

STATE OF MICHIGAN
COURT OF APPEALS

In re MARY V. MARTINDALE TRUST

ELIZABETH VAESSEN,

Petitioner-Appellant,

v

MARGARET MARTINDALE, Trustee for the
MARY V. MARTINDALE Trust,

Respondent-Appellee.

UNPUBLISHED

May 23, 2013

Nos. 302978 & 303478
Marquette Probate Court
LC No. 09-031585-TV

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

In Docket No. 302978, petitioner appeals as of right from an order holding that a case evaluation award resolved the parties' dispute over the amount of attorney and fiduciary fees incurred by respondent before the case evaluation date. In Docket No. 303478, petitioner appeals as of right from an order allowing respondent to remove approximately \$8,000 from the Mary V. Martindale Trust for attorney fees incurred after the case evaluation date. For the reasons set forth, we affirm in part, reverse in part, and remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

Petitioner alleged that respondent was the successor trustee of a trust created by James L. Martindale and Mary V. Martindale. James predeceased Mary, who passed away in June 2008. Petitioner further alleged that the trust provided that each of Mary's three children (petitioner, respondent, and a third party) were beneficiaries of the trust and entitled to an equal distribution of the trust assets.¹ Petitioner challenged disbursements from the trust to respondent totaling

¹ The trust documents provided to this Court indicate that the settlors created a trust in 1982 that provided that the trust res consisted of the contents of a joint bank account held by Retail Employees Credit Union of Hopkins, Minnesota. The terms of the trust provide for a successor trustee to be named from the beneficiaries in specific order, unless they are unable to serve as

several thousand dollars, including for expenses claimed to have been incurred by respondent before Mary's death. The petition included five separate requests for relief:

(1) Enjoining the Respondent and any Successor Trustees from making any distributions of Trust assets to or for the benefit of any purported beneficiaries under the Trust pending this Court's subsequent determination of the validity of Respondent's claims against the Trust which arose prior to the Decedent's death.

(2) Enjoining the Respondent and any Successor Trustees from making any payments for attorney and fiduciary fees and compensation pending this Court's review and approval.

trustee. The settlors also executed a document entitled "Amendments to Declarations of Trust" in 1989 which purported to amend "certain declarations of trust" and references three trusts dated April 24, 1981; March 12, 1982; July 15, 1983. The amendment provides that "for each and every such trust we hereby grant to the Successor Trustee the power to mortgage, lease, sell, by deed or contract, and liquidate all assets in order to make distributions to the beneficiaries, in cash or in kind." Finally, in 1993, the settlors created another trust that provided that the trust res consisted of the contents of a joint bank account held by Marquette First Credit Union in Marquette, Michigan. The trust document does not purport to incorporate by reference or restate any previous trusts; indeed the trust documents do not even establish that the name of any trust created is the "Mary V Martindale Trust." Thus, from the documents provided to this Court, it does not appear that either the 1982 trust or the 1993 trust assets encompass property other than money held by credit unions. However, throughout this case the parties have assumed that the trust res consists of all of Mary's assets upon her death (with the exception of certain tangible personal property such as pictures). Pleadings filed in the probate court indicated that this matter was captioned "In the Matter of: Mary V. Martindale (and James Martindale) Declaration of Trust, dated March 12, 1982, as amended May 4, 1989 and December 7, 1993." Throughout the case the parties and trial court make reference to a single trust. It may be the case that there are other documents outside the record received by this Court that so provide for the title of the trust and the power of the successor trustee to distribute Mary's assets. In any event, as neither party challenges respondent's power to distribute Mary's assets, and the trial court did not reach this issue, we will assume that respondent indeed possesses such power. See *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000) (this Court generally does not consider any issues not set forth in the statement of questions presented); *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993) (this Court is not obliged to consider issues not raised and preserved below). The terms of the 1982 trust and 1993 trust documents are identical except for the name of the financial institution holding the joint bank account; however the 1982 trust (if presently existing) would also be subject to the 1989 amendment adding to power of the successor trustee. This Court's holdings in this case are made with respect to both the 1982 trust (if it remains in existence) as amended by the 1989 amendment and the 1993 trust, whether or not the 1993 trust in effect restates or incorporates the 1982 trust.

