

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2011

GAIL LEVIN,
Appellant,

v.

WILLIAM LEVIN, individually, and as Trustee of the Shirley Sunshine
Levin Declaration of Trust Agreement Dated May 22, 2008, **JESSICA
LYNN LEVIN**, and **BENJAMIN LEVIN**,
Appellees.

Nos. 4D09-5143 & 4D09-5145

[August 10, 2011]

PER CURIAM.

In this probate case, appellant appeals a judgment assessing attorney's fees against her share of the estate as well as an order taxing costs against her. The trial court did not make the requisite finding of any bad faith, wrongdoing, or frivolousness before awarding fees against appellant's share of the estate. *See Geary v. Butzel Long, P.C.*, 13 So. 3d 149 (Fla. 4th DCA 2009); *In re Estate of Lane*, 562 So. 2d 352 (Fla. 4th DCA 1990). Accordingly, we reverse and remand for the trial court to determine, either from the record or after an evidentiary hearing, whether appellant engaged in any bad faith, wrongdoing, or frivolousness in the pursuit of her claim. The trial court should make this determination after deciding whether the will and trust were the product of an "insane delusion," as we directed in the related case of *Levin v. Levin*, 60 So. 3d 1116 (Fla. 4th DCA 2011). Although we find no abuse of discretion in the inclusion of the trial notebook and demonstrative aids in the calculation of costs, we nevertheless reverse the order taxing costs, as the award of costs is dependent upon who is ultimately the prevailing party.

Reversed and remanded for further proceedings.

CIKLIN, LEVINE, JJ., and THORNTON, JOHN W., JR., Associate Judge, concur.

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Consolidated appeals from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jack H. Cook, Judge; L.T. Case Nos. 502008CP005732XXXXMB and 502009CP002379XXXXMB.

Jennifer S. Carroll of Law Offices of Jennifer S. Carroll, P.A., Palm Beach Gardens, for appellant.

James G. Pressly, Jr. of Pressly & Pressly, P.A., West Palm Beach, for appellee Estate of Shirley Levin.

Not final until disposition of timely filed motion for rehearing.