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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-203**

In re: Estate of Mary Ann Reiman, Decedent

**Filed January 3, 2012
Affirmed in part, reversed in part, and modified
Minge, Judge**

Hennepin County District Court
File No. 27-PA-PR-08-1940

Stuart E. Gale, Bloomington, Minnesota (for appellants Stuart E. Gale and Scott Holm)

Steven M. Press, Press Law Office, PLLC, St. Louis Park, Minnesota (for respondent Tammy Jo Reiman)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Ross, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellants, who served as the personal representative and attorney of the estate of decedent Mary Ann Reiman, challenge the district court's order reducing their fees. Appellants argue that the district court variously erred or abused its discretion by (1) failing to provide adequate findings to allow meaningful appellate review; (2) making findings contrary to the record; (3) denying their motions for amended findings and a new trial; and (4) declining to impose sanctions against respondent and her attorney. By notice of related appeal, respondent asserts that the district court erred by failing to award

her attorney fees from the estate in her challenge to the final account. For the reasons discussed below, we affirm in part, reverse in part, and modify to increase attorney fees for appellants by \$3,950.

FACTS

Mary Ann Reiman died testate on September 3, 2008. An informal probate was filed, and, based on decedent's will, appellant Scott Holm (decedent's grandson) was appointed personal representative. Respondent Tammy Jo Reiman (decedent's daughter and an heir) objected to Holm being a personal representative and demanded a formal probate. After a hearing in February 2009, the district court formally appointed Holm personal representative and ordered formal probate of decedent's will.

In March 2010, appellants petitioned for the complete settlement of the estate and a decree of distribution. The gross size of the estate was \$113,384.10. The district court found that appellants sought \$2,162.50 for compensation of the personal representative, \$500 in estimated future representative fees, \$16,043 in attorney fees for appellant Stuart Gale, and \$2,000 for estimated future attorney fees. Respondent objected to the final account, alleging various improprieties by the personal representative and challenging the fees of both appellants as excessive in light of the size and complexity of the estate.

Trial and Initial Order

In June 2010, a trial was held on the final account and respondent's objections. The hearing almost exclusively concerned various claimed errors and improprieties, including paying a late-filed claim by a bank; reimbursing a late claim for payment of the funeral bill; improperly using decedent's checkbook and bank cards prior to and, in one

instance, after decedent's death; disposing of a vehicle; not accounting for all items of decedent's personal property; and accepting an inadequate life-insurance payout. On the day of trial, voluminous time and billing records supporting the fees of the personal representative and attorney were provided to opposing counsel and introduced as exhibits. Although the personal representative testified to and answered questions about his work, there was no evidence or argument otherwise supporting or contesting the fees. The district court dissuaded attorney Gale from testifying about the personal representative's fees because of the difficulties it would pose for him continuing as an attorney in the trial. After the trial, the parties filed posttrial memoranda, and Holm, as personal representative, and Gale, as attorney for the estate, followed up on certain matters as suggested by the district court.

On August 30, 2010, the district court, in an extensive order, validated certain questioned acts of the personal representative; except for fees, approved the final account; and *sub silentio* denied respondent's other objections. The district court addressed the fees of the personal representative and attorney in detail, concluding that both were unreasonable. The district court reduced the personal representative's fees by approximately one-half, from \$2,275 for 91 hours to \$1,150 for 46 hours. The district court reduced attorney Gale's \$16,043 fee for approximately 80 hours of work by \$5,354, about one-third, leaving Gale with a fee of \$10,689.

Motion for New Trial/Amended Findings

In their posttrial motion for a new trial or for amended findings of fact and conclusions of law, appellants challenged the district court's reduction of their requested

fees. The posttrial motion was accompanied by a motion for approval of the Amended Final Account that included additional attorney and personal-representative fees covering the time leading up to the June 2010 trial, the trial itself, posttrial activity, and completion of the probate. In the Amended Final Account, the personal-representative fees increased by \$500 and the attorney fees increased to \$32,780. Appellants also moved the district court to sanction respondent “for needlessly protracting the disposition of this estate” and forcing a trial on frivolous claims. A hearing on the Amended Final Account and various motions was held on November 10, 2010. No transcript or record of the November hearing was provided to this court on appeal.