(3) Directing the Trustee to prepare an amended accounting which includes all receipts and only properly allowed claims against the Trust, and resubmit the same for the Court's review and approval.

(4) Ordering the Trustee to physically divide the Decedent's tangible personal property, including photographs, equally between the beneficiaries, and provide all beneficiaries with a complete set of copies all photographs.

(5) Continuing supervisory jurisdiction over the Trust to assure proper distribution of the Trust assets pursuant to law.

The parties apparently settled the dispute regarding Mary's personal property out of court. The parties then agreed to submit their remaining issues to case evaluation. The case evaluation award simply provided that petitioner was entitled to \$5,000 against the trust, and respondent was entitled to \$8,000 against the trust. Both parties ultimately accepted the award. A few days after the award was issued, petitioner sent an ex parte communication to the case evaluation panel seeking a "clarification" of the award. The panel responded to petitioner by facsimile, explaining in relevant part that the award "encompassed all claims of the petitioner and respondent to the date of the case evaluation hearing, including any attorneys' fees incurred by either petitioner or respondent (whether or not previously paid by the trust) and were intended to be the total amount paid by the trust for these claims."

In late December 2010, respondent provided the trial court with copies of a \$5,000 check and an \$8,000 check as had been authorized and directed by the case evaluation award. Respondent requested that the trial court dismiss all claims in the petition, with the exception of the request for supervision of the trust, because the claims purportedly were settled by the case evaluation. Petitioner, however, disputed that respondent had complied with the terms of the award. Petitioner argued that respondent was entitled to a total of \$8,000 from the trust for all attorney fees, fiduciary fees, and claims against the trust incurred before the case evaluation date. Petitioner contended that respondent had removed approximately \$20,000 from the trust before the case evaluation date. Thus, petitioner contended, respondent was not entitled to the \$8,000 check and additionally was required to reimburse approximately \$12,000 to the trust. According to petitioner, the trial court was required to implement the award by reviewing accountings after the case evaluation and then adjusting the \$8,000 award to reflect all trust disbursements to respondent before case evaluation.

Initially, the trial court ordered the parties to submit their respective case evaluation summaries, to assist the court in determining the issues that were resolved by case evaluation. However, the trial court ultimately decided that it could not review the summaries, pursuant to MCR 2.403(J)(4). In an order dated February 4, 2011, the trial court dismissed with prejudice petitioner's claims for monetary damages, pursuant to MCR 2.403(M)(1). It further held that the case evaluation made any challenges to trust accounting before the case evaluation date res judicata. In essence, the trial court approved respondent's interpretation of the award and rejected petitioner's interpretation of the award. The court further noted that petitioner's request for an accounting from respondent "falls outside the scope of MCR 2.403(A)(1).

Petitioner continued to challenge respondent's disbursements from the trust before the case evaluation date. Petitioner also challenged respondent's accountings, claiming that they were insufficient. Petitioner further argued that any attorney fees incurred by respondent after the case evaluation date were incurred in respondent's personal capacity, not her capacity as trustee, and therefore were not chargeable against the trust. However, in an order dated March 28, 2011, the trial court allowed respondent to remove approximately \$8,000 from the trust for attorney fees incurred after the case evaluation. The trial court also approved respondent's accountings.

Petitioner appeals from the trial court's February 4, 2011 and March 28, 2011 orders.

II. JURISDICTIONAL CHALLENGE IN DOCKET NO. 302978

In docket number 302978, respondent argues that this Court lacks jurisdiction over petitioner's appeal of the February 4, 2011 order, because the acceptance of the case evaluation award by both parties amounted to a consent judgment and as such is not subject to appeal by the parties. Respondent refers this Court to *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549; 640 NW2d 256 (2002), in support of this claim.

