STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF ROSA LOUISE PARKS,
a deceased person.

In re: MATTER OF ROSA LOUISE PARKS TRUST, u/a/d 7/22/98.

JOHN M. CHASE, JR., and MELVIN D. JEFFERSON,

Petitioners-Appellees,

v

ELAINE STEELE,

Respondant-Appellant,

and

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT,

Respondant,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY, SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, and CHERYL MARGUARITE MCCAULEY,

Petitioners-Appellees.

UNPUBLISHED
March 19, 2009

No. 281203
Wayne Probate Court
LC Nos. 2005-698046-DE and 2006-707697-TV

JOHN M. CHASE, JR., and MELVIN D. JEFFERSON,

Petitioners-Appellees,

v

ELAINE STEELE,

Respondant,

and

RAYMOND AND ROSA PARKS INSTITUTE FOR SELF-DEVELOPMENT,

Respondant-Appellant,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY, SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, and CHERYL MARGUARITE MCCAULEY,

Petitioners-Appellees.

No. 281204
Wayne Probate Court
LC Nos. 2005-698046-DE and 2006-707697-TV

MELVIN D. JEFFERSON, JR. and JOHN M. CHASE, JR. TRUSTEE,

Petitioners-Appellees,

v

ROSA AND RAYMOND PARKS INSTITUTE FOR SELF-DEVELOPMENT,

Respondant-Appellant,

No. 281437
Wayne Probate Court
LC Nos. 2005-698046-DE and 2006-707697-TV

and

ELAINE STEELE,

Respondant,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, CHERYL MARGUARITE MCCAULEY, and SUSAN DIANE MCCAULEY,

Petitioners-Appellees.

MELVIN D. JEFFERSON, JR. TRUSTEE and JOHN M. CHASE, JR. TRUSTEE,

Petitioners-Appellees,

v

ROSA AND RAYMOND PARKS INSTITUTE FOR SELF-DEVELOPMENT,

Respondant,

and

ELAINE STEELE,

Respondant- Appellant,

and

SYLVESTER JAMES MCCAULEY, DEBORAH ANN ROSS, ASHEBER MACHIRIA, ROBERT DUANE MCCAULEY, MARY YVONNE TRUSEL, ROSALIND ELAINE BRIDGEFORTH, RHEA DARCELLE MCCAULEY, SUSAN DIANE MCCAULEY,

No. 281438
Wayne Probate Court
LC Nos. 2005-698046-DE and 2006-707697-TV

SHIRLEY MCCAULEY JENKINS, SHEILA GAYE KEYS, RICHARD MCCAULEY, WILLIAM MCCAULEY, and CHERYL MARGUARITE MCCAULEY,

Petitioners-Appellees.

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

In this consolidated appeal, appellants, Elaine Steele and the Rosa and Raymond Parks Institute for Self Development, appeal as of right from the probate court's orders allowing account of successor trustees dated September 19, 2007, and approving the marketing agreement dated October 1, 2007. For the reasons set forth below, we affirm the decisions of the probate court.

This matter concerns the estate of legendary civil rights activist Rosa Parks. Rosa Parks and her husband, Raymond Parks, created the Rosa and Raymond Parks Institute for Self Development (the Institute) in 1987. Rosa and Raymond Parks had no children. Raymond Parks died in 1997 and Rosa Parks died on October 24, 2005 at the age of 92.

Initially, William McCauley, Rosa Parks' nephew, filed a petition for an intestate estate on November 10, 2005. The next day, attorney Adam A. Shakoor filed a competing petition to probate a will dated March 28, 2003. In the petition, Shakoor nominated himself and Elaine Steele, as co-personal representatives, declaring that he and Steele were nominated as such in the 2003 will at Article 5. On December 14, 2005, the probate court ordered the will dated March 28, 2003 withdrawn in favor of an earlier will dated July 22, 1998. The probate court declared that the only will to be considered was the July 22, 1998 will and appointed Shakoor and McCauley co-special personal representatives. Rosa Parks had also executed a revocable Living Trust Agreement (the trust) on July 22, 1998, and on her death, the trust became irrevocable. Article 2, Section 1 of the will represented a "pour over" provision that directed, "[a]ll of my property of whatever nature and kind, wherever situated, shall be distributed to my revocable living trust." And Article 12, Section 3, part c. appointed Steele and Shakoor successor co-trustees.