In a December 15, 2010 order covering all matters that were scheduled for consideration at the November hearing, the district court approved the Amended Final Account with substantial reductions to the additional attorney fees and denied appellants’ motions. As for personal representative Holm, the district court found that, although the additional fees were not supported by any billing records, Holm had been instructed by the district court to amend certain items in the final account and that the requested fee increase of \$500 was reasonable.

In rejecting attorney Gale’s motions regarding its prior reductions of his fees, the district court observed that the bases for its initial determination concerning the reasonableness of the fees were both the timesheets and billing records Gale previously introduced into evidence¹ and the statutory standard for attorney fees in probate, noting

¹ There is a certain amount of confusion concerning the exhibits received at the June 21 hearing. After the hearing, the district court apparently lost the exhibits. Although

that the award of fees in this circumstance is within the district court's discretion. The district court further observed that Gale's timesheets did not always match the billing records; that many of the handwritten time logs were illegible and contained only summary descriptions of the work performed; that the smallest increment of time in Gale's billing system was one-quarter hour, or \$50, resulting in a significant charge for nominal activity; and that Gale had billed his attorney hourly rate for some work that could typically be done by a paralegal when he otherwise reduced his rate for such work.

As for the additional legal fees that were being newly claimed as part of the Amended Final Account, the district court stated that the November hearing was Gale's opportunity to present all of his supporting evidence and arguments. The district court observed that the dramatic increase in attorney fees from the initial final account to the amended final account was "alarmingly high." The district court further found that there was not supporting documentation for the fees and that attorney fees incurred in the preparation of a motion for yet additional attorney fees and personal-representative fees were not incurred for the benefit of the estate "in any shape or form," but for the benefit of appellants. The district court added several other critical findings regarding the fees. Based on time billed for appearing at trial and certain necessary posttrial work, the district court allowed an increase of \$2,500 over the \$10,689 in attorney fees amount previously approved. This appeal follows.

appellants assert a duplicate set was delivered to the district court, many exhibits were not included in the records transmitted to the court of appeals from the district court. Copies of these exhibits were provided by appellants.

DECISION

I. ADEQUACY OF FINDINGS

The first issue raised by appellants is whether the district court erred by failing to provide sufficient specific findings regarding the reasonableness of the fees charged, thereby preventing appellate review. What constitutes a reasonable amount of attorney fees is a factual determination that will not be set aside unless clearly erroneous. *In re Estate of Balafas*, 302 Minn. 512, 516, 225 N.W.2d 539, 541 (1975). When the district court's findings are reasonably supported by the evidence, they are not clearly erroneous and must be affirmed. *Schweich v. Ziegler, Inc.*, 463 N.W.2d 722, 729 (Minn. 1990). But “[t]he district court must make sufficient findings to permit meaningful appellate review.” *Metro. Sports Facilities Comm’n v. Minnesota Twins P’ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002); *cf. In re Guardianship of Doyle*, 778 N.W.2d 342, 353 (Minn. App. 2010) (reversing the district court’s sua sponte disallowance of \$5,000 in guardian-conservator fees for lack of adequate findings and because the district court had yet to finally review and rule on the account.).

Here, the August 2010 order includes nine specific findings concerning the personal-representative fees and makes general observations justifying the district court’s conclusion that attorney Gale billed an unreasonable amount of legal time devoted to decedent’s estate. Although the district court’s August order does not provide a detailed analysis of Gale’s specific billing practices, in its December 2010 order denying appellants’ posttrial motions the district court made numerous specific findings concerning Gale’s billing practices that clearly demonstrate the district court’s rationale

in determining that the attorney fees were unfair and unreasonable. On this record, we conclude that the district court's findings as to appellants' fees are sufficiently detailed to permit appellate review.

II. FEE REDUCTIONS

The second issue raised by appellants is whether the district court erroneously reduced their fees. Minnesota statutes authorize reasonable compensation. *See* Minn. Stat. §§ 524.3-719 (2010) (“reasonable” for personal representative); 525.515 (2010) (“just and reasonable” for attorney). Allowance of personal-representative and attorney fees is a matter largely within the discretion of the district court; the reasonable value of such services is a question of fact. *In re Estate of Baumgartner*, 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966). A district court's findings of fact will not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01; *see In re Disciplinary Action Against Coleman*, 793 N.W.2d 296, 303 (Minn. 2011) (stating that factual findings will not be reversed “if they have evidentiary support in the record and are not clearly erroneous” and that findings of fact are clearly erroneous when an appellate court is “left with the definite and firm conviction that a mistake has been made” (quotations omitted)). We give due deference to the district court's opportunity to observe witnesses and evaluate their credibility. Minn. R. Civ. P. 52.01; *In re Estate of Serbus*, 324 N.W.2d 381, 384–85 (Minn. 1982), *overruled on other grounds by In re Estate of Kinney*, 733 N.W.2d 118, 125 (Minn. 2007).

A. Objection

Appellants complain that no one filed a motion or petition challenging fees. They claim that such a formal challenge is required by Minn. Stat. § 524.3-721 (2010) prior to district court consideration. However, the statute only requires that the person contesting fees notify interested parties or file a petition or motion. Minn. Stat. § 524.3-721. The statute does not mandate a petition or motion. *Id.*

Here, the record indicates that, in an affidavit dated April 1, 2010, respondent objected to both the fees of the personal representative and the attorney and that this objection was served on appellants. When the district court scheduled the June 21, 2010 trial, it was clear that this objection to fees was before the district court. The transcript of that hearing contains statements by counsel and the district court reflecting awareness of the challenge to fees. The record indicates that respondent expressed concern that she only received appellants' billing records in the form of voluminous exhibits on the morning of the trial and did not have adequate time to prepare. We conclude on this record that respondent's objection was sufficient to place the fees at issue and gave appellants notice that their fees were appropriately part of the trial. Although respondent failed to address or present evidence regarding the fee issue and the district court dissuaded attorney Gale from testifying as an expert witness on the personal-representative fees, appellants knew their fees were at issue and had the responsibility of proving up their fee requests.

B. Personal-representative fees

The law provides that, to determine what amount reasonably compensates a personal representative:

[T]he court shall give consideration to the following factors:

- (1) the time and labor required
- (2) the complexity and novelty of problems involved; and
- (3) the extent of the responsibilities assumed and the results obtained.

Minn. Stat. § 524.3-719(b). Further, “[a]ny personal representative . . . who defends or prosecutes any proceeding in good faith, whether successful or not, . . . is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys’ fees incurred.” Minn. Stat. § 524.3-720 (2010).

Here, the district court made detailed findings concerning the tasks of the personal representative in this probate proceeding. It found that the estate contained no real estate or other assets that were difficult to liquidate or distribute and that, as a result, the administration of decedent’s estate was relatively simple. Although the district court found that the personal representative’s hourly rate was reasonable, it also found that the number of hours billed, as well as the method of tracking billed time, exaggerated the time that the personal representative spent on estate matters. The district court essentially found that the estate did not require the time or labor that the personal representative put in. Not only were there no novel or complex problems, but the district court specifically found that the personal representative’s recordkeeping was questionable and that his administration of the estate was generally inefficient. The district court noted that menial tasks such as opening an envelope were recorded as taking 15 minutes. The record

indicates that the responsibilities assumed and results obtained were not unusual. In sum, the district court applied the statutory factors and made findings of fact supported by record evidence. We conclude that the district court did not abuse its discretion in reducing the personal representative's fee to \$1,150 in its August 30, 2010 order and by affirming that reduction in the December 2010 order.²

C. Attorney fees

Appellants also assert that the district court abused its discretion in reducing the attorney fees. The law provides that, in probate proceedings:

(a) Notwithstanding any law to the contrary, an attorney performing services for the estate at the instance of the personal representative, . . . shall have such compensation therefor out of the estate as shall be just and reasonable. . . .

(b) . . . Where there is no prior agreement in writing with the testator consideration shall be given to the following factors in determining what is a fair and reasonable attorney's fee:

- (1) the time and labor required;
- (2) the experience and knowledge of the attorney;
- (3) the complexity and novelty of problems involved;
- (4) the extent of the responsibilities assumed and the results obtained; and
- (5) the sufficiency of assets properly available to pay for the services.

(c) . . . In determining the reasonableness of the attorney fees, consideration shall be given to all the factors listed in clause (b) and the value of the estate shall not be the controlling factor.

Minn. Stat. § 525.515. Caselaw adds that the services provided by the attorney representing the estate must benefit the estate in order to be compensable. *In re Estate of*

² The district court did allow the requested \$500 of additional compensation for the personal representative for work done on the final account after the June hearing. That increase is not at issue in this appeal.

Evenson, 505 N.W.2d 90, 92 (Minn. App. 1993); see *In re Estate of Weisberg*, 242 Minn. 150, 152, 64 N.W.2d 370, 372 (1954) (stating that “courts have a duty to prevent dissipation of estates through allowance of exorbitant fees to those who administer them”). Generally, fees incurred in defending or seeking contested fees are not for the benefit of the estate and are not recoverable. *In re Estate of Bush*, 304 Minn. 105, 123–26, 230 N.W.2d 33, 44–45 (1975).

1. Arguments

In an attempt to organize the multitude of objections raised and repeated at different points in appellants’ brief, we summarize appellants’ arguments claiming district court error in reducing Gale’s fees as follows:

A. Gale was obligated to, and did successfully, defend the final account against respondent’s objections.

1. Respondent forced Gale to engage in significant extra activity with numerous unfounded objections and demands, including:

- i. demanding formal probate of the estate,
- ii. claiming undue influence of Holm on decedent,
- iii. objecting to the appointment of Holm as personal representative,
- iv. bonding the personal representative when the decedent’s will waived a bond,
- v. claiming inappropriate bank and credit card usage,
- vi. disputing payment on a late claim for reimbursement of funeral bill,
- vii. arguing that there were missing items of personal property,
- viii. objecting to amount of decedent’s life-insurance payout,
- ix. disputing payment on a late claim, and
- x. arguing that there was a missing Cadillac car.

2. Gale had an obligation to prepare for and handle a trial over several of these matters.

3. The district court failed to recognize Gale's success in rebutting or successfully overcoming all of the foregoing objections and demands.

4. The district court disregarded the numerous documents and items of correspondence that attorney Gale prepared and filed as a part of probate and incident to the numerous, unfounded objections.

5. The district court shifted the financial burden of defending the estate against ill-founded claims from respondent and the estate to Gale personally, assuming that the successful defense did not benefit the estate.

B. The district court made erroneous assumptions about Gale's billing practices.

1. The district court misconstrued his time records when comparing them to billing statements.

2. The district court unfairly criticized the legibility and brevity of his daily logs and failed to recognize that there were also typed billing statements.

3. The district court improperly assumed that a solo practitioner should have support staff readily available to handle routine matters and should bill accordingly.

C. Gale was denied a hearing on his fee claim.

D. The district court improperly allocated the burden of proof and considered evidence outside the record.

1. The district court failed to place the burden on the objector to establish by expert testimony or otherwise that fees as paid are excessive.

2. The district court failed to recognize that respondent did not introduce any evidence that fees were excessive and that the record is otherwise devoid of such evidence.

3. The district court based findings on the court's personal knowledge or experience when it must base its decision only on the record.

2. Broad Considerations

Given the record in this case and the shotgun-style briefing on several of these arguments, we will not address them individually. Rather, we will address broad considerations that bear on resolution of these matters.

a. Statutory Standards/Deference

Before reaching the merits of Gale's attorney-fee claims, we first address his assertion concerning the allocation of evidentiary burdens when a probate attorney requests fees. Gale claims that the district court was bound to accept his fee proposals because respondent introduced no evidence to show that the fees were neither just nor reasonable. Gale mischaracterizes the burdens relevant to a claim for attorney fees in the probate setting. "[T]he allowance of compensation for attorney[] fees in probate proceedings rests largely in the discretion of the [district] court; and . . . the reasonable value of such services is a question of fact." *Baumgartner*, 274 Minn. at 346, 144 N.W.2d at 580. As such, the district court's findings will not be disturbed unless the appellate court, after reviewing the evidence, "is left with the definite and firm conviction that a mistake has been committed." *In re Estate of Congdon*, 309 N.W.2d 261, 266 n.7 (Minn. 1981) (quotation omitted).

As previously noted, a probate attorney "shall have such compensation . . . out of the estate as shall be just and reasonable," and, in reviewing fees, the district court is to consider the previously quoted statutory factors. Minn. Stat. § 525.515(a)–(b). But,

regardless of the factors, caselaw interpreting section 525.515 “requires proof of a benefit to an estate before an attorney may be paid for providing ‘services’ for the estate.” *Evenson*, 505 N.W.2d at 92. A party in exclusive possession of evidence has the burden to produce that evidence. *See Butt v. Schmidt*, 747 N.W.2d 566, 576 (Minn. 2008) (stating that, in the marital-dissolution context, each party is responsible for producing his or her own work, education, and earnings history). This assertion is consistent with the nearly universal rule that the party moving the court to order payment of attorney fees bears the burden to establish the propriety of the award. *See. e.g., Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001) (stating that, in a marital-dissolution proceeding, the moving party has the burden of proof in establishing that conduct-based fees are appropriate).

Here, Gale made this threshold showing by submitting his billing records—which were in his exclusive possession—and both parties in various ways over the course of the district court proceedings argued the five statutory factors. The district court considered the record when it ruled on this issue. As the party requesting fees and having the supporting evidence, Gale bore the initial burden of production. Once he produced the evidence in his control, respondent argued that the statutory factors, when properly applied to these facts, mandated limiting Gale’s requested fees. But respondent could also have rested on the record. Gale is essentially suggesting that the district court was bound to grant his fee request for the sole reason that respondent-objector failed to come forward with evidence sufficient to defeat the request. There is no such requirement in the statute, which mandates the application of certain factors. Because imposing a

burden of production on a party who raises objections to a final account and requiring the district court to grant the fees requested unless the objector meets that burden would alter the district court's inherent discretion in acting on fee requests, we decline to adopt Gale's approach.

b. Attorney Fee Request, Generally

In entering its orders, the district court looked at the attorney-fee request generally and had the opportunity to determine an appropriate fee for this type of estate, based on its experience, its observations of the trial, the nature and extent of the various disputes, and its evaluation of Gale's work. In its August 2010 order, the district court found that the number of hours Gale reported for work for the estate was excessive. The district court found that the estate was not large or complex. The district court pointed out that the estate consisted largely of bank accounts with no real property, stocks, or complex investments; that no experts were retained; and that, as the attorney for the estate, Gale's responsibilities were presumptively relatively light. It determined that none of the five statutory factors supported a larger fee for this type of estate. Indeed, except for having to deal with the persistent inquiries of respondent and recasting the probate from informal to formal, Gale does not indicate any estate-related legal work that was unusually onerous or excessive that would support a greater fee. While recognizing that a formal probate takes more attorney time than an informal proceeding, we conclude that a district court may limit fees in a straightforward probate based on the statutory factors.

We recognize that this probate was complicated by respondent's objections. In this regard, the district court dealt with the parties and the various disputes. It saw the

witnesses and documents, listened to counsel, read the pleadings, and had a far better opportunity than this appellate court to evaluate the complications of this probate proceeding, the complexity and cause of the problems, the experience and knowledge of the attorney, the work that is customarily done by clerical and paralegal staff, the responsibilities assumed, and the results obtained. We conclude that the district court applied the statutory factors in reaching its determination that the hours billed by Gale were an excessive and unreasonable amount to devote to the settlement and distribution of a modest estate and to answering questions and dealing with challenges about a range of matters. In sum, subject to adjustments noted below, we conclude that the district court did not clearly err in finding that, based on the statutory factors, the attorney's probate fees as presented and considered at the June hearing should be limited to the reduced amount which it allowed.

c. Respondent's Objections

In looking at the multitudinous challenges by respondent, several are relevant to attorney fees, while others were never seriously pursued. As a daughter and devisee of decedent, respondent appears to be troubled by perceived improper conduct by her nephew, who had access to her mother's bank accounts and household furnishings and who participated in selling her house to the fiancée of another nephew. The suspicions of the heirs extended to Holm's handling of the probate as the personal representative. When it came to a trial, the objections of undue influence and missing property melted away for lack of evidence.

We also note that although the district court ruled against the challenges, they are not necessarily ill-founded. Paying late claims for reimbursement raises red flags. The cash sale of the Cadillac appears to have caused confusion. Thus, to a certain extent, avoidable sloppiness in handling the estate may have caused objections. Similarly, the use of credit cards and the checkbook by a grandson of decedent when she was in the nursing home and the use of her cash card after her death raised suspicions. The trial testimony of Holm explaining the usage was not contradicted, and the district court ignored the issues in its order, effectively dismissing respondent's objections. Yet an additional consideration was the life insurance payout. Further investigation was not unreasonable with respect to the position of the life-insurance company reducing its payout on decedent's policy. This was easily resolved when the insurer furnished attorney Gale a letter written by the decedent electing to reduce the size of the policy.

One consideration that appears in reviewing the objections and claims of maladministration of the estate is that they were partly caused by Holm and were easily corrected or possibly could have been prevented by the attorney for the estate. The district court could weigh this in determining fee requests.

d. Briefing by Appellants

Appellants have not provided in their brief any indication of how much of Gale's time went into dealing with objections, trial preparation, or following up after the trial and have not pointed us to exhibits detailing that time.³ This is largely the attorney time

³ We also note that appellants' brief does not contain an addendum providing the orders from which this appeal was taken and that the appendix lists every page as a separate

spent after January 2010 and included in the fees that were subject to the November 2010 court hearing. Parties on appeal are required to cite to the record for all statements of material fact, Minn. R. Civ. App. P. 128.02, subd. 1(c), and failure to cite to the record may be a basis for declining to consider an issue or for dismissal of an appeal, *Brett v. Watts*, 601 N.W.2d 199, 202 (Minn. App. 1999), *review denied* (Minn. Nov. 17, 1999). The purpose of the rule requiring citations is to facilitate appellate review. *Cole v. Star Tribune*, 581 N.W.2d 364, 371 (Minn. App. 1998) (striking portions of appellants' briefs because they failed to provide citations to the record, relied on extra-record assertions, and made repeated erroneous assertions of facts). Although we choose not to strike appellants' factual assertions that are unsupported by citations to record evidence, we decline to undertake the task of hunting through a trial transcript and hundreds of exhibits to locate uncited evidence to overturn a district court decision.

e. Gale's Submissions

Next, we consider the findings of the district court concerning the legibility and inconsistency in billing records. Like the handwriting of many of us, Gale's handwritten time records are difficult to read. This should not be held against him. (Typed billing statements were submitted to the district court.) But, given this difficulty, we question the purpose and value of filing these time records.⁴ Their submission to the district court raised the risk of confusion. In addition, we note that Gale numbered nearly every page

“exhibit.” See Minn. R. Civ. App. P. 128.02, subd. 3 (requiring an addendum). We also note that almost every sentence in the brief is a separate paragraph, making it challenging to follow appellants' arguments.

⁴ Time records should only be submitted if requested by the court. Minn. R. Gen. Pract. 119.03, 412(a).

of his office records as a separate exhibit and referred to them in large blocks, compounding the district court's and our difficulty of locating record support for his statements and arguments. As just mentioned, it is not the responsibility of this court to hunt through the record to find documents that may or may not support reversal of a district court decision. That is appellant's responsibility.

The district court pointed out inconsistencies in appellants' time and billing records. In their motion for amended findings and in their brief, appellants attach and cite to the exhibits which overcome or otherwise answer the district court's comments about inconsistency. This substantiates four hours of billed work disallowed by the district court. Here, the district court did not question Gale's billing rate of \$200 per hour. We allow these four hours at that rate for \$800. We acknowledge that these were pointed to by the district court as examples of why it discounted Gale's fees for the period preceding February 2010. Although the impact of the district court's finding may extend beyond the four hours and \$800, we recognize that the time was incident to the routine probate tasks and before a trial was even scheduled. Thus, the district court was dealing with the basic fees for probating this estate. Our \$800 allowance corrects what is a clear detail error in the more general analysis of the district court.

f. Solo Practitioner

We take seriously appellants' complaint that the judiciary should not penalize a solo practitioner's request for fees for lack of a paralegal or other support staff that is typically available in a larger law firm. It is common knowledge that many solo practitioners have highly capable support staff. We note that Gale himself sometimes

billed his time at \$100 per hour on the ground that he was essentially performing paralegal work. We review the district court's decision and findings for abuse of discretion. We conclude that generally the district court did not abuse its discretion or inappropriately penalize Gale as a solo practitioner when indicating that Gale should more rigorously follow his own billing practice.

In one instance, Gale's classification of time spent as an attorney is improperly disallowed. He asserts that he spent attorney time to immediately respond to the district court's apparent loss of his exhibits, fearing lack of the missing exhibits might adversely affect his claim for fees, and that he should be fully compensated for this court-caused problem. Responding to the district court's apparent loss of documents understandably puts pressure on the solo practitioner, and he should be allowed compensation. We note that Gale's fees were reduced by \$250 for this effort and conclude that \$250 of his fees should be restored.

g. Evidentiary Hearing

Appellants claim that the district court improperly denied them an adequate evidentiary hearing. Appellants' claims in this regard are unavailing. The claimed fees were submitted to the district court on two occasions. First, there are the fees that were presented to the district court at the June 21, 2010 hearing, reduced in the August 30 order, and subject to the motions for amended findings or a new trial. These fees were for the period in the initial final account. Because these fees had been the subject of the June 21 trial, the district court order correctly points out that there had already been a hearing.

Second, there are the fees that were claimed after those earlier billings. The additional fees for attorney time were included in appellants' Amended Final Account and motion for acceptance of that account and were before the district court at the November 10 hearing. Appellants do not identify any ruling of the district court that precluded their bringing up these bills on November 10. The fees included all the pre- and posttrial time of Gale. At this stage of the proceedings, appellants knew that the district court was highly critical of attorney fees and should have recognized that the sizable additional claimed fees were at risk.

The district court's December order points out that appellants failed to avail themselves of the November hearing as an opportunity to prove up these fees. Appellants have not furnished us with a transcript or any record of the November hearing, and none appears in the district court file. On appeal, appellant has the burden of providing an adequate record, including a transcript of the proceedings, that is sufficient to show alleged errors. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995); Minn. R. Civ. App. P. 110.02, subd. 2. Absent such a record, we are unable to consider appellants' claims regarding the adequacy of the November hearing or review the district court's denial of their request for yet further proceedings on the matters before the court in June 2010.

h. Trial Preparation

Appellants claim attorney fees for preparation for the June 21 trial. Based on the district court's document register, the trial transcript, and the appendix to the brief, we recognize that Gale devoted time to preparation for the June trial that was not included in

billings that stopped in February 2010. This cut-off date was four months before trial. Based on a one-day trial, the expectation that there are at least two hours of preparation time for each hour of trial, and the fact that the district court allowed seven and one-fourth hours of trial time, we conclude that fourteen and one-half hours can fairly be considered minimal preparation time. Based on \$200 per hour, we allow Gale \$2,900 in fees for trial preparation.

III. NEW TRIAL

The third issue raised by appellants is whether the district court abused its discretion in denying their motion for a new trial. Appellants argue that they were denied an opportunity to submit evidence and that they are entitled to a new hearing at which they can present a detailed accounting of their fees. We review a district court's denial of a new-trial motion for an abuse of discretion. *Stoebe v. Merastar Ins. Co.*, 554 N.W.2d 733, 735 (Minn. 1996).

Minn. R. Civ. P. 59.01 provides that a new trial may be granted on several grounds, including an irregularity in the proceedings whereby the moving party was deprived of a fair trial, or a decision not justified by the evidence or contrary to law. Appellants' principal contention is that they were deprived of a fair trial by an irregularity, specifically that the district court did not give them an opportunity to explain their recordkeeping at the hearing or allow Gale to testify as an expert concerning his own method of billing. Appellants do not cite to any point in the record where the district court refused to allow Gale to testify. On one occasion, the district court cautioned him against being a witness on the personal representative's fees because it might complicate

his continuing role as an attorney for the estate in the court proceeding. As the district court observed, appellants were given an opportunity to present documentation and testimony in support of their requests for fees at the June 21 and November 10 hearings. We have no record or transcript of the November hearing. For the reasons previously discussed, we conclude that the district court did not abuse its discretion in denying the motions for a new trial and amended findings and deny the request that we remand for a further hearing on attorney fees.

IV. SANCTIONS

The next issue is whether the district court erred in denying appellants' motion for rule 11 sanctions against respondent's attorney. We review a district court's determination of the need for rule 11 sanctions for an abuse of discretion. *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn. App. 2000), *review denied* (Minn. Apr. 18, 2000).

Appellants' sanction motion is procedurally deficient. They did not bring a separate motion for rule 11 sanctions; rather, they argued in their posttrial motion that a hearing should be scheduled to impose sanctions on respondent and her counsel for pursuing baseless and frivolous claims. A motion for rule 11 sanctions must (1) be made separately from other motions or requests; (2) describe the specific conduct alleged to violate the rule; and (3) be served as provided in Minn. R. Civ. P. 5.01–.05. Minn. R. Civ. P. 11.03(a)(1); *see Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 789–90 (Minn. App. 2003) (holding that the district court abused its discretion by imposing rule

11 sanctions when the moving party failed to follow the provisions of Minn. R. Civ. P. 11.03(a)(1)).

Even had appellants followed the proper procedure, rule 11 sanctions are not necessarily warranted just because the district court ruled against and declined to address respondent's objections to the final account. As previously discussed, questions were raised about whether decedent was capable of writing checks or using her bank card while in the nursing home, the use of her cash card after her death, whether her life-insurance company was justified in reducing the face amount of the policy, whether certain late claims should have been disallowed, and the amount of personal representative and attorney fees. We conclude that the district court did not abuse its discretion in denying sanctions.

V. RESPONDENT'S ATTORNEY FEES

By notice of related appeal, respondent argues that her counsel's fees should have been paid from the estate under Minn. Stat. § 524.3-720. Respondent's counsel conceded at oral argument that this issue was not raised before the district court. As such, the issue is not properly before us on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (1988) (appellate court will generally consider only matters presented to and considered by the district court). Respondent provides no support for the proposition that an issue raised for the first time on cross-appeal is entitled to any more consideration than an issue raised for the first time on direct appeal. *See State v. Thomas*, 467 N.W.2d 324, 327 (Minn. App. 1991) (issues not raised before district court generally will not be addressed on appeal). Respondent has waived this issue.

VI. CONCLUSION

In sum, we conclude that the district court made three errors in reducing Gale's attorney fees: misreading time records resulting in an \$800 adjustment, disallowing legal time in supplying a replacement set of exhibits resulting in a \$250 adjustment, and excluding trial-preparation time resulting in a \$2,900 adjustment. This is a total adjustment of \$3,950. We modify the December 15, 2010 order of the district court to add \$3,950 to the previously allowed attorney fees for a total of \$17,139. Otherwise, based on our scope of review and all of the considerations previously discussed, we conclude that there is substantial evidence and sufficient findings to sustain the August and December orders and that the district court acted within its discretion in reducing Gale's attorney fees.

Additionally, we conclude that the district court's findings are adequate for appellate review and that it did not abuse its discretion in denying appellants' motions for amended findings, a new trial, and sanctions. We further reject respondent's request for attorney fees.

Affirmed in part, reversed in part, and modified.

Dated: