NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

RHP

2013 CA 1766

IN THE MATTER OF THE SUCCESSION OF GERALD HENDRICKS

On Appeal from the 18th Judicial District Court
Parish of West Baton Rouge, Louisiana
Docket No. 6577, Division "B"
Honorable J. Robin Free, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Judgment rendered NOV 07 2014

Guidry, J. concurs in the result.

PARRO, J.

Gerald Hendricks' children, Jamie Franklin, Donnie Franklin, and Sherall Franklin (the Franklins), appeal a judgment signed October 22, 2012, which ruled on their motion to traverse a proof of claim in the succession of their father, filed by his widow, Marie Melinda Juge Hendricks (Melinda).[1] For the following reasons, we amend the judgment on the traversal, affirm it as amended, and remand for further proceedings in accordance with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Gerald Hendricks (Gerald) died on November 27, 2007, leaving a notarial testament dated July 31, 2006 (the 2006 will). On January 4, 2008, Melinda filed a petition to be appointed testamentary executrix to administer the assets of the succession in accordance with the will. Two wills were filed into the record: the 2006 will and a prior will dated August 27, 1993 (the 1993 will). Both wills left the bulk of Gerald's assets to Melinda and his three sisters.[2] On January 29, 2008, Melinda was appointed executrix of the succession and letters testamentary were issued by the deputy clerk of court. On February 8, 2008, the Franklins filed a rule to show cause why the 2006 will should not be nullified due to Gerald's failure to sign each separate page of the will. The Franklins also filed pleadings seeking recognition that the succession was intestate, on the grounds that the 2006 will, although not a valid testament, was a valid authentic act. As such, they contended that because the 2006 will revoked all prior wills and testaments, the 1993 will was also invalid. Following a hearing, the court declared that the 2006 will was null and void, that the 1993 will had been revoked by the revocation clause in the 2006 will, and that the succession was intestate. The judgment granted a stay of the proceedings until a judgment from this court and/or the Louisiana Supreme Court would become final. The judgment also ordered that during the stay, although she was removed as the testamentary executrix,

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[1] They also appeal a judgment signed March 20, 2013, which denied their motion for a new trial. Although the denial of a motion for new trial is an interlocutory judgment, it may be appealed along with a final judgment rendered in the case. See People of Living God v. Chantilly Corp., 251 La. 943, 947-48, 207 So.2d 752, 753 (1968).

[2] Although Gerald and Melinda had lived together for about 30 years, they were not married until June 3, 2006, eighteen months before his death. Therefore, most of the succession assets were Gerald's separate property.

Melinda was to:

> maintain the property of the succession, including mortgage, if any, insurance premiums, if any, and property taxes, if any, until such time [as] an administrator is appointed, and all expenses associated with maintaining the succession property, shall be included as a privilege debt and Melinda Juge Hendricks as creditor.

This court affirmed the district court's judgment. See In re Succession of Hendricks, 08-1914 (La. App. 1st Cir. 9/23/09), 28 So.3d 1057, writ not considered, 10-0480 (La. 3/26/10), 29 So.3d 1256 (Hendricks I).[3] Melinda occupied the Hendricks' residence until January 31, 2011, during which time she continued to manage and preserve the assets of the succession, as ordered by the court.

After the Hendricks I judgment became final, the Franklins moved to be named independent administrators of the succession and for an accounting of the succession assets by Melinda. Melinda also moved to be appointed as an independent administrator of the succession. Following a hearing on May 13, 2010, the court signed a judgment on July 1, 2010, appointing Jamie Franklin and Melinda as co-independent administrators of the succession and ordering Melinda to provide an accounting of the assets and liabilities of the succession. On October 21, 2010, Melinda filed a proof of claim in the succession, seeking reimbursement of her personal funds spent in the management and preservation of the property. On January 20, 2011, she filed an accounting of the assets and liabilities of the succession, showing her claims as succession liabilities. On March 19, 2012, the Franklins filed a traversal of Melinda's proof of claim.