On April 28, 2006, Rosa Parks' heirs-at-law[1] filed objections to the probate court's admission of the July 22, 1998 will. Thereafter, on May 9, 2006, the probate court referred the proceedings to mediation on its own motion. On June 21, 2006, Shakoor filed a petition for his

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[1] Sylvester McCauley, Deborah Ann McCauley, Rosalind Elaine Bridgeforth, Asherber Macharia, Robert Duane McCauley, Rhea Dorsell McCauley, Shirley McCauley-Jenkins, William Patrick McCauley, Sheila Gay Keys, Cheryl McCauley, Susan McCauley, and Richard Lloyd McCauley represented themselves as Rosa Parks' heirs-at-law in their objections to the admission of the July 22, 1998 will filed on April 28, 2006.

own removal as, and resignation from, his position as co-special personal representative of the estate of Rosa Parks. Shakoor stated in pertinent part:

> When I accepted my appointment on December 14, 2005 it was with the hopes that the parties could resolve their differences and reach a settlement in the matter. I have attempted on various occasions to seek a settlement with the last efforts being my acting as a Mediator with the agreement of all parties of interest in this matter. Unfortunately, the parties have decided to continue their litigation at the present time and are not able to reach a settlement. Therefore, the original purpose for my appointment no longer exist[s] and I tender my resignation in the matter.

On June 29, 2006, the probate court accepted Shakoor's resignation and then removed both Shakoor and William McCauley as co-personal representatives. Also in the probate court's June 29, 2006 order, it waived the requirement of a final accounting "for the reason that neither [Shakoor, nor McCauley] obtained possession or control of any assets belonging to the estate[.]" In the same order, the probate court appointed petitioners, John M. Chase, Jr. and Melvin D. Jefferson, Jr., co-temporary personal representatives but restricted their power to sell assets except on further order of the court. Petitioners filed their acceptances of appointment to qualify to serve as co-temporary personal representatives on July 12, 2006. The probate court appointed petitioners successor co-trustees of the trust on September 6, 2006, granting them "full power and authority . . . to take possession, collect, preserve, manage, and dispose of all of the property of the Trust according to Law . . . ." Petitioners filed their acceptances of appointment on September 8, 2006. The probate court subsequently appointed petitioners to act as co-personal representatives of the Estate of Rosa Parks on November 28, 2006.

Petitioners filed an initial inventory on September 5, 2006 reflecting a total estate value of $372,624 consisting of only bank account balances. In an effort to locate and inventory Parks' numerous outstanding assets including awards, documents, correspondence, and other various historic possessions, petitioners contacted Guernsey's, an auction house located in New York. On October 26, 2006, the probate court held a conference in chambers with all parties' counsel, and petitioners. After the conference, the probate court ordered, among other things, that within forty-eight hours, petitioners were to "take control of the contents of the apartment belonging to Rosa Parks" and directed petitioners to contact Guernsey's to commence "cataloging and compiling an Inventory and valuation of all property belonging to the late Rosa Parks, whether such property is located at the Apartment or any other location."

On November 8, 2006, representatives from Guernsey's began cataloging and overseeing the removal of personal property from Rosa Parks' apartment as well as her former home at 9336 Wildemere in Detroit. Parks' former home served as the headquarters of the Institute. Guernsey's report regarding the conditions at 9336 Wildemere recounted in part:

> Throughout our stay, our efforts were often challenged by those working at The Institute. It was their frequent claim that materials we were recording were the property of the Institute and not that of Mrs. Parks. While we were directed to attempt to identify and record items specifically owned by Mrs. Parks, making such an identification was at times difficult, if not impossible.

Petitioners learned through reviewing contracts obtained from the Institute, that the Institute had recently contracted with a firm named CMG Worldwide, Inc., concerning marketing Parks' image and likeness. On December 7, 2006 the probate court ordered that all monies held by CMG Worldwide, Inc., for the benefit of Rosa Parks or the Institute be delivered to petitioners in their fiduciary capacity.

The probate court's revised scheduling order dated December 12, 2006, ordered that trial would commence on a date between February 19, 2007 and February 23, 2007. While hotly contested litigation continued, lengthy and intense negotiating sessions involving all parties resulted in a settlement agreement dated February 16, 2007, thwarting trial. The settlement agreement contained a framework for administration of the estate and resolved the contested issues among the parties. The settlement agreement was contingent on approval by the probate court. The probate court issued an order approving the settlement agreement on March 12, 2007.