In *CAM Constr*, the plaintiff filed a four-count complaint against the defendant. *Id.* at 550-551. The defendant was granted summary disposition by the circuit court on count IV; the plaintiff did not appeal that decision. *Id.* at 551. The parties then submitted the case to case evaluation, at the time referred to as "mediation." Both parties accepted the award. *Id.* In responding to defendant's request for an order dismissing the entire case under MCR 2.403(M)(1), the plaintiff argued that it had preserved its right to appeal the grant of summary disposition on count IV, and asserted that the case evaluation award only covered counts I through III. *Id.* at 552. The circuit court agreed, and the plaintiff thereafter appealed the grant of summary disposition on Count IV. This Court dismissed the plaintiff's appeal on the grounds that "a party cannot appeal an earlier order entered after a subsequent acceptance of the mediation award." *Id.* at 552-553.

Our Supreme Court affirmed, explaining that, under MCR 2.403(M)(1), the case evaluation award resolved all claims in the action and did not allow parties to except particular claims from case evaluation. *Id.* at 554-557 ("The language of MCR 2.403(M)(1) could not be more clear that accepting a case evaluation means that *all claims* in the *action*, even those summarily disposed, are dismissed.") (Emphases in the original).

Although we will discuss *CAM Constr*, *infra*; we conclude that, by itself, it does not definitively resolve respondent's jurisdictional challenge. Here, unlike in *CAM Constr*, petitioner does not seek to appeal an earlier order that was absorbed into the case evaluation award under MCR 2.403(M)(1), but rather appeals an order entered *subsequent* to the parties' acceptance of case evaluation that addresses the parties' dispute over the interpretation and application of the case evaluation award.

Notably, the trial court in this case is a probate court. Not all orders of a probate court are appealable by right to this Court. MCR 7.203(A)(2) provides, with respect to courts other than the circuit court or court of claims, that this Court has jurisdiction over an appeal by right

from “[a] judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule.” MCR 5.801(B) defines orders from a probate court that are appealable by right to this Court. Relevant to this appeal, such orders include orders “allowing, disallowing, or denying a claims [sic].” MCR 5.801(B)(2)(i). The February 4, 2011 order of the trial court ordered that “the parts of the original petition that related to monetary damages are HEREBY DISMISSED WITH PREJUDICE, pursuant to MCR 2.403(M)(1).” The order further established that the court would only hear objections to any claims against the trust arising after the date of the case evaluation.

MCR 2.403(M)(1)² provides in relevant part:

If all the parties accept the panel’s evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court *shall* dismiss the action with prejudice. *The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered* [Emphasis added.]

Here, the case evaluation panel rendered its decision on November 30, 2011. The notification of the acceptances was filed December 16, 2011. Copies of checks provided to the probate court indicate that checks were issued by the trust on December 28 and 29, 2011. Thus, the trial court was obliged under MCR 2.403(M)(1) to dismiss petitioner’s claims. Moreover, as is reflected in the February 4, 2011 order, the trial court’s dismissal of petitioner’s claims that arose before the date of the case evaluation hearing in fact was made pursuant to MCR 2.403(M)(1). Pursuant to that court rule, the dismissal is “deemed to dispose of all claims in the action” We conclude that the trial court’s dismissal thus did not operate as either a disallowance or denial of claims under MCR 5.801(B)(2), but rather as a recognition, under the court rule, of the disposition of those claims pursuant to case evaluation. Simply put, petitioner’s claims here were not denied or disallowed, they were *decided* by the case evaluation. See *CAM Constr*, 465 Mich at 557.³

² MCR 2.403 was amended May 1, 2012. This opinion discusses the version of MCR 2.403 in effect at the time of the proceedings below.

³ Arguably, the language of MCR 2.403(M)(1) indicates that the trial court should have dismissed the entire action, including plaintiff’s equitable claims. See also, *CAM Constr*, 465 Mich at 557. However, MCR 5.143(B) (probate court procedure) reads as follows:

If a dispute is submitted to case evaluation, MCR 2.403 and 2.404 shall apply to the extent feasible, except that sanctions must not be awarded unless the subject matter of the case evaluation involves money damages or division of property.

