

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSEPH LEE AGREEMENT OF
TRUST.

DANIEL LEE, Co-Trustee,

Appellant,

v

JOSEPH A. BONVENTRE, Guardian Ad Litem
for RAPHAEL LEE and JEROME LEE,
PAULINE SOFFA and SYLVIA KENNEDY, Co-
Trustees,

Appellees.

UNPUBLISHED

December 9, 1997

Nos. 194937; 197004
Oakland Probate Court
LC No. 88-190906-TI

Before: Bandstra, P.J., and Cavanagh and Markman, JJ.

PER CURIAM.

Daniel L. Lee, Co-Trustee of the Joseph Lee Trust Agreement, (hereinafter appellant) appeals as of right the probate court's order approving \$6,000 in guardian ad litem fees requested by Joseph Bonventre in a petition for services rendered between November 1, 1995 through February 29, 1996. Appellant also appeals an order arising from the same petition which denied certain equitable relief appellant sought in a counter-petition for instructions. We affirm both orders.

Pursuant to the Trust Agreement, Joseph Lee's assets were distributed to his five children and two individual trusts were established for two of his children, Jerome and Raphael Lee. Bonventre served as guardian ad litem for both Jerome and Raphael Lee. Pursuant to a settlement agreement approved by the probate court, Bonventre was paid for his legal services equally from both trusts. Following a hearing, the court ordered that future services were to be billed separately to each trust based upon actual services rendered to that trust.

Appellant argues that, under MCR 8.303(C), the probate court erred in approving the fees because Bonventre's statements for services failed specifically to show for which trust services were provided and because the fees charged did not represent actual work performed. We disagree.

MCR 8.303(C) states:

Regardless of the fee arrangement, every attorney who represents a fiduciary must maintain time record for services that must reflect the following information: the identity of the person performing the services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services.

The purpose of MCR 8.303(C) is to facilitate the court's review of the reasonableness of attorney fees and costs under MCR 8.303(A). Comment to MCR 8.303. The rule is intended to assist the *court*, not to serve as a billing requirement for attorney fees. There is no precise formula for computing the reasonableness of an attorney's fee. *J C Building v Parkhurst Homes*, 217 Mich App 421, 430; 552 NW2d 466 (1996). See also MCR 8.303(A). However, the factors to be taken into consideration in determining the reasonableness of a fee include, but are not limited to, the following:

(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. [*Id.*]

This Court will not reverse the probate court's decision on a reasonable amount of attorney fees absent an abuse of discretion. *In Re Irwin Estate*, 162 Mich App 522, 530; 413 NW2d 37 (1987). An abuse of discretion will be found when the decision is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992). We find that the probate court did not abuse its discretion in awarding Bonventre \$6,000 in guardian ad litem fees. In ruling on the fees, the court did not indicate that it lacked information needed to review Bonventre's fees or that Bonventre's records were otherwise inadequate. Rather, the invoices clearly indicated the number of hours of work performed each month and the rate charged. The additional descriptions of the services performed were reasonably specific and detailed. Indeed, two of the three co-trustees believed the fees were reasonable. Accordingly, Bonventre did not violate MCR 8.303(C) and the court did not abuse its discretion in awarding \$6,000 in guardian ad litem fees to him.

Appellant also argues that the requirement in the settlement agreement that Bonventre's fees be paid equally from the two trusts is contrary to public policy. However, appellant did not raise this argument below. As a general rule, issues not raised before the trial court are not properly preserved for appellate review. *Phinney v Verbrugge*, 222 Mich App 513, 544; 564 NW2d 532 (1997). More significantly, appellant himself stated on the record below that the settlement agreement was valid and that he was bound by it.¹ A party may not take a position in the trial court and subsequently seek

redress in an appellate court that is based on a position contrary to that taken in the trial court. *Id.* Accordingly, we decline to review this issue.

Appellant also argues that Bonventre improperly charged the trusts with expenses related to litigation among the parties in Wayne County.² Because this issue was also not raised below, we decline to review it. Appellant next argues that Bonventre improperly acted as counsel for Co-Trustees Sylvia Kennedy and Pauline Soffa. However, appellant did not specify what services Bonventre allegedly performed for Kennedy and Soffa or when he provided them. Accordingly, we find that appellant's argument is without merit.

Next, appellant argues that the probate court erred, in violation of MCR 8.303(D), in failing to have Bonventre prepare, and for itself not reviewing, separate statements for all previously paid guardian ad litem services, after ordering future fee statements to be submitted separately for each trust. We disagree. MCR 8.303(D)(2) requires an attorney retained by a fiduciary to mail to interested parties a statement for services or costs upon request. Appellant has not demonstrated that Bonventre was a "fiduciary" or an attorney for a fiduciary subject to MCR 8.303(D). In any event, the record indicates that Bonventre provided detailed fee statements to all of the Co-Trustees, including appellant, upon their request. In addition, the settlement agreement, which appellant stated he was bound by, required attorney fees to be paid equally from each trust. Accordingly, we find that the trial court did not abuse its discretion in declining to order Bonventre to prepare and review separate statements for previous services.

Finally, appellant argues that a conflict of interest arose by permitting the guardian ad litem to take funds from one trust to pay the fees of the other trust. We disagree. Whether a conflict of interest existed in Bonventre's representation of both the trusts of Raphael and Jerome Lee is a question of law. This Court reviews de novo issues of law. *Meyers v Patchkowski*, 216 Mich App 513, 516; 549 NW2d 602 (1996). We find that the probate court did not err in finding that there was no conflict of interest. Under MCL 700.24(2); MSA 27.5024(2), Bonventre was permitted to represent more than one person as a guardian ad litem. Appellant has presented no facts which demonstrate a conflict of interest. The only potential conflict was the requirement that Bonventre be paid for his services equally from both trusts. However, the settlement agreement, to which appellant was bound, required this method of paying Bonventre's fees.

Appellant's reliance on *In re Valentino's Estate*, 128 Mich App 87, 93; 339 NW2d 698 (1983) is misplaced because there was no court-approved settlement agreement in *Valentino* which authorized the two trusts to pay guardian ad litem fees. In addition, this Court in *Valentino* essentially constructed a new will for the testator. *Id.* In the instant case, the probate court did not re-write Joseph Lee's Agreement of Trust, but rather, approved a settlement agreement reached by the parties.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Stephen J. Markman

¹ After counsel for appellant contended that the two co-trustees had violated the settlement agreement, the Court stated to counsel, "And is your client bound by that?". Counsel responded, "My client is bound by that agreement and so are they, your Honor." [Tr I at 16-7].

² LC No. 91-112370-CK. On January 24, 1996, this Court dismissed a claim of appeal, Docket No. 190495.