The settlement agreement provided that a "Marketing Committee" would "market the Marketable Property." The settlement agreement defined the Marketing Committee as follows:

> The Committee shall be constituted of the following: (1) a representative of the Institute and Steele; (2) a representative of the Heirs; and (3) a person to be identified by the Court.

Elaine Steele or Anita Peek filled one position representing the Institute and Steele; William Patrick McCauley represented the heirs, and the probate court appointed petitioners to the final slot on the Marketing Committee.

On July 30, 2007, petitioners filed a petition to approve a proposed marketing agreement selecting Guernsey's as broker of the marketable property. Steele answered petitioners' petition to approve the marketing agreement on September 4, 2007 objecting to the proposed marketing agreement and submitting that it should not be approved. Steele further requested a hearing "to explore the composition, operation and function of the Marketing Committee, as relates to the participation of the parties and the mandates of the Settlement Agreement." The Institute also filed objections to the petition to approve the marketing agreement. The heirs at law responded to the objections lodged by Steele and the Institute contending that the probate court should deny their objections and approve the marketing agreement. The probate court directed interested parties to submit revised language for the marketing agreement by September 4, 2007. The probate court held a hearing as requested and directed the parties to meet to discuss proposed revisions to the marketing agreement on September 6, 2007. The meeting occurred as scheduled including legal counsel for all parties who discussed the suggested revisions. After several hours, ultimately the marketing agreement was revised and a new document prepared. Petitioners submitted the revised marketing agreement to the probate court for approval on September 14, 2007. On October 1, 2007, the probate court issued an order finding the objections filed by Steele and the Institute to be without merit and approving the revised marketing agreement. On November 6, 2007, the probate court denied requests for rehearing and reconsideration filed by Steele and the Institute.

Legal fees mounted during the litigation. Steele's legal fees included a $71,047.95 invoice from Underwood & Marsh, P.C. and a $23,831.81 invoice from Gandelot & Associates.

Shakoor's legal fees included a bill for $80,519.64 from Jaffe, Raitt, Heuer & Weiss, P.C. Both Steele and Shakoor submitted these bills to petitioners for payment from estate assets. On September 11, 2007, the probate court issued an order regarding payment of claimed legal fees and costs in connection with Steele's and Shakoor's attorney representation directing that the firms be paid a pro rata share of $100,000 available to satisfy their claims. The probate court further ordered that the firms "shall be entitled to further payment on the unpaid portion of each claim from 50% of the balance of the funds remaining in the Estate and/ or Trust prior to final distribution on a pro rata basis and in an amount not to exceed $50,000 cumulatively."

Throughout the contentious litigation, inventorying continued, and on August 30, 2007 petitioners filed an amended inventory consisting of a sixty-nine page list of items located and cataloged by Guernsey's both at the apartment and the house on Wildemere. Petitioners also filed their annual account and a petition to allow annual account including a request for their attorney fees on August 24, 2007 and provided copies to the parties. Chase included a detailed listing of services provided between June 30, 2006 and July 11, 2007 totaling $60,847.50. Chase charged $195 per hour for legal work and $95 per hour for fiduciary work. Jefferson included a detailed listing of services provided between July 5, 2006 and July 11, 2007 totaling $45,899.25. Jefferson charged $195 per hour for legal work and $90 per hour for fiduciary work. Steele and the Institute filed objections to petitioners' request for fees and the renewal of petitioners' letters of authority on September 11, 2007. The probate court held a hearing on the objections on September 11, 2007 and on September 19, 2007 entered an opinion and order approving the accounts and request for attorney and fiduciary fees.

Steele and the Institute now appeal as of right.

I

Steele and the Institute first argue that the probate court erred in awarding attorney fees to petitioners in the absence of the notice required by MCR 5.313(D). Steele and the Institute assert that petitioners retained themselves as attorneys for the estate upon their appointment as fiduciaries, but failed to serve the required notice and fee agreement. Thus, Steele and the Institute specifically contend that the probate court erred as a matter of law in failing to strike the attorney fee request because the fiduciaries did not meet the threshold requirements of MCR 5.313(D) for engaging counsel. MCR 5.313(D) states as follows:

> (D) Notice to Interested Persons. Within 14 days after the appointment of a personal representative or the retention of an attorney by a personal representative, whichever is later, the personal representative must mail to the interested persons whose interests will be affected by the payment of attorney fees, a notice in the form substantially approved by the State Court Administrator and a copy of the written fee agreement. The notice must state:
>
> (1) the anticipated frequency of payment,
>
> (2) that the person is entitled to a copy of each statement for services or costs upon request,

(3) that the person may object to the fees at any time prior to the allowance of fees by the court,

(4) that an objection may be made in writing or at a hearing and that a written objection must be filed with the court and a copy served on the personal representative or attorney.