Moreover, MCR 2.403(A)(1) provides that “[a] court may submit to case evaluation any civil action in which the relief sought is primarily money damages or division of property.” Thus,

The only other section of MCR 5.801 which arguably applies to the February 4, 2011 order is MCR 5.801(B)(2)(x), which allows an appeal by right to this Court from a probate court order allowing an accounting. However, the trial court ordered an accounting and supervisory jurisdiction in an order dated January 11, 2011, not in the February 4 order, and further did not approve the final accounting until the March 28, 2011 order. In the February 4 order, the trial court merely stated that the claim for an accounting was outside the scope of MCR 2.403, and that it would not hear objections to the accounting for fiduciary or attorney fees incurred prior to the case evaluation. We therefore conclude that MCR 5.801(B)(2)(x) does not provide this Court with jurisdiction over petitioner's appeal from the February 4, 2011 order.

Because we do not find the February 4, 2011 order to be “[a] judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule[.]” we thereby agree with petitioner that we lack the jurisdiction over plaintiff's appeal from that order, and dismiss the appeal in docket number 302978. However, this Court has jurisdiction over petitioner's appeal from the March 28, 2011 order in docket number 303478, as an order allowing an accounting, fees, and administration expenses. See MCR 5.801(B)(2)(x).

III. ATTORNEY FEES IN DOCKET NO. 303478

Petitioner argues that the trial court, in its March 28, 2011 order, erroneously allowed respondent to remove funds from the trust for attorney fees incurred after the case evaluation to litigate the terms of the award and defend her accountings. Petitioner argues that these attorney fees were incurred in respondent's personal capacity and are therefore not chargeable against the trust. When a trial court's decision to allow attorney fees involves an underlying question of law, we review the question of law de novo. *Marilyn Froling Revocable Living Trust*, 283 Mich App at 296-297.

case evaluation is appropriate for resolving an action with mostly legal claims, not an action with mostly equitable claims. See *Zurcher v Herveat*, 238 Mich App 267, 32; 605 NW2d 329 (1999) (observing that mediation was inappropriate because the plaintiffs sought specific performance of a contract, which is an equitable action). In this case, petitioner requested two injunctions, an accounting, a division of tangible personal property, and supervisory jurisdiction. Except for the tangible personal property issue, nothing involved money damages or the division of property, so the issues arguably were not proper for case evaluation. Actions for injunctions are equitable in nature, *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 79-80; 577 NW2d 150 (1998), lv den 459 Mich 948 (1999), as are actions for accountings. *Boyd v Nelson Credit Ctr, Inc*, 132 Mich App 774, 779; 348 NW2d 25 (1984). Nonetheless, as is reflected in the trial court's February 4, 2011 order, petitioner's claims for a pre-case evaluation accounting were effectively disposed of by the case evaluation award and that subsequent order.

Neither party disputes the trial court's continuing jurisdiction over post-case evaluation accounting and trust supervision issues. Moreover, under the circumstances presented, petitioner's claims for a post-case evaluation accounting and supervisory jurisdiction could not feasibly have been addressed or resolved by case evaluation. We therefore conclude that the trial court did not err in failing to dismiss these post-case evaluation claims after acceptance of the case evaluation award.

Initially, we observe that the trial court allowed respondent's attorney fees under the current version of MCL 700.7904. The Michigan Trust Code, MCL 700.7101 *et seq.*, became effective April 1, 2010. 2009 PA 46; see MCL 700.8204. This case was initially filed on October 9, 2009. Thus, the previous version of the Estates and Protected Individuals Code (EPIC) governs this case. See *Davis v State Employee's Retirement Bd*, 272 Mich App 151, 163; 725 NW2d 56 (2006). Under the previous version of EPIC, the applicable statute governing attorney fees was MCL 700.7401. See *In re Temple Marital Trust*, 278 Mich App 122, 131-134; 748 NW2d 265 (2008). MCL 700.7401 read in relevant part as follows:

(1) A trustee has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, use, and distribution of the trust property to accomplish the desired result of administering the trust legally and in the trust beneficiaries' best interest.

(2) Subject to the standards described in subsection (1) and except as otherwise provided in the trust instrument, a trustee possesses all of the following specific powers:

* * *

(v) To employ, and pay reasonable compensation for services performed by, a person . . . even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty. . .

(w) To employ an attorney to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties. An attorney employed under this subdivision shall receive reasonable compensation for that employment.

(x) To prosecute, defend, arbitrate, settle, release, compromise, or agree to indemnify a claim or proceeding in any jurisdiction or under an alternative dispute resolution procedure. The trustee may act under this subsection for the trustee's protection in the performance of the trustee's duties.

In this case, one of respondent's administrative duties as trustee was to lawfully distribute assets of the trust. See MCL 700.7401(1). To carry out this administrative duty, respondent employed her attorney to litigate the lawful distribution of the trust's assets. In particular, petitioner's claims against respondent necessarily involved a question of lawful distribution of trust assets. Respondent was therefore entitled to attorney fees incurred in defending this action. *In re Temple Marital Trust*, 278 Mich App at 136; MCL 700.7401(2)(w). We affirm the trial court's ruling on this issue because it ultimately reached the correct decision despite applying the wrong statute. *Dybata v Wayne Co*, 287 Mich App 635, 647; 791 NW2d 499 (2010).

Petitioner cites *In re Sloan Estate*, 212 Mich App 357; 538 NW2d 47 (1995), in arguing that respondent is not entitled to attorney fees incurred in an attempt to obtain or justify attorney fees. We agree that under *In re Sloan Estate*, "attorney fees and costs incurred in establishing and defending a petition for attorney fees" may not be charged against a trust. *Id.* at 360-361.

However, the attorney fees at issue were not incurred “in establishing and defending a petition for attorney fees,” as in *Sloan*. Rather, the attorney fees at issue were incurred to defend respondent’s disbursement of the trust assets pursuant to the case evaluation award. A trustee is entitled to attorney fees incurred to litigate distribution of trust assets, provided that the trustee acts in good faith. MCL 700.7401(2)(w); *In re Temple Marital Trust*, 278 Mich App at 135-136. There is no evidence to suggest that respondent did not act in good faith. We therefore conclude that the trial court properly allowed respondent’s claim for attorney fees incurred in litigating the interpretation of the award.

Petitioner also argues that the trial court erred in allowing respondent’s claim for attorney fees incurred in defending her accountings. As stated above, we will not review petitioner’s claim concerning any fees incurred up to the date of the case evaluation hearing. As for fees incurred subsequent to the hearing, we find that the trial court properly found respondent to be entitled to payment from the trust.

In *Temple Marital Trust*, 278 Mich App at 135, this Court affirmed a trial court’s decision to allow payment from trust assets for the trustees’ attorney fees incurred in defending against allegations of misconduct. This Court explained that the lower court’s decision was correct because payment of such attorney fees was authorized by MCL 700.7401(2)(w) and (2)(x) when there is no proof that the trustee(s) did anything improper. *Id.* at 136. Similarly, respondent incurred attorney fees to defend her accountings. There was no proof of any “wrongdoing” or “improper” activity committed by respondent; in fact respondent waived all right to fiduciary fees incurred after the case evaluation date in an apparent attempt to reduce the litigation in this case. See *id.* at 135-136. Thus, we conclude that the trial court properly allowed respondent’s attorney fees incurred to defend her accountings. *Dybata*, 287 Mich App at 647.

Finally, petitioner argues that the trial court erred in approving payments for attorney fees from the trust to respondent, in the amount of approximately \$8,000, because the fees were unreasonable. See *In re Temple Marital Trust*, 278 Mich App at 137. We review the trial court’s award of attorney fees for an abuse of discretion. *McIntosh v McIntosh*, 282 Mich App 471, 483; 768 NW2d 325 (2009). The party requesting attorney fees has the burden of showing that the attorney fees are reasonable. *Id.*

This issue is governed by the former version of MCL 700.7205, which read as follows:

On petition of an interested person, after notice to all other interested persons, the court may review the propriety of employment of a person by a trustee including an attorney, auditor, investment advisor, or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed and the reasonableness of the compensation determined by the trustee for the trustee’s own services. The court may order a person who receives excessive compensation from a trust to make an appropriate refund.

There is no precise formula for assessing the reasonableness of an attorney fee. *Temple Marital Trust*, 278 Mich App at 138. However, factors that must be considered include:

(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), quoting *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573, 588, 321 NW2d 653 (1982).]

Also, a trial court should consider the overlapping factors listed in the Michigan Rules of Professional Conduct:

- (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. [*Smith*, 481 Mich at 529–530, 751 NW2d 472, quoting MRPC 1.5(a).]

The *Smith* Court held that

a trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services, i.e., factor 3 under MRPC 1.5(a). In determining this number, the court should use reliable surveys or other credible evidence of the legal market. This number should be multiplied by the reasonable number of hours expended in the case (factor 1 under MRPC 1.5[a] and factor 2 under *Wood*). The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee. We believe that having the trial court consider these two factors first will lead to greater consistency in awards. Thereafter, the court should consider the remaining *Wood*/MRPC factors to determine whether an up or down adjustment is appropriate. And, *in order to aid appellate review, a trial court should briefly discuss its view of the remaining factors*. [*Smith*, 481 Mich at 530–531, 751 NW2d 472 (emphasis added).]

In this case, petitioner repeatedly argued that respondent’s accounting was insufficient to establish the reasonableness of the attorney fees. In particular, petitioner alleged below, and contends on appeal, that the attorney fee statements included a \$195 per hour rate for both the

experienced attorney representing respondent and an inexperienced attorney assisting with the case. Petitioner argued that the inexperienced attorney should have a lower hourly rate than the experienced attorney.

A review of the record indicates that respondent's filings with the trial court were signed by Daniel Mead, the experienced attorney referenced by petitioner. Mead also asserted at the motion hearing that all of the work on the case was done by him. There is no factual basis to conclude that these papers were prepared by another attorney. In addition, there is no factual basis to conclude that any other work on this case was performed by another attorney. We decline to reverse the trial court's March 28, 2011 order on the basis of this argument because the argument lacks factual support in the record. *Begin v Michigan Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009).

Still, we conclude that the trial court made an error of law by stating that its "determination of reasonableness" of an attorney fee did not include "second-guessing an attorney's hourly fee[.]" An attorney's standard hourly rate is not necessarily a "reasonable hourly rate." See *Zdrojewski v Murphy*, 254 Mich App 50, 72-73; 657 NW2d 721 (2002). When determining a reasonable attorney fee, a court should examine the relevant factors and revise the hourly fee lower if necessary. See *id.* While the trial court is not required to detail its specific findings on the record in regard to the factors listed above, it should at least briefly discuss them in order to aid appellate review. *Smith*, 481 Mich at 530-531; *Wood*, 413 Mich at 588. We therefore remand this case to the trial court so it may assess the "reasonableness" of the \$195 an hour rate in light of the factors quoted above.

We reverse the trial court's March 28, 2011 order to the extent that it allows for a \$195 hourly fee without an analysis of the reasonableness of the fee. We remand for further proceedings to determine the reasonableness of the fee. We affirm the trial court in all other respects.

We dismiss the appeal in docket number 302978 and deconsolidate it from docket number 303478. Docket number 303478 will proceed on its own. With respect to docket number 303478, we affirm in part, reverse in part, and remand for further proceedings. We retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra

Court of Appeals, State of Michigan

ORDER

In re Mary V Martindale Trust

Docket No. 302978; 303478

LC No. 09-031585-TV

Amy Ronayne Krause
Presiding Judge

Elizabeth L. Gleicher

Mark T. Boonstra
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until after they are concluded. As stated in the accompanying opinion, we remand this case to the trial court to determine the reasonableness of the attorney fees paid from the trust to respondent, and to articulate the rationale in an for its determination in a written order, so that the record is amenable to appellate review.

Should the trial court order any additional proceedings on remand, the parties shall promptly file with this Court a copy of all papers filed on remand. The transcript of all proceedings on remand, if any, shall be prepared and filed within 21 days after completion of the proceedings. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAY 23 2013

Date


Chief Clerk