A hearing on the traversal was held, following which, on October 22, 2012, the court signed a judgment ordering reimbursement to Melinda for her claimed expenses, subject to an offset for certain rents she had collected from rental properties belonging to the succession. The judgment also ordered payment of the Franklins' expenses for a real estate appraiser and payment of Melinda's expenses for attorney fees. The judgment denied the Franklins' request for a rental offset of $1200 per month for Melinda's occupancy of the Hendricks' home, finding that the market rental value of the

[3] The Hendricks I opinion discusses in more detail the legal analysis and the sequence of events leading up to the judgment declaring both wills null and void.

property would not exceed $900 per month. The judgment further ordered that any future claim by the Franklins for rental reimbursement from Melinda would be limited to the time period from November 23, 2009,[4] through January 31, 2011, and that Melinda could submit a claim for time and expenses she incurred to manage the succession properties as an offset to any rental amounts determined to be owed by her to the succession. The Franklins filed a motion for a new trial, which was denied by the court on March 20, 2013. The Franklins appeal both the October 22, 2012 judgment and the March 20, 2013 judgment.

The Franklins claim in this appeal that the trial court erred: (1) by allowing Melinda's claim for payment of $43,000 in attorney fees; (2) by allowing Melinda to avoid paying any rent for occupying the Hendricks' residence from Gerald's death on November 23, 2007, until she moved out on January 31, 2011; (3) by adopting a monthly rental rate of $900 per month to be paid by Melinda for the months she occupied the Hendricks' residence, rather than $1,200 per month, as opined by the Franklins' expert witness; (4) by not requiring the payment of rent by Melinda for an amount determined to be owed by the court; and (5) by adopting all of the miscellaneous items claimed for reimbursement by Melinda, despite a lack of supporting evidence for many of those amounts and the fact that some awards exceeded the amounts claimed.

STANDARD OF REVIEW

A court of appeal may not overturn a trial court judgment unless there is an error of law or a factual finding that is manifestly erroneous or clearly wrong. Morris v. Safeway Ins. Co. of Louisiana, 03-1361 (La. App. 1st Cir. 9/17/04), 897 So.2d 616, 617, writ denied, 04-2572 (La. 12/17/04), 888 So.2d 872. In order to affirm the factual findings of the trier of fact, the supreme court posited a two-part test for the appellate review of facts: (1) the appellate court must find from the record that there is a reasonable factual basis for the finding of the trier of fact; and (2) the appellate court must further determine that the record establishes that the finding is not clearly wrong

[4] The court consistently referred to November 23, 2009, as the date the judgment became final, when in fact, the supreme court's judgment did not become final until March 26, 2010. November 23, 2009, was the date this court denied a rehearing of its Hendricks I opinion.

(manifestly erroneous). Mart v. Hill, 505 So.2d 1120, 1127 (La. 1987). Thus, if there is no reasonable factual basis in the record for the trier of fact's finding, no additional inquiry is necessary to conclude there was manifest error. However, if a reasonable factual basis exists, an appellate court may set aside a factual finding only if, after reviewing the record in its entirety, it determines the factual finding was clearly wrong. See Stobart v. State, through Dep't of Transp. and Dev., 617 So.2d 880, 882 (La. 1993); Moss v. State, 07-1686 (La. App. 1st Cir. 8/8/08), 993 So.2d 687, 693, writ denied, 08-2166 (La. 11/14/08), 996 So.2d 1092. If the trier of fact's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse those findings even though convinced that, had it been sitting as the trier of fact, it would have weighed the evidence differently. Wilkerson v. Buras, 13-1328 (La. App. 1st Cir. 8/12/14), 2014 WL 3928804, ___ So.3d ___, ___.

DISCUSSION

Attorney Fee Award

The Franklins claim that ordering payment to Melinda of $43,000 in attorney fees from the succession assets was an abuse of the court's discretion, alleging that most of those fees were incurred for Melinda's personal benefit, rather than the succession's benefit, and that some of the services rendered by her attorneys were frivolous and/or unnecessary.