We need not address this issue because Steele and the Institute never properly presented this argument before the probate court. While Steele and the Institute state in their brief on appeal that they "strenuously objected to the payment of attorney fees in the absence of proper notice," they do not provide citations to the record in support of this assertion. Steele and the Institute's mere assertion that their rights were violated, unaccompanied by record citations, cogent argument, or supporting authority, is insufficient to present this issue for consideration by this Court. MCR 7.212(C)(7).

And, the record reveals that in their objections before the probate court, Steele and the Institute couched their argument in vague terms and never alleged that petitioners had violated MCR 5.313(D). Similarly, Steele and the Institute never raised a violation of MCR 5.313(D) in hearings before the probate court. "An issue is not properly preserved for appeal if not raised in the circuit court, and we need not address arguments first raised on appeal." *Green v Ziegelman*, ___ Mich App ___, ___; ___ NW2d ___ (2009). Accordingly, we decline to address Steele and the Institute's argument that the trial court erred as a matter of law in failing to strike the attorney fee request in view of the failure of the fiduciaries to meet the threshold requirements of MCR 5.313(D) for engaging counsel.

Moreover, were we to review this issue we would find no error because Steele and the Institute have not avoided forfeiture under the plain error rule. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000), applying *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Steele and the Institute do not explain how petitioners' failure to strictly comply with MCR 5.313(D) affected their substantial rights justifying complete reversal of the probate court's attorney fee award. The record is replete with evidence that petitioners repeatedly appeared in court, filed numerous pleadings in their capacity as attorneys, and even exchanged correspondence on firm letterhead during more than a year of contentious legal battles. Clearly, Steele and the Institute were aware that petitioners were acting as attorneys and not just fiduciaries of the estate. And petitioners provided notice regarding the allowance of attorney fees to Steele and the Institute and also informed them of their right to object via a notice of hearing sent to all parties dated August 24, 2007.[2] Indeed, Steele and the

[2] The notice stated as follows in pertinent part:

NOTICE TO INTERESTED PERSONS:

(continued…)

Institute provided strenuous objections to the probate court and the probate court heard arguments on the attorney fee issue before petitioners were paid. Steele and the Institute have not shown plain error that affected substantial rights. *Id.*

II

Next, Steele and the Institute argue that the probate court erred in awarding attorney fees to petitioners in the absence of sufficiently descriptive time entries. This Court reviews a trial court's grant of attorney fees for an abuse of discretion, reviews the findings of fact on which the trial court bases an award of attorney fees for clear error, and reviews de novo questions of law. *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007) (citation omitted). "An abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006) (internal quotations and citations omitted). "[W]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment." *Id.*

MCR 5.313(C) states, "[r]egardless of the fee agreement, every attorney who represents a personal representative must maintain time records 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." Here, the record reflects that both petitioners presented the probate court with combined statements of legal and fiduciary services provided. Chase's statement consisted of 21 pages of chronological entries and Jefferson's statement was 13 pages of chronological entries. Our review of the record reveals that both statements were itemized accounts of the services performed identifying the person performing the service, the date of the service rendered, the time spent on the service, and a brief description of the service in accordance with MCR 5.313(C). Contrary to Steele and the Institute's assertions, each entry is sufficient to determine the service rendered. As such, the record belies Steele and the Institute's argument that petitioners' time entries were not sufficiently descriptive.

(…continued)

1. You must bring to the court's attention any objection you have to this account. The court will not review the account otherwise.

2. You have the right to review proofs of income and disbursement at a time reasonably convenient to the fiduciary and yourself.

3. You may object to all or a part of an accounting by filing a written objection with the court before the court allows the account. You must pay a $20.00 filing fee to the court when you file the objection.

4. If an objection is filed and is not otherwise resolved, the Court will conduct a hearing and determine the objection.

III

Steele and the Institute argue that the probate court erred in awarding attorney fees to the fiduciaries because the alleged work performed did not benefit the estate. Again, we review a trial court's grant of attorney fees for an abuse of discretion, reviews the findings of fact on which the trial court bases an award of attorney fees for clear error, and reviews de novo questions of law. *Stallworth*, *supra* at 288.

