need only find that Lanfor committed one of them to uphold the award.

¶27 The trial court's judgment included the following findings:

Finally, Mr. Lanfor violated A.R.S. § 12-349(A)(3) by unreasonably expanding the proceedings. [He] filed an unprecedented and unwarranted number of pleadings. Dozens of pleadings, repetitive Motions to Dismiss, To Reconsider, To Correct, a premature appeal. More than fifty pleadings after the initial pleadings necessary to establish the Guardian/Conservatorship. All means of litigation were engaged without a meaningful effort to determine validity or to reduce the litigation or to respect the rulings on determined issues. Much of what Mr. Lanfor asserted was not reasonably in conflict and much of the conflict he perpetuated was not in good faith. His recent Partial Allowance to allow \$35.00 of the \$2,900.00 claim demonstrates that. Ultimately, and in particular, Mr. Lanfor did not prevail on virtually any position which he asserted and continues to assert. The Court finds that this unreasonable and unnecessary escalation requires an attorney's fees award in Ms. Brydges' favor. Mr. Lanfor caused

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time-consuming and expensive disorder in
what should have been an orderly process.

¶28 The record reveals no clear error in the factual findings set forth by the trial court here. We additionally find that the facts of this case are readily applied to the “[u]nreasonably expand[ing] or delay[ing] the proceeding” category in § 12-349(A)(3) justifying an award of attorney fees. *See Solimeno v. Yonan*, 224 Ariz. 74, ¶ 32 (App. 2010) (continually filing inappropriate pleadings may justify attorney fee award under § 12-349(A)(3)); *Hohokam Res. v. Maricopa County*, 169 Ariz. 596, 606 (App. 1991) (“extensive and immaterial analysis” of statute may justify attorney fee award under § 12-349(A)(3)).

¶29 As to Lanfor’s claim that the sanction could not be imposed against him personally, § 12-349 states that attorney fees may be assessed against “an attorney or party” and, as Brydges correctly points out, Rule 2(M), Ariz. R. Prob. P., defines “Party” as “a person who has filed a notice of appearance, an application, a petition, or an objection in a probate proceeding.” Lanfor filed the petition in this probate proceeding and was therefore a “party” to the case who could properly be sanctioned with attorney fees under § 12-349.

¶30 Lanfor cites *Matter of Estate of Brown*, 137 Ariz. 309, 311 (App. 1983), for the proposition that “[i]t has long been the rule in Arizona that attorney’s fees are not payable from the assets of the estate except for lawyers hired by the personal representative.” But that case did not address attorney fees assessed under § 12-349 and in any event went on to say that revisions to the Probate Code gave courts the power to award fees beyond the traditional rule. *See id.* at 312. Because Lanfor has identified no authority prohibiting a court from assessing attorney fees against an estate for the misdeeds of the guardian and conservator, and we are aware of none, we find no error in the trial court’s attorney fees award against both Lanfor personally and the estate. We additionally note that, as with the investigator fees, § 14-1105(B) empowered the court to hold Lanfor responsible for the attorney fees levied against the estate because of his unreasonable conduct.

Appellate Costs and Attorney Fees

¶31 Brydges has requested costs and attorney fees on appeal pursuant to Rule 21, Ariz. R. Civ. App. P., and §§ 12-341 and 12-349. Because Lanfor brought this appeal without substantial justification,

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Brydges is entitled to her attorney fees on appeal under § 12-349, in addition to her costs as the successful party to a civil action under § 12-341.

Disposition

¶32 For the foregoing reasons, we affirm the trial court's judgment in all respects. Upon her compliance with Rule 21(c), Brydges is awarded her reasonable costs and attorney fees on appeal.