The trial court has much discretion in fixing an award of attorney fees, and its award will not be modified on appeal absent a showing of an abuse of discretion. In re Succession of Bankston, 02-0548 (La. App. 1st Cir. 2/14/03), 844 So.2d 61, 65, writ denied, 03-0710 (La. 5/9/03), 843 So.2d 400. An administrator of a succession may obtain an attorney to aid in carrying out the administrator's duties and to defend the succession against adverse claims made against it. See Succession of Jenkins, 481 So.2d 607, 609 (La. 1986). The costs of such legal representation may be charged to the succession. See Atkins v. Roberts, 561 So.2d 837, 841 (La. App. 2nd Cir. 1990). However, where the legal representation is primarily for the personal benefit of the administrator and not the succession, such fees may not be paid from the property of the succession. See Succession of Haydel, 606 So.2d 42, 45 (La. App. 4th Cir. 1992).

Whether or not an attorney's work was for the benefit of the succession is a question of fact that cannot be set aside absent manifest error. Id. at 45-46; In re Succession of Brazan, 07-566 (La. App. 5th Cir. 12/27/07), 975 So.2d 53, 57.

Melinda's proof of claim for the attorney fees was supported by a copy of a statement dated September 2, 2011, from Decuir, Clark & Adams, L.L.P., which showed the services rendered by the firm, the person performing the services, the date those services were performed, the time required to perform those services, and the amount billed for those services. The total amount for attorneys' services was $44,205. The invoice also showed disbursements by the firm in the amount of $2,503.16 for filing fees and other court costs. The total for services and costs was $46,708.16. Melinda's proof of claim, which was filed in October 2010, showed the attorney fees as $43,000, and it was this amount that was awarded to her in the judgment.

The Franklins contend that, since her attorneys recognized and advised her that the 2006 will was not valid due to Gerald's failure to sign every page, she should not have submitted this will for probate. They further argue that, since the 2006 will was a valid authentic act that revoked all prior wills, the 1993 will had clearly been revoked and should not have been submitted for probate and defended all the way to the Louisiana Supreme Court. However, as the named executor of both wills, Melinda had a responsibility to present those wills to a court for a decision as to their validity. Neither she nor the Franklins could decide that the wills were invalid and treat the succession as intestate. This was a decision that had to be made by the court. Louisiana Code of Civil Procedure article 2853 states:

> If a person has possession of a document purporting to be the testament of a deceased person, even though he believes that the document is not the valid testament of the deceased, or has doubts concerning the validity thereof, he shall present it to the court with his petition praying that the document be filed in the record of the succession proceeding.
>
> A person so presenting a purported testament to the court shall not be deemed to vouch for its authenticity or validity, nor precluded from asserting its invalidity.

The use of the word "shall" in this Article indicates clearly that the person who has a document that appears to be a decedent's will **must** present it to the court for a

decision as to its authenticity and validity. Therefore, the Franklins' argument to the contrary has no merit.

The Franklins further argue that none of Melinda's attorney fees should be paid out of succession assets, because her actions in bringing the wills to court and defending them were done for her personal benefit, rather than for the benefit of the succession. While it is true that Melinda had a personal interest in having one of the wills probated, since both wills left most of the succession assets to her and Gerald's sisters, she had a duty to present those wills to the court, as required by Article 2853. Additionally, until this court's decision in Hendricks I, the long-standing jurisprudence of this state had held that:

> [I]f a will containing a clause revoking a previous will, or revoking all previous wills of the testator, is annulled, the revoking clause loses its effect, and the last preceding will stands unrevoked. ... The reason for this is that the Civil Code requires, in article 1692, that an express revocation of a testament or testamentary disposition, to have effect, "must be made in one of the forms prescribed for testaments, and [be] clothed with the same formalities."

Succession of Feitel, 187 La. 596, 618, 175 So. 72, 80 (1937)(citations omitted). As this court explained in Hendricks I, that jurisprudence was based on former Louisiana Civil Code article 1692, which had since been revised and re-enacted as Article 1607. Article 1607 expanded the means by which a will could be revoked to include its revocation by an authentic act of the testator. LSA-C.C. art. 1607(2), Revision Comments 1997. Until this court's decision in Hendricks I, no court had interpreted the revised codal article to declare that even when a subsequent will containing a revocation clause was not a valid will, if it was a valid authentic act, then the revocation clause was effective as to prior wills. Since the effect of Article 1607(2) had not been addressed by any court, it was not frivolous for Melinda's attorneys to seek clarification on this issue for the benefit of the succession.