Fiduciaries, under MCL 700.3719(a) and MCL 700.7503(2), and attorneys, pursuant to MCR 5.313(A), MCL 700.3720, MCL 700.3715(v), and MCL 700.7401(2)(v), are entitled to recover reasonable compensation for necessary legal and administrative services performed on behalf of an estate or a personal representative. While a probate court may exercise broad discretion in determining the amount that comprises a reasonable compensation, *In re Krueger Estate*, 176 Mich App 241, 248; 438 NW2d 898 (1989), that discretion is not unfettered. Specifically, MCR 5.313(A) requires that, "In determining the reasonableness of fees, the court must consider the factors listed in MRPC 1.5(a)."[3] When evaluating a fee petition, the probate court must review the requested attorney fees for reasonableness with a commensurate focus on preserving the assets of the estate for the beneficiaries. *In re Sloan Estate*, 212 Mich App 357, 364; 538 NW2d 47 (1995). Specifically, legal services that are rendered on behalf of an estate

[3] MRPC 1.5(a) states that:

> A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:
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> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

are compensable if the services confer a benefit to the estate through either increasing or preserving the estate's assets. *Id*. at 362.

The probate court found that petitioners' services conferred a clear benefit on the estate. It stated as follows:

> After a thorough review of the Account and the fiduciary and attorney fees requested, it is clear to this Court that the fees are consistent with Michigan law. The Petitioners were brought into this matter at the behest of the Court because of their legal experience and due to the extraordinary nature of this proceeding and the contentiousness between the parties. The parties on both sides of this dispute have litigated and continued to litigate every issue. In light of this, the Court elicited the help of both of the Petitioners, who between them have nearly 80 years of probate Court experience, to help resolve this matter. Although the Petitioners were brought in to this case as Successor Fiduciaries, their special skills as probate attorneys was critical to resolving the issues in this case. Given the complexity of the legal issues involved in this litigation, the Court is convinced that without such third-party intervention no resolution would have been reached in February, 2007 between the parties. Furthermore, and more importantly, the ultimate cost to the Estate would far exceed the Petitioner's [sic] current request for fees. While the Petitioners combined request for fees is in excess of $106,000.00, and this represents nearly one-third (1/3) of the balance of this Estate, the Court finds that for the services rendered and for the time spent the hourly rate of $195.00 per hour is more than reasonable under the circumstances. Therefore, this Court denies the Institute's Objection as to the rate at which these fees were billed, and the request to reduce this rate to $90.00 per hour.
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> In addition, as to the Institute's second objection that the fiduciary and attorney fees in this case should be reduced as duplicative, unnecessary and not a benefit to the estate, the Court also finds no merit in this assertion. Given the nature and complexity of this proceeding, collaborative action between the Petitioners was not only necessary, but encouraged or ordered by the Court. This is not a typical or ordinary probate and trust administration. It involves extraordinary time, skill, effort and deals with many forms of litigation, along with numerous lawyers representing multiple parties. The parties have litigated for nearly 2 years and continue to do so. Given these circumstances, this Court is frankly amazed that the Petitioners have been able to handle the multitude of issues involved so effectively, without additional fiduciary or legal resources. In light of this, the Court will deny the objections.

Steele and the Institute have not shown that the probate court abused its discretion in awarding attorney fees to petitioners because the alleged work performed clearly benefited the estate. Again, legal services rendered on behalf of an estate are compensable if the services confer a benefit to the estate through either increasing or preserving the estate's assets. *In re Sloan Estate, supra* at 362. The record reveals that this case presented unique and delicate circumstances from the outset considering the fact that it involved the estate of a public figure of marked historical stature. The litigation was more than contentious with the parties contesting

seemingly every issue involved. It is readily discernible from the record that petitioners, because of their legal skill-set and vast probate experience, were uniquely suited for the task of moving this matter along with the best interest of the estate in mind. The record supports the probate court's observation that due to petitioners' abilities, the matter was settled in a more efficient manner than would otherwise have been expected considering the contentiousness involved among the parties, and costly litigation at trial was avoided as a result of petitioners' efforts.

Thus, by their efficiency and skill, petitioners succeeded in preserving the estate's assets. *Id*.

