

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

DAVID MERCER, individually, as personal representative of the estate of
Blanche Heisch and as Trustee of the Sixth Amended and Restated
Declaration of Trust of Blanche Heisch, and **WINTTER & ASSOCIATES,**
P.A.,
Appellants,

v.

TERRY KANOWSKY,
Appellee.

No. 4D04-228

[November 16, 2005]

PER CURIAM.

In this appeal involving a final accounting in estate and trust proceedings, David Mercer, the personal representative of the estate and trustee of the trust of Blanche Heisch, and his attorneys, Wintter & Associates, P.A., contend that the probate court erred in denying payment for extraordinary attorney's fees and other expenses incurred by the estate during administration. The fees were incurred primarily in determining title to real property devised by will to Mercer and were objected to by Terry Kanowsky, the residuary beneficiary of the trust.

After hearing evidence regarding conflicts of interest and other failures in the administration of the estate, the probate court ordered appellants to disgorge the extraordinary attorney's fees, real estate taxes, and expenses charged to the trust. We affirm on all points raised by appellants, except we reverse that portion of the court's order requiring Wintter & Associates to perform future legal services for the estate and trust without compensation. The court's order compelling the law firm to perform additional services at no cost to the estate and trust denied the law firm due process, because the firm was not a party to the proceedings below, this relief was not sought by the pleadings, and the law firm was not given notice or an opportunity to be heard on such relief.

Affirmed in part, and *Reversed* in part.

WARNER, KLEIN and TAYLOR, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mel Grossman, Judge; L.T. Case No. PR-C-01-4155.

Christopher Q. Wintter of Wintter & Associates, P.A., Hollywood, for appellants.

Janice L. Griffin of Hodgson Russ, LLP, Boca Raton, for appellee.

Not final until disposition of timely filed motion for rehearing.