STATE OF MINNESOTA
IN COURT OF APPEALS
A11-23

In the Matter of the Guardianship and Conservatorship of:
Joseph James Langa, Ward.

Filed December 12, 2011
Affirmed
Worke, Judge

Aitkin County District Court
File No. 01-P0-92-000511

Thomas C. Pearson, Gammello, Qualley, Pearson & Mallak, PLLC, Baxter, Minnesota (for appellants Paul Peterson and H. Frances Peterson)

Jeffrey Haberkorn, Haberkorn Law Offices, Ltd., Aitkin, Minnesota (for respondent Candace A. Simar)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellants served as guardians and conservators of the ward. Appellants challenged the district court's disallowance of certain fees as unnecessary and unreasonable. We reversed and remanded with instructions to the district court to allow appellants to challenge the policies that the district court relied on in determining the reasonableness of appellants' fees and, in its discretion, to reopen the record. Following remand, appellants now argue that the district court ignored evidence and abused its

discretion in disallowing certain expenses and fees and in requiring appellants to repay those amounts. We affirm.

FACTS

In August 2004, appellants Paul Peterson and H. Frances Peterson were appointed guardians of Joseph James Langa and conservators of the estate of Langa. Appellants served in these capacities until Langa's death on February 2, 2006. Although appellants' powers terminated when Langa passed, appellants continued to write checks from the estate. In April 2008, the district court ordered appellants to show cause as to why fees charged to the estate were not excessive. Following a hearing, the district court, relying on Aitkin County Health and Human Services Service Fee Policy for Guardians and Conservators (policy) and the Minnesota Association for Guardianship and Conservatorship Standards of Practice (standards), determined that several of appellants' charges—their hourly rate and $250 monthly base fee—were excessive, unnecessary, and unreasonable, although the court found that appellants' billings were "extremely disorganized and inaccurate," making it difficult to determine which expenses were necessary.

Appellants challenged the district court's order disallowing certain fees, and we reversed and remanded with instructions to the district court to allow appellants an opportunity to challenge the persuasiveness of the policy and standards, and, in its discretion, to reopen the record. *See In re Guardianship and Conservatorship of Langa*, No. A09-451, 2010 WL 346378, at *5 (Minn. App. Feb. 2, 2010). We further instructed the district court to apply a five-factor guide in determining just-and-reasonable fees. *See*

id. at *6; *see also In re Guardianship of Doyle*, 778 N.W.2d 342, 351 (Minn. App. 2010) (setting out five-factor guide).

The district court held a hearing, but neither the policy nor the standards were admitted into the record, and the district court declined to take judicial notice of the policy and standards, finding neither to be "particularly helpful or overly persuasive." In its original order, the district court, relying on the policy, determined that appellants could not charge more than $35 per hour. But on remand, the district court determined that the policy was merely persuasive and not binding. After applying the just-and-reasonable test on remand, the district court determined that appellants could charge no more than $25 per hour. The district court further disallowed the $250 monthly flat fee that appellants charged for 18 months for recurring tasks. The district court concluded that there was no evidence that the recurring tasks were actually performed and that there was no reason to charge a flat fee rather than breaking down the accounting. The district court concluded that appellants must repay the estate $10,250.[1] This appeal followed.

D E C I S I O N

Appellants argue that the district court's findings and conclusions are not supported by the evidence and that the district court abused its discretion in disallowing certain expenses. The district court's findings will not be disturbed unless this 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)

[1] $4,750 ($250 monthly fee charged for 18 months + $250 that was charged twice in June 2005) + $5,500 (excessive, unreasonable, and unnecessary billings taking into account $25 hourly rate) = $10,250.

(quotation omitted). A district court's decision as to the reasonable value of a conservator's or guardian's services is a question of fact that will not be set aside unless clearly erroneous. *In re Conservatorship of Mansur*, 367 N.W.2d 550, 552 (Minn. App. 1985), *review denied* (Minn. July 11, 1985).

The district court applied the five-factor guide to determine whether appellants' fees were just and reasonable, considering: (1) the time and labor required; (2) appellants' experience and knowledge; (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 available to pay for the services. *See Doyle*, 778 N.W.2d at 351.

Time and labor

The district court determined that the matter was not time-intensive because appellants spent, on average, "6.1 hours per week" on this matter. The district court also found that the matter was not labor-intensive because appellants made phone calls, wrote letters, prepared documents, talked with people, attended court hearings, and travelled marginally.

Although the district court found it difficult to determine the exact amount of time appellants expended on the matter because of the way they submitted their billings, the court found that appellants expended approximately 438.9 hours over the course of 18 months. Thus, appellants dedicated an average of 6.1 hours per week to this matter, on tasks that were not labor-intensive. The record supports the district court's findings that this matter was neither time- nor labor-intensive.

Experience and knowledge

Appellants argue that they have extensive accounting backgrounds and educational experience. The district court found that appellants

> failed to demonstrate any experience that was germane to their roles as guardians/conservators. All of the experience they cite is illusory at best because it does not contain any information which would allow this [c]ourt to weigh its value. The [c]ourt cannot determine anything from their averments other than they worked somewhere, doing something for a period of years and received or did not receive certain degrees.
>
> Without more specific information regarding their experiences, the [c]ourt cannot find that there is any value to their 'experience' or 'knowledge.'
>
> Accordingly, the Court finds that with respect to the second factor of the 'just and reasonable test' [appellants] have no experience or knowledge which is germane to their role as guardians/conservators.

The district court based this determination on appellants' submissions on remand that sought to demonstrate their experience and knowledge. Appellants both claimed: (1) three years as "manager" of "National Tax Firm's Accounting Office"; (2) nine years as "owner of a tax accounting office"; and (3) nine years "doing farm accounting." H. Frances Peterson also claimed to have spent five years as a "purchasing agent" for a window manufacturer and claimed to have two years of college education. Paul Peterson claimed to have twelve years of "tax reduction analysis and income enhancement experience"; training and experience in life insurance, long-term health care, and "asset conservation/preservation"; three college degrees; and law-school experience.

We agree with the district court that appellants provided only vague descriptions of their prior experiences and have failed to explain how their experiences are relevant to

serving as guardians/conservators. First, it is questionable that appellants held the same titles for three different positions for the same number of years. Appellants also failed to describe the duties they performed at these tax offices, whether they performed accounting duties, and how their positions related to work performed as guardians/conservators. Further, appellants failed to show the relevance of work performed as a purchasing agent of a window manufacturer to the duties of a guardian/conservator. Additionally, H. Frances Peterson failed to describe the classes she took during her two years of college. And Paul Peterson failed to define what "tax reduction analysis and income enhancement experience" means or how he gained that experience. He also failed to provide any details regarding his training and experience in life insurance, long-term health care, and asset conservation/preservation. Finally, Paul Peterson claimed to have three college degrees—an Associate of Arts degree in science, a Bachelor of Arts in history, and a Bachelor of Science degree in secondary education. Appellants assert that these degrees are relevant to the matter because they broadened Paul Peterson's perspective, helped him deal with people, and helped him understand people and situations. But, as the district court found, these general averments are not specific to the role of a guardian/conservator.

Moreover, H. Frances Peterson testified that she was responsible for the accounting and paperwork involved in the matter. But the numerous errors and irregularities in the accounting raised questions about her abilities as an accountant. And she testified at an earlier hearing in 2008, prior to the first appeal, that she was required to complete forms provided by the county that she found unfamiliar and complicated.

H. Frances Peterson also testified that she was instructed to conduct an assessment of Langa's personal belongings each year, but that she "really didn't know how to do that accurately." At the same hearing, she testified that this was one of the first guardian/conservatorship matters appellants handled. Paul Peterson testified that he had little experience as a guardian/conservator. Thus, appellants admitted their lack of experience and knowledge that is relevant to guardian/conservatorship matters. Therefore, the district court's finding is supported by the evidence; the record simply does not establish that appellants had even moderate levels of experience or knowledge to appropriately handle this matter.

Complexity and novelty

Appellants argue that the matter was complex because of the involvement of Langa's family member and her attempts in district court to remove them from their appointments. The district court found that while the family member's behavior "may have seemed meddlesome or quarrelsome . . . her actions did not contribute to the complexity or novelty of problems in this matter." The record supports the determination that the family member's involvement did not make the matter more complex. Appellants claim that dealing with this family member's behavior accounted for a lot of the time that they expended on the matter. But if the family member's involvement made the matter more time-consuming, appellants could have billed the time spent on the matter, and presumably did. Appellants failed to show how the family member's involvement made the matter complex; they appear to be confusing the time-and-labor

factor with the complexity-and-novelty factor. Thus, the district court's finding that this matter was not complex or novel is supported by the evidence.

Responsibilities assumed and results obtained

The district court found that appellants assumed significant responsibilities, but found it "impossible" to determine the exact results obtained. The district court noted that appellants' record keeping was "atrocious and not commensurate with the general professionalism expected of a guardian/conservator." Thus, the district court found that appellants failed to achieve positive results because "of the haphazard manner in which they conducted various accounting tasks." This finding is supported by the record because of appellants' severely flawed record keeping.

Sufficiency of available assets

The district court found that Langa had sufficient assets to pay for appellants' services. The record supports this determination.

Based on the district court's consideration of the just-and-reasonable test, the court determined that appellants' reasonable hourly rate was $25. Appellants argue that the district court was required to adopt the $35-per-hour rate based on the remand instructions from this court. But that is an incorrect reading of this court's opinion. This court instructed the district court to, in its discretion, reopen the record. This court did not instruct the district court to use the $35-per-hour rate; rather, we instructed the court to analyze the matter using the five-factor guide, which it did. When the district court conducted the analysis, it determined that $25 per hour was the appropriate rate. This determination was within the district court's discretion based on: (1) this matter was not

time- or labor-intensive; (2) appellants had essentially no experience or knowledge germane to guardians/conservators; (3) the matter was not complex or novel; and (4) appellants assumed responsibilities of guardians/conservators, but obtained unsatisfactory results.

The district court further concluded that the monthly fee of $250 charged for 18 months was unreasonable, excessive, and unnecessary because appellants failed to explain what the recurring monthly tasks were and whether they were actually performed. The district court also correctly noted that there was no reason why the tasks could not have been broken down and assessed at an hourly rate. This conclusion is also within the district court's discretion because appellants claimed that the flat fee covered five hours of work each month, but the flat fee appellants charged certain months did not correspond to five hours of work. And based on the district court's reduction of appellants' reasonable hourly rate to $25, the resulting flat rate would be $125, not $250 that appellants charged. Additionally, there were months when appellants billed their hourly rate for recurring tasks and also billed the monthly fee—essentially double billing.

The district court concluded that appellants billed excessive fees and that appellants must repay $10,250 to the estate. This conclusion, supported by the record, is within the district court's discretion.

Affirmed.