Moreover, it seems patently clear from the record that petitioners alone are responsible for increasing the value of the estate--possibly by tenfold--according to auction estimates. Petitioners recognized the historical significance, as well as the monetary value, of Rosa Parks' personal assets. Petitioners contacted professionals, Guernsey's, who had extensive experience in marshaling, identifying, preserving, cataloging, and valuing these types of assets. Guernsey's spent many days searching and evaluating items located at both the apartment and the Wildemere house, in old boxes and bins in the basement and attic. Steele and the Institute were less than cooperative during the process. Ultimately, Guernsey's produced a 69-page inventory of assets to be sold pursuant to the marketing agreement. Had petitioners not recognized the value and significance of the personal items and contacted Guernsey's, the estate's value would not have increased by such a large factor, if at all.

In sum, petitioners' services obviously both preserved the value of the estate through their efficiency as well as increased its value through recognizing the value of the personal items, and thus, the probate court did not abuse its discretion and Steele and the Institute's argument fails. *In re Sloan Estate*, *supra* at 362.

IV

Next, Steele and the Institute argue that the trial court erred in awarding attorney fees to petitioners for the performance of purely administrative work that did not involve "attorney work." Though, Steele and the Institute do not explain why administrative work that was necessary to the administration of the estate was not "attorney work." In fact, the probate court at times specifically ordered petitioners to engage in certain administrative activities. For example, the probate court ordered that "[w]ithin forty-eight (48) hours . . . [petitioners] shall take control of the contents of the apartment belonging to Rosa Parks." In performing that task, the probate court also ordered petitioners to supervise Steele vacating the apartment, or direct Guernsey's to take control of the apartment. The probate court determined that this probate and trust administration required the expertise of petitioners. The probate court further held that without petitioners' efforts, additional estate resources would have been expended. Our review of the record reveals that because of the unique circumstances involved in this matter, seemingly routine administrative tasks oftentimes implicated complex legal questions requiring "attorney work." Therefore, for these reasons, we decline to determine that the probate court abused its discretion when it concluded that petitioners should be compensated at the legal rate for work performed. *In re Krueger Estate*, *supra* at 248

V

Steele and the Institute contend that the probate court erred in awarding compensation to petitioners for their work on the marketing committee when such work did not involve administration of the estate. The record contradicts this claim. Under MCL 700.3711, "a personal representative has the same power over the title to estate property that an absolute owner would have, in trust, however, for the benefit of creditors or others interested in the estate." There is no question that the estate assets, now "marketable property" via the settlement agreement, had not been transferred out of the estate. Until the "marketable property" presently owned by the estate is sold by the marketing committee, by and through the administration of the estate, that property continues to be controlled and administered by petitioners. MCL 700.3711. And, as we stated above, fiduciaries, under MCL 700.3719(a) and MCL 700.7503(2), and attorneys, pursuant to MCR 5.313(A), MCL 700.3720, MCL 700.3715(v), and MCL 700.7401(2)(v), are entitled to recover reasonable compensation for necessary legal and administrative services performed on behalf of an estate or a personal representative. The portion of petitioners' fees associated with the marketing committee and the marketing agreement clearly came within the scope of their authority to administer the estate and thus they are entitled to compensation. Steele and the Institute have not shown error.

VI

Steele and the Institute next assert that the trial court erred in failing to conduct an evidentiary hearing on the reasonableness of the attorney fee requests and erred in failing to make findings on the required reasonableness factors.

> As all agree, the burden of proving reasonableness of the requested fees rests with the party requesting them. In Michigan, the trial courts have been required to consider the totality of special circumstances applicable to the case at hand. *Wood [v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982),] listed the following six factors . . . to be considered in determining a reasonable attorney fee:
>
> "(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." [*Smith v Khouri*, 481 Mich 519, 529; 751 NW2d 472 (2008).]

In this case, we conclude that the probate court did not abuse its discretion in awarding petitioners the requested fees because (1) both petitioners supplied a thorough and detailed itemized list of the legal expenses incurred throughout the proceedings, (2) the probate court's role as presiding judge over the course of the lengthy and involved proceedings indisputably informed its understanding of the numerous and complex issues in this extraordinarily thorny case, and (3) the probate court's thoughtful thirteen-page written opinion plainly reflects its express consideration of all the *Wood* elements.

Furthermore, although Steele and the Institute correctly observe that a probate court "should normally hold an evidentiary hearing when the opposing party challenges the reasonableness of a fee request," a court does "not err in awarding fees without having held an evidentiary hearing" when "the parties [have] created a sufficient record to review the issue, and

the court fully explain[s] the reasons for its decision." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). Because both of the *Head* conditions exist here, we find no error. Moreover, despite claims to the contrary in their brief on appeal, the record reflects that neither Steele nor the Institute ever requested an evidentiary hearing before the probate court on the reasonableness factors.