The Franklins also contend that Melinda's attorneys filed unnecessary pleadings intended simply to harass them and delay the proceedings, particularly a motion to have DNA testing done on them to determine if Gerald was indeed their father. However, our review of the attorney fee statement and the record in this case reveals that the only matters included on the fee statement are those services that were

rendered up to the time the Louisiana Supreme Court denied writs on March 26, 2010. Subsequent services, including the motion for DNA testing, litigation over the appointment of independent administrators of the succession, and the filing and defense of Melinda's proof of claim and succession accounting, were not included on the statement. Therefore, the Franklins' objections to those particular items had no basis. We conclude that the court's implicit finding that the services rendered by Melinda's attorneys were for the benefit of the succession was not manifestly erroneous and, although the amount awarded by the court was somewhat less than she had claimed, the court did not abuse its discretion in awarding Melinda $43,000 for attorney fees.

Rental of Residence

The Franklins assert that the court erred in allowing Melinda to occupy the Hendricks' residence without paying any rent from the time of his death in November 2007 until she moved out in January 2011. They also claim the court erred in adopting a monthly rental rate of $900 per month, rather than the $1,200 per month estimated by their appraiser, and in not ordering Melinda to repay the succession an amount owed as rent.

During the traversal hearing, the court acknowledged that Melinda may be obligated to reimburse the succession for her occupancy of the house, but did not set an amount or order any reimbursement as an offset to the awards made to her. The court stated several times that the hearing was limited to the items on Melinda's proof of claim and would not be expanded to include other items on which there was no motion before the court.

However, the court did address several aspects of any rental reimbursement that might be required from Melinda. The transcript of the traversal hearing reveals that the parties discussed with the court the inclusion of two items in the judgment as offsets to the amount awarded as reimbursement for Melinda's out-of-pocket expenses. One item was rental payments in the amount of $8,400 that Melinda had collected from Gerald's rental properties; the other was her rental obligation in the amount of $900 per month for occupying the Hendricks residence. Although it appeared that the parties were

moving toward consensus on these items, ultimately, the judgment ordered an offset of $8,400 from the amounts awarded to Melinda, but did not include an amount to be offset for the residence rental. On this issue, the judgment limited the time period for such rental to the period between November 23, 2009,[5] and January 31, 2011, and stated that the fair rental value of the residence did not exceed $900 per month. The judgment also stated that, if the Franklins filed a motion to require rental payments from Melinda, she would be entitled to submit a claim for her time and expenses in managing the succession properties.

The district court has discretion to control the proceedings at a hearing or trial. See Hamilton v. Winder, 06-0994 (La. 6/16/06), 931 So.2d 358, 358-59; Hurts v. Woodis, 95-2166 (La. App. 1st Cir. 6/28/96), 676 So.2d 1166, 1174. Louisiana Code of Civil Procedure article 1631(A) provides:

> The court has the power to require that the proceedings shall be conducted with dignity and in an orderly and expeditious manner, and to control the proceedings at the trial, so that justice is done.

The trial judge has great discretion in the manner in which proceedings are conducted before his court, and it is only upon a showing of a gross abuse of discretion that appellate courts have intervened. Pino v. Gauthier, 633 So.2d 638, 648 (La. App. 1st Cir. 1993), writs denied, 94-0243 and 94-0260 (La. 3/18/94), 634 So.2d 858 and 859.

We do not find an abuse of discretion or error of law in the court's decisions on the residence rental issue. In Succession of Wood, 186 La. 181, 171 So. 843 (1937), the only supreme court case we could locate on this issue, the decedent's widow continued to occupy the residence until the decedent's son, her stepson, was appointed as administrator. He immediately demanded that she vacate the residence or reimburse the succession for the time she had continued to reside there. She left the residence, and the administrator and his wife immediately moved in. Mrs. Wood eventually filed a motion for rental payments from the administrator for the time he and his wife had occupied the home. The court granted this motion; there was no mention of requiring Mrs. Wood to reimburse the succession for her own occupancy of the home

[5] As previously noted, the correct date for the finality of the judgment in Hendricks I is March 26, 2010.

after her husband's death.[6]

In the matter before us, Melinda's appointment as executrix was recalled by the court after both wills had been declared null and void by the district court. Melinda did not have fiduciary duties as an administrator of the succession after that date. No one was appointed as administrator of the intestate succession until after the supreme court's ruling in March 2010. Until that date, the nullity of the two wills was still in question, and both wills had bequeathed full ownership of the residence to Melinda. Accordingly, we conclude that the court did not err in limiting the time period for rental payments to the period after which the nullity of both wills became final. However, because the date assigned by the district court to that occurrence was in error, we will amend the judgment to show that any future claim for rental reimbursement will be limited to the time period from March 27, 2010, to January 31, 2011.

With reference to the court's limitation of the rental amount to no more than $900 per month, we note that the appraiser admitted there were no recent sales of properties in the rural area of the Hendricks' residence. The sales used as comparables to establish fair market value were suburban homes twelve miles away, nearer to an urban area where schools, shopping, and entertainment would be more readily available. He admitted that homes in these areas were in a more desirable location. Also, there were no similar houses for rent within three miles of the subject property. The comparables used to establish fair rental value were twelve to fifteen miles from the Hendricks' residence and were approximately ten years old,[7] whereas the Hendricks' residence was over thirty years old. The appraisal was completed in December 2010. The house was listed for sale at $199,000 in January 2011, was reduced to $179,000 in July 2011, and had not sold by the time of the hearing in June 2012. Photographs in the record showed that the exterior appearance and condition of the house had deteriorated considerably during that period. Therefore, the court did not err in finding

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[6] In contrast, two cases out of the Fourth Circuit ordered rental payments to be made by the occupants of the decedent's residence from the date of the death. See Succession of Menendez, 160 So.2d 827 (La. App. 4th Cir. 1964); Succession of Christophe, 487 So.2d 529 (La. App. 4th Cir. 1986). Due to the unique factual circumstances of this case, we decline to follow those cases.

[7] One house that was used to establish fair rental value was a "spec" house less than two years old.

that the appraiser's estimated fair rental value of $1,200 per month was too high for the property at issue and in reducing that fair rental value to a maximum of $900 per month.

The court pointed out that another hearing would be conducted in the event the Franklins filed a motion for rental reimbursement from Melinda. At that hearing, both sides could present additional evidence, including Melinda's claims for time and expenses incurred in preserving the residence during her occupancy. We find no abuse of discretion in this decision by the court, as both parties will have an equal opportunity to present evidence on this issue.

Air Conditioner

Another item disputed by the Franklins was Melinda's claim for $5,140 for replacing the air conditioning unit at the house. She identified two payments, one for $5,000 and one for $140, in a "receipt book" that she kept to record income and expenses. Melinda testified that she had to buy a new air conditioner when it "just blew up" and started spewing white smoke into the air. Photographs of the unit show what appears to be a new air conditioner with serial number 0902052744. By way of a phone call to the manufacturer, Melinda's attorney had verified that the first four digits represented the year and the month of its manufacture.[8] The court reminded the attorneys that, in addition to documentary and photographic evidence, there was "such a thing that's called credibility that I can rely on just in case you all haven't figured it out yet." The court obviously believed Melinda's testimony that she had spent $5,140 of her personal funds to replace the air conditioner with a new unit. We find no manifest error in this factual finding.

Automobile Insurance Premiums

Melinda's initial proof of claim showed automobile insurance payments in the amount of $16,317 to maintain insurance on vehicles belonging to the succession. Her later accounting of the succession's assets and liabilities shows the automobile insurance premiums paid were $16,999. The judgment recited the claim for these

[8] Although the Franklins' attorney objected to this comment from Melinda's attorney, the court did not rule on the objection and allowed the photograph to represent that the unit was new.

premiums as $16,999, and deducted $3,180, representing premiums for a 2000 Chevrolet Impala belonging to Melinda, and leaving a reimbursement amount of $13,819. The Franklins dispute this award, claiming that the documentary evidence in the record leaves the amounts of Melinda's premium payments unclear and that policy documents show that insurance premiums were being paid on vehicles that were not succession property.

Melinda testified that her husband owned a 1982 Chevrolet pickup truck, which was "his pride and joy." Since no one was driving the vehicle after Gerald's death in November 2007, she dropped the insurance on it. The insurance policy also covered Gerald's 1999 Chevrolet pickup, which she drove and occasionally allowed her children to drive. She stated that a 2000 Chevrolet Impala was her vehicle, a gift from her husband. The policy also included a 2004 Pontiac Grand Am, which was Sherall's car, on which Gerald had co-signed the loan and was paying the insurance premiums. The policy also covered a 1996 Honda Civic, which Melinda testified was purchased by Gerald after their marriage for her to use to go to work.

Documents in the record from the insurance company reveal that for the period June 8, 2006, to June 8, 2007, the annual premium was $4,461. From June 8, 2007, to June 8, 2008, the annual premium was $4,601. The covered vehicles at this point were the 1996 Honda Civic, the 1999 Chevrolet pickup, the 2000 Chevrolet Impala, and the 2004 Pontiac Grand Am. Gerald's name had been deleted from the policy and the 1996 Honda Civic had been substituted for the 1982 Chevrolet pickup truck. A subsequent invoice for this time period shows a premium adjustment was made on February 12, 2008, eliminating the 2004 Pontiac Grand Am and its driver, Sherall Franklin, and resulting in a reduced annual premium of $2,684. The policy renewal invoice for June 8, 2008, to June 8, 2009, listed only the 1996 Honda Civic, the 1999 Chevrolet pickup, and the 2000 Chevrolet Impala, and had an annual premium in the amount of $2,853. The policy renewal for June 8, 2009, to June 8, 2010, listed the same three vehicles with an annual premium of $3,140. An adjustment dated July 29, 2009, eliminated the 1996 Honda Civic as of that date and showed the annual premium was $2,206. Another premium adjustment was made on September 3, 2009, eliminating the 2000

Chevrolet Impala and showing the annual premium as $1,371. For the period June 8, 2010, to June 8, 2011, the renewal policy on the remaining vehicle, the 1999 Chevrolet pickup, showed an annual premium of $1,474.

In briefs to this court, the Franklins' attorney, who is also a CPA, described these documents as a "barrage of invoices, policies, etc. that did not give an organized listing of the payments claimed." We have to agree. We have not found a combination of the premium amounts and adjustments shown on the policy statements that will yield a sum of exactly $16,317 or $16,999. However, using the first year's premium amount as $4,461, the second year's premium adjusted to $2,684, the third year's premium at $2,853, the fourth year's premium adjusted twice for a total of $1,371, the final year's premium as $1,474, and the premiums on the 2000 Chevrolet Impala as $3,060,[9] the total premiums paid add up to $16,803. Deducting the premiums for the 2000 Chevrolet Impala, the resulting amount is $13,743. Given the premium adjustments shown on the documentary evidence, and giving credence to Melinda's testimony and sworn documents showing that she paid either $16,317 or $16,999 for automobile insurance premiums on all of the vehicles, we conclude that the court's award of $13,819 for Melinda's payment of automobile insurance premiums was reasonably supported by the record and was not manifestly erroneous.

Exxon Benefits

Melinda's proof of claim shows $1,062 paid for "Exxon Benefits." The exhibits include a copy of two checks written to ExxonMobil by Melinda; one check is in the amount of $411.36, and the other is in the amount of $650.96. Melinda explained that these payments were for health insurance benefits that Gerald had earned during his employment with Exxon. A portion of the payment was for Gerald and a portion was for Sherall Franklin. The Franklins dispute these payments on the grounds that these may have been community expenses and that the payments may have been solely for Melinda's benefit.

Although the evidence is not as conclusive as this court might prefer, it provides

[9] With reference to the premiums charged for the 2000 Chevrolet Impala, the June 8, 2007 to June 8, 2008 period shows $950; the June 8, 2008 to June 8, 2009 period shows $1,005; and the June 8, 2009 to June 8, 2010 period shows $1,105.

a sufficient basis for the lower court's factual findings that these were succession expenses paid by Melinda out of her own funds. Therefore, we find no manifest error in the court's ruling on these payments.

Credit Card Payments

The Franklins dispute two amounts shown on Melinda's proof of claim as credit card payments, one to MasterCard in the amount of $5,561 and the other to Merrill Lynch Credit Card Services in the amount of $1,288. There are copies of two checks in the record for these payments. Melinda had no documentation showing the items purchased with these cards, but explained that these payments were for charges made by Gerald on his credit cards. She believed these charges were for lumber and other materials to renovate the residence, which was his separate property.

Based on Melinda's explanation and the documents in the record showing her payment of these credit card charges, the court had a reasonable basis for its finding that these payments were made to pay debts of the succession. Our review of the record in its entirety does not reveal that this finding was manifestly erroneous.

Collection of Rent from Rental Properties

The Franklins note that Melinda's proof of claim did not include an offset for rental payments she received on rental properties owned by her husband, but she showed rental payments to her on an accounting she filed with the court. She testified that she received $8,400 in rental payments for a small house adjacent to the Hendricks' residence, and this amount was included by the court as an offset to her reimbursement. However, she also testified that she received rental payments for a trailer located on Highway 1, and her receipt book shows the amounts of $500, $565, $565, and $302 for these payments. We agree with the Franklins that these rental payments in the total amount of $1,932 to Melinda should also have been offset against her reimbursement, and the judgment will be amended accordingly.

Motion for New Trial

In addition to appealing the October 22, 2012 judgment on the traversal of Melinda's proof of claim, the Franklins appealed the March 20, 2013 judgment denying their motion for a new trial. This motion was based entirely on the issue of Melinda's

obligation to pay rent for her occupation of the Hendricks' residence. In their motion, the Franklins cited a colloquy during the traversal hearing between counsel for both parties and the court. As mentioned previously in this opinion, there was some indication that the parties contemplated that the rental payments received by Melinda, as well as her obligation to pay rent for occupying the residence, would be included in the judgment as an offset to her reimbursement. However, the final judgment did not fix that amount or order that amount offset against her award.

The transcript of the hearing on the motion for new trial reveals that the parties had not reached agreement on a definite amount for Melinda's rental obligation to the succession, because during the traversal hearing, Melinda testified that the co-administrator, Jamie Franklin, had paid himself $100 for gas and travel expenses that he incurred to sell the 1999 Chevrolet pickup truck for $1000. However, Melinda had not included on her proof of claim and had not been paid any similar payments for her own time and expenses in managing and preserving all of the succession property during the three-year period until the Hendricks I judgment became final. At the hearing on the motion for a new trial, it became clear that the parties had not been clear in their expectations of what would be included in the judgment and had not actually reached an agreement on the rental issue. After hearing those arguments and reviewing the judgment, the court stated that the judgment was an accurate expression of the court's conclusions and denied the motion.

We previously concluded that the court did not abuse its discretion in leaving for another hearing the exact amount of rental and any possible compensation to Melinda for her time and expenses in preserving and managing the succession property. Accordingly, we dismiss as moot the appeal of the March 20, 2013 judgment denying the motion for new trial.

CONCLUSION

We dismiss the appeal of the March 20, 2013 judgment denying the Franklins' motion for a new trial. We amend the judgment of October 22, 2012, in the following particulars: (1) the time period for any rental obligation of Melinda's occupancy of the Hendricks' residence is from March 26, 2010, to January 31, 2011; and (2) rental

income in the amount of $1,932 from rental property on Highway 1 shall be offset against the amounts owed by the succession to Melinda. In all other respects, the judgment is affirmed. This case is remanded for further proceedings in accordance with this opinion. Each party is to bear its own costs for this appeal.

APPEAL OF MARCH 20, 2013 JUDGMENT DISMISSED; OCTOBER 22, 2012 JUDGMENT AMENDED AND AFFIRMED AS AMENDED; REMANDED.