VII

Steele and the Institute argue that the trial court erred in failing to order the removal of petitioners in accordance with the settlement agreement's language that the probate court remove petitioners "as soon as practicable." Steele and the Institute never filed a petition before the probate court to remove petitioners as co-personal representatives and co-trustees. Instead, Steele and the Institute merely opposed petitioners' petition to continue in their appointed capacities.

The settlement agreement states that:

> The parties agree that Elaine Steele and Adam Shakoor are to be reinstated as co-personal representatives and co-Trustees of the Will and/or Trust *as soon as the Court deems practicable*. [Emphasis added.]

"Appointment of a personal representative is within the trial court's discretion." *In re Kramek*, 268 Mich App 565, 575; 710 NW2d 753 (2005). And, "[a] probate court's decision to remove a trustee will not be reversed absent an abuse of discretion." *Comerica Bank v City of Adrian*, 179 Mich App 712, 729; 446 NW2d 553 (1989). Clearly, the plain language of the settlement agreement as well as the law regarding the appointment of personal representatives and trustees place any decisions regarding removing petitioners from their posts squarely within the probate court's discretion. Steele and the Institute do not argue that the probate court abused this discretion, but instead only assert that "the trial court erred as a matter of law when it refused to remove Chase and Jefferson . . . . " Steele and the Institute have not shown error because both the law and the settlement agreement empower the probate court to decide when removing petitioners is proper and best for administration of the estate.

VIII

Next, Steele and the Institute argue that the trial court erred in failing to enforce the arbitration provision contained in the settlement agreement. Steele and the Institute raise this issue in regard to their opposition to the probate court's approval of the marketing agreement. Though, the record shows, and Steele and the Institute admit in their response briefs on appeal that neither objected to petitioners' petition for approval of the revised marketing agreement by asserting their rights under the arbitration clause in the settlement agreement. At no time prior to the probate court's approval of the marketing agreement did Steele or the Institute question the authority of the probate court to approve the marketing agreement on the basis of the arbitration clause. Rather, Steele and the Institute assert in their brief on appeal that "[t]he trial court should

have recognized that the Appellants' objections to the Marketing Agreement constituted a "dispute" under the settlement agreement that should have been submitted to binding arbitration."[4] Steele and the Institute do not explain how the probate court, on its own accord, should have somehow known that Steele and the Institute wanted the petition submitted to arbitration, rather than probate court resolution, when the probate court has exclusive legal and equitable jurisdiction over proceedings concerning the administration of estates. MCL 700.1302(a) and (b).[5] This is especially the case considering the fact that the settlement agreement contains a court approval clause stating that:

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[4] The arbitration clause in the settlement agreement states as follows:

> The parties agree to tender any dispute under this Agreement for non-binding informal resolution by the Wayne County Probate Court. In the event that no agreed resolution can be reached, then such controversy shall be referred to binding arbitration, pursuant to the Commercial Arbitration Rules of the American Arbitration Association, before a panel of three arbitrators chosen as follows: each side shall designate an arbitrator, and the two party-designated arbitrators shall designate a third arbitrator, who shall be the panel chair. The arbitration shall be expedited and the parties waive any discovery or dispositive motions practice in advance of the arbitration hearing.

[5] MCL 700.1302. states in pertinent parts that:

> The [probate] court has exclusive legal and equitable jurisdiction of all of the following:
>
> (a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:
>
> (i) The internal affairs of the estate.
>
> (ii) Estate administration, settlement, and distribution.
>
> (iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.
>
> (iv) Construction of a will.
>
> (v) Determination of heirs.
>
> (vi) Determination of death of an accident or disaster victim under section 1208.
>
> (b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

(continued…)

> The parties' agreements memorialized herein are subject to and contingent upon approval by the Probate Court of Wayne County, Michigan.

And the marketing agreement also clearly provides that the plan prepared by the marketing committee was subject to and contingent on probate court approval. Given the authority granted the probate court in MCL 700.1302(a) and (b), and in the agreements, under these facts, we can contemplate no scenario where the probate court on its own accord, without any request from Steele and the Institute, should have submitted petitioners' petition for approval of the marketing agreement to arbitration. Steele and the Institute have not shown error.

Moreover, the record reflects that all parties, including Steele and the Institute, as well as the probate court were participating in the steps they set for approval of the marketing agreement in the settlement agreement, i.e. creation of a marketing committee, drafting a marketing agreement, and, ultimately probate court approval of the marketing agreement. Again, it was not until after the probate court approved the revised marketing agreement pursuant to the court approval clauses present in both documents, that Steele and the Institute chose to announce that they sought to exercise their rights under the arbitration clause. The probate court entered the order approving the marketing agreement on October 1, 2007. Following the issuance of the order, Steele and the Institute demanded arbitration under the arbitration provision in the settlement agreement via untimely filed motions for rehearing and rescission of the order approving the marketing agreement dated October 18, 2007 and October 19, 2007 respectively. MCR 2.119(F)(1). But at this point, it was too late to demand arbitration because there literally was no "dispute" to submit to arbitration. Any dispute regarding the provisions of the marketing agreement had already been resolved by virtue of the probate court's denial of Steele and the Institute's objections and issuance of the order expressly approving the marketing agreement. Thus, Steele and the Institute have not shown error.

Further still, because the reconsideration motions raising the arbitration clause contained facts and theory that Steele and the Institute could have pled or otherwise set forth in response to petitioners' petition for approval of the marketing agreement, the probate court did not abuse its

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(…continued)

> (i) Appoint or remove a trustee.
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> (ii) Review the fees of a trustee.
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> (iii) Require, hear, and settle interim or final accounts.
>
> (iv) Ascertain beneficiaries.
>
> (v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.
>
> (vi) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.
>
> (vii) Release registration of a trust.
>
> (viii) Determine an action or proceeding that involves settlement of an irrevocable trust.

discretion by denying Steele and the Institute's motions for reconsideration. *Charbeneau v Wayne County Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

IX

Finally, Steele and the Institute contend that the probate court erred in approving the marketing agreement without requiring the completion of a clear condition precedent to its execution, i.e., Steele and the Institute's opportunity to physically inspect the marketable property. Settlement agreements are generally construed in the same manner as contracts. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001). "The primary goal of contract interpretation is to enforce the parties' intent." *Chestonia Twp v Star Twp*, 266 Mich App 423, 432; 702 NW2d 631 (2005) (citation and quotation marks omitted). "A condition precedent is a fact or event that the parties intend must take place before there is a right to performance." *Real Estate One v Heller*, 272 Mich App 174, 179; 724 NW2d 738 (2006) (internal quotations omitted).

Regarding Steele and the Institute's opportunity to inspect the marketable property, the settlement agreement states as follows:

> "Marketable Property" shall mean all tangible personal property identified in Exhibit A to this agreement, which will be attached as a supplement to this Agreement within 21 days, following a physical inspection by Mrs. Steele and a representative of the Institute of the property held by the personal representatives. The Heirs will have a corresponding opportunity to conduct a physical inspection of said property within 21 days. The Heirs claims to possess the coat worn by Rosa Parks on the date of her arrest on the bus ("the Coat"), and the Heirs acknowledge and agree that the Coat shall be included in the Marketable Property. The parties agree to work cooperatively toward the purchase of an insurance policy to cover the property in the possession of the personal representatives against casualty or other loss, the premium of which shall be paid by the Estate.

Steele and the Institute claim in their brief on appeal that they "have never been afforded the opportunity to inspect the Marketable Property." This claim is absurd. The record reflects that petitioners attached the 69-page inventory prepared by Guernsey's to the settlement agreement identifying all the tangible personal property identified as marketable property as required in the settlement agreement. But neither Steele nor the Institute exercised their right of inspection. Subsequently, Steele and the Institute complained to the probate court that they had not had an opportunity to inspect the property. The probate court then specifically granted Steele and the Institute a second opportunity to inspect the marketable property before sale. For indeterminable reasons, Steele and the Institute again did not exercise their right to inspect the marketable property.

We need not decide whether the opportunity to inspect in the settlement agreement constituted a "condition precedent" to its execution because a party cannot successfully argue reversible error on appeal when that alleged error is due to the party's own conduct. *People v McPherson*, 263 Mich App 124, 139; 687 NW2d 370 (2004) citing *People v Jones*, 468 Mich 345, 352; 662 NW2d 376 (2003). ("Under the doctrine of invited error, a party waives the right to seek appellate review when the party's own conduct directly causes the error.") Clearly, Steele and the Institute were awarded two distinct opportunities to view the property and inspect

it, but chose not to without explanation in the lower court record or in their brief on appeal. For this reason, Steele and the Institute have not established error in the probate court's approval of the marketing agreement without Steele and the Institute having first viewed the marketable property. *Id.*

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering