[Cite as *In re Dye*, 2012-Ohio-2570.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

FAYETTE COUNTY

IN THE MATTER OF THE ESTATE OF:	:	
		CASE NOS. CA2011-04-004
SALLY ANN DYE.	:	CA2011-04-005
		CA2011-04-006
	:	
		O P I N I O N
	:	6/11/2012
	:	

APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
PROBATE DIVISION
Case No. 07PE00148

Renae E. Zabloudil, 58 East High Street, Suite B, London, Ohio 43140, guardian ad litem

George Wertz, 23 South Main Street, Suite 301, Akron, Ohio 44308, for appellee, Estate of Sally Ann Dye and George R. Wertz, Administrator

Paul W. Flowers Co., L.P.A., Paul W. Flowers, Virginia Shenkan, Terminal Tower, 35th Floor, 50 Public Square, Cleveland, Ohio 44113 and Michelle Stine Barnoff, P.O. Box 816, Uniontown, Ohio 44685, for appellants/cross-appellees, Joel Medrano, Individually and as Administrator, Emma Medrano, A Minor, and the Virginia Shenkan Law Center, P.C.

A. Mark Segrati, Jr., 1405 Streamside Drive, Dayton, Ohio 45459, for appellee/cross-appellant, Mary Frances O'Connors

Volkema Thomas Miller & Scott, Warner M. Thomas, Jr., Michael S. Miller, 140 East Town Street, Suite 1100, Columbus, Ohio 43215, for appellee, John Michael Dye

PIPER, J.

{¶ 1} This matter is an appeal from an order of the Fayette County Court of Common Pleas, Probate Division, distributing the settlement proceeds of a wrongful death claim.

Appellants/cross-appellees are Joel Medrano and George Wertz, Esq., as co-administrators of the decedent's estate, Joel Medrano individually, Emma Medrano, a minor, and the Virginia Shenkan Law Center, P.C. Appellees are Logan Dye, Mary O'Connors and Mark Segreti, Jr., Esq. O'Connors and Segreti also assert two cross-assignments of error.

{¶ 2} On July 15, 2007, the decedent, Sally Ann Dye, was killed in a car accident, along with her boyfriend, Robert Connell. Although Dye was dating Connell at the time, she was actually married to appellant/cross-appellee, Joel Medrano.

{¶ 3} One week after Dye's death, Attorney Segreti filed an application on behalf of O'Connors to administer Dye's estate in the Fayette County Probate Court. Attorney Wertz filed a competing application on behalf of Medrano to administer the estate in Franklin County. In an effort to resolve their administrative dispute, Medrano and O'Connors entered a consent order dated August 14, 2008. O'Connors agreed to withdraw her application to administer Dye's estate, at which time Medrano and Wertz would become co-administrators. The parties then agreed that the co-administrators would apply for approval of a one-third contingency fee contract for the payment of attorney fees in regard to pursuing the wrongful death claim. Additionally, in the event that Segreti and the co-administrators could not agree on Segreti's compensation, they established that he could seek payment on a *quantum meruit* basis.

{¶ 4} On April 28, 2010, roughly two years after finalizing the consent order, Wertz filed an application to approve a contingency fee contract between the co-administrators and the Virginia Shenkan Law Center ("Shenkan"). The next day, the court accepted Wertz's application, and ordered the approval of a one-third contingency fee contract. Segreti immediately moved to vacate the contract, arguing it was not pre-approved by the court in violation of the Rules of Superintendence. Segreti further argued that Shenkan did not

deserve attorney fees, where she failed to pursue an additional liability claim against Robert Connell's insurer, State Farm Insurance Company (hereinafter referenced as the "State Farm Insurance claim"). A hearing on Segreti's motion was scheduled for July 28, 2010. However, prior to the hearing, Shenkan proposed a $250,000 settlement agreement. The court approved the settlement, and subsequently held a hearing to distribute the proceeds.

{¶ 5} During the hearing, the court set aside $83,250 for attorney fees and expenses.[1] However, the court immediately subtracted $30,000 to reflect the loss of the State Farm Insurance claim. The court then divided the remaining $53,250 between Segreti, Shenkan, and Wertz. Following the distributions, Segreti asked the court to reconsider Shenkan's fee award, claiming the $30,000 loss in insurance money was entirely Shenkan's fault. The court noted Segreti's objection and concluded the hearing.

{¶ 6} On March 16, 2011, the court issued its final order of distribution. However, the distributions therein differed considerably from those proposed during the hearing. The redistribution was the result of the court's decision not to reduce Shenkan's attorney fees by $30,000 for the loss of the alleged State Farm Insurance claim. The court stated the claim was "speculative at best."

{¶ 7} Prior to awarding the distributions, the court determined that the co-administrators had failed to proffer a new contingency fee contract in accordance with the consent order. The court further found that there was no agreement as to Segreti's fee, and therefore recognized his application for fees on a *quantum meruit* basis.

{¶ 8} The final order of distribution then awarded the following:

Attorney fees and expenses fund:	**$83,333**
Segreti attorney fees:	(17,518.12)

Wertz attorney fees:	(17,518.12)
Shenkan attorney fees:	(41,223.83)
Total expenses awarded:	(7,072.93)
Total:	$0

Beneficiary fund:	**$166,667**
Surviving Spouse:	(500)
Funeral expenses:	(7,805.77)
Logan Dye:	(79,180.61)
Emma Medrano:	(79,180.61)
Total:	$0.01

Total settlement award:	**$250,000**

{¶ 9} This appeal followed. Appellants present four assignments of error for review, while Segreti and O'Connors ("appellees") assert two cross-assignments of error. For ease of discussion, we will address the parties' arguments out of order.

Standing to Appeal

{¶ 10} As an initial matter, appellees argue that appellants lack standing to appeal the order of distribution. We will address each appellant individually.

{¶ 11} "Standing is a preliminary inquiry that must be made before a court may consider the merits of a legal claim." *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 2010-Ohio-6036, ¶ 9. Standing is a question of law, so we review the issue de novo. *State ex rel.*

1. The court's subsequent order of distribution indicated it intended to authorize no more than one-third of the settlement for all attorney fees combined.

Merrill v. Ohio Dept. of Natural Resources, 130 Ohio St.3d 30, 2011-Ohio-4612, ¶ 27.

{¶ 12} To have appellate standing, a party must be aggrieved by the final order appealed from. *Williams v. McFarland Properties, L.L.C.*, 177 Ohio App.3d 490, 2008-Ohio-3594, ¶ 29 (12th Dist.). A party is aggrieved if it has an interest in the subject matter of the litigation that is "immediate and pecuniary" rather than "a remote consequence of the judgment." *Id.*, quoting *Midwest Fireworks Mfg. Co., Inc. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St.3d 174, 177 (2001). The party seeking to appeal bears the burden of establishing standing. *McFarland* at ¶ 29.

Medrano and Wertz as Co-administrators of the Estate

{¶ 13} Appellees first argue that Medrano and Wertz, in their capacities as co-administrators, lack standing to challenge the court's distribution of the wrongful death settlement proceeds.

{¶ 14} Appellees cite case law which states that fiduciaries often lack standing to appeal wrongful death issues in their official capacity, because the statutory beneficiaries are the real parties in interest to the action. *See Burwell v. Maynard*, 21 Ohio St.2d 108, 110 (1970); *Kyes v. Pennsylvania RR. Co.*, 158 Ohio St. 362, 362 (1952); *In re Estate of Wirebaugh*, 84 Ohio App.3d 1, 3-4 (6th Dist.1992). Appellees suggest that pursuant to this rule, Medrano and Wertz lack standing to appeal in their official capacities, since the beneficiaries had the sole interest in the settlement proceeds.

{¶ 15} We disagree. Instead, we find that Medrano's and Wertz's participation in the August 14, 2008 consent order vests them with standing to appeal. *Cf. Bennett v. Babcock*, 10th Dist. No. 87AP-1156, 1988 WL 70477, * 2 (June 28, 1988). The consent order was the instrument that governed each attorney's method of payment, and which guided the court's final distribution of fees and expenses from the wrongful death proceeds. Clearly, the co-

administrators had an interest in ensuring that the lower court properly enforced an agreement that they created. *See McFarland*, 2008-Ohio-3594 at ¶ 29.

{¶ 16} Under these circumstances, we find that Medrano and Wertz, as co-administrators, have a sufficient interest in the distribution of attorney fees and expenses, where they participated in negotiating the consent order that controls this precise issue. *See Wilmington City School Dist. Bd. of Edn. v. Bd. of Commrs. of Clinton Cty.*, 141 Ohio App.3d 232, 238 (12th Dist.2000).

{¶ 17} Unlike the division and payment of attorney fees, the co-administrators have not demonstrated how they are prejudiced by Medrano's $500 award as the surviving spouse. They do not claim that this award somehow interfered with enforcing the consent order. Instead, as we will discuss next, Medrano's award only affected him individually, as a statutory beneficiary. However, as co-administrators, Medrano and Wertz lack standing to appeal the $500 award distributed to Medrano as a beneficiary.

Medrano as the Surviving Spouse

{¶ 18} In addition to appealing in his capacity as co-administrator, Medrano also appeals as Dye's surviving spouse, a statutory beneficiary pursuant to R.C. 2125.02. As noted above, Ohio law states that the beneficiaries are the real parties in interest to a wrongful death action. *Maynard*, 21 Ohio St.2d at 110. *See also Toledo Bar Assn. v. Rust*, 124 Ohio St.3d 305, 2010-Ohio-170, ¶ 29. Thus, Medrano, in his individual capacity, clearly has an interest in the distribution of the wrongful death settlement proceeds. On appeal, Medrano argues that the court's $500 award was prejudicial to him as an affected surviving spouse, and was in direct conflict with the rebuttable presumption that he suffered damages by reason of his spouse's wrongful death. It follows that Medrano, in his individual capacity, has standing to challenge his $500 award.

{¶ 19} However, in his individual capacity, we fail to see how Medrano was aggrieved by the lower court's distribution of attorney fees and expenses. He does not argue that this money belongs to him as the surviving spouse. *See McFarland*, 2008-Ohio-3594 at ¶ 29; *Util. Serv. Partners, Inc. v. Pub. Util. Comm. of Ohio*, 124 Ohio St.3d 284, 2009-Ohio-6764, ¶ 49 ("[t]o have standing, the general rule is that a litigant must assert its own rights, not the claims of third parties"). Thus, we find Medrano, in his individual capacity, lacks standing to appeal the award of attorney fees and expenses.

Virginia Shenkan Law Center

{¶ 20} Appellees next claim that Shenkan Law Center lacks standing to appeal. Appellees argue that a representative of the firm was required to appear in court in order to demonstrate its interest in the fee distribution. We disagree.

{¶ 21} Despite failing to physically appear before the court, Shenkan received a large portion of the attorney fees and expenses that are at the heart of this appeal. As such, it is likely that Shenkan's alleged injury, i.e., insufficient payment, would be redressed by a favorable decision by this court. In other words, if we were to find Segreti's *quantum meruit* attorney fees were unreasonable, Shenkan would likely benefit from the redistribution of that money. *See Wilmington*, 141 Ohio App.3d at 238 ("[a]n injury in fact requires a showing that the party has suffered or will suffer a specific injury, that the injury is traceable to the challenged action, and that it is likely that the injury will be redressed by a favorable decision").

{¶ 22} Moreover, as a result of the court's finding that a contingency fee agreement did not exist, Shenkan was no longer guaranteed to receive 1/3 of the settlement proceeds as payment for its services. There is little doubt that this decision injured Shenkan's pecuniary interest.

{¶ 23} While we do not condone Shenkan's remote form of representation, we cannot deny that it has a significant stake in the outcome of the controversy surrounding attorney fees and expenses. *See In re Estate of York*, 133 Ohio App.3d 234, 241 (12th Dist.1999). As such, we find Shenkan has standing to appeal the order of distribution as it relates to attorney fees and expenses. However, for the same reasons applicable to the co-administrators, we find Shenkan lacks standing to appeal the $500 award to Medrano.

Emma Medrano

{¶ 24} Lastly, appellees argue that Emma Medrano lacks standing to appeal in this matter. We agree.

{¶ 25} First, Emma does not claim that the $83,333 reserved for the attorneys belongs to the beneficiary account. Thus, she has no demonstrable interest in this award. Further, Emma does not claim she was aggrieved by the court's $500 award to Medrano. Thus, Emma lacks standing to appeal in this matter.

{¶ 26} In sum, we find the parties having standing are: (1) Medrano and Wertz as co-administrators, (2) Shenkan Law Center, and (3) Medrano as the surviving spouse, who may only appeal his $500 award.[2] To the extent permissible, we now address the parties' assignments and cross-assignments of error. For ease of discussion, we will address the co-administrators and Shenkan as "appellants," while addressing appellant/cross-appellee Medrano individually.

{¶ 27} Assignment of Error No. 1:

{¶ 28} THE PROBATE JUDGE ERRED, AS A MATTER OF LAW, BY DETERMINING THAT SHE POSSESSED AUTHORITY TO ORDER THE LEGAL FEES AND EXPENSES OF A NON-PARTY TO BE PAID FROM A WRONGFUL DEATH RECOVERY.

2. We note that no argument was made as to Segreti's or O'Connors' standing to appeal.

{¶ 29} Appellants first argue that Segreti's attorney fees were not authorized and therefore erroneously drawn from the wrongful death settlement proceeds.

{¶ 30} Initially, appellants claim that the lower court was not authorized to award Segreti settlement proceeds because they, as co-administrators, did not hire him to represent the estate. Curiously, however, the bulk of appellants' first argument is that Segreti was not entitled to settlement funds because they "never entered a fee agreement with [him.]"

{¶ 31} Generally, an award of attorney fees must be predicated on statutory authorization or upon a finding of conduct that amounts to bad faith. *Vance v. Roedersheimer*, 64 Ohio St.3d 552, 556 (1992); *In re Estate of Poling*, 4th Dist. No. 04CA18, 2005-Ohio-5147, ¶ 43. Thus, under normal circumstances, an attorney like Segreti, who is not employed by the administrator of the estate, would not be entitled to attorney fees. R.C. 2113.36 (reasonable attorney fees payable to attorneys "employed in the administration of the estate"). *But see In re Estate of Fugate*, 86 Ohio App.3d 293, 298 (4th Dist.1993).

{¶ 32} However, the lower court did not cite statutory authority or bad faith as the basis for Segreti's attorney fees. Instead, it relied on the consent order dated August 14, 2008, which states, in pertinent part:

> The parties, Joel Medrano and Mary Frances O'Connor, having resolved their differences, have hereby entered into the following agreement:
>
> * * *
>
> 8. That the co-administrators will file an application and order to approve the contingent fee agreement with this setting forth the 1/3 contingent fee agreement.
>
> 9. That once the wrongful death proceeding is settled, Mr. Segretti will file an application to the Court in the event an agreement cannot be reached for payment of attorney fees on a quantum merit basis [sic].

{¶ 33} From this, the parties clearly agreed that Segreti could seek attorney fees in

quantum meruit, provided that he and the co-administrators could not reach an agreement on their own. Moreover, at no time did appellants object to, or seek to modify, the terms of the consent order with respect to Segreti's fee application. Under these circumstances, we find the consent order is binding and its terms can no longer be litigated. *See Deutsche Bank Natl. Trust Co. Americas v. Weber*, 12th Dist. No. CA2009-10-264, 2010-Ohio-1630, ¶ 13-14 ("[a] judgment entry to which the parties voluntarily agree and/or consent is essentially a contract between the parties * * * [and the] purpose of a consent judgment is to resolve a dispute without further litigation").

{¶ 34} Absent an agreement on Segreti's fees, we find that pursuant to Section 9 of the consent order, the lower court was authorized to pay Segreti from the settlement proceeds on a *quantum meruit* basis. *See In re Estate of Kenington*, 12th Dist. No. CA2002-01-005, 2003-Ohio-2549; *In re Thamann*, 152 Ohio App.3d 574, 2003-Ohio-2069, ¶ 11 (1st Dist.). We emphasize, however, that our decision is strictly the result of the consent order.

{¶ 35} Lastly, we note appellants' ancillary public policy argument against allowing "interlopers" like Segreti to demand payment from wrongful death proceeds for work done on behalf of a nonparty. This argument would be more persuasive if not for the consent order.

{¶ 36} Having considered appellants' various challenges to the lower court's authority to pay Segreti, we overrule their first assignment of error.

{¶ 37} Assignment of Error No. 2:

{¶ 38} THE PROBATE JUDGE ABUSED HER DISCRETION BY ARBITRARILY CALCULATING THE *QUANTUM MERUIT* COMPENSATION DUE TO A. MARK SEGRETI, JR., ESQ.

{¶ 39} In their second assignment of error, appellants argue that even if the court was authorized to award Segreti's fees, it abused its discretion in calculating the *quantum meruit*

value of his services.[3]

{¶ 40} As previously noted, the lower court awarded Wertz and Segreti each $17,518.12 in attorney fees. Appellants argue that the court would not have paid Segreti so much, had it properly considered the totality of the circumstances in assessing the *quantum meruit* value of his services.

{¶ 41} Appellants are correct that when a court determines the reasonableness of an attorney's services in *quantum meruit*, it should consider the totality of the circumstances involved in the situation. *See, e.g., Goldauskas v. Elyria Foundry Co.*, 145 Ohio App.3d 490, 495 (9th Dist.2001). "The number of hours worked by the attorney before the discharge is only one factor to be considered. Additional relevant considerations include the recovery sought, the skill demanded, the results obtained, and the attorney-client agreement itself." *Id.* Other factors to be considered will vary, depending on the facts of each case. *Id.* at 496; *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry*, 68 Ohio St.3d 570, 576 (1994). *See also* Prof.Cond.R. 1.5 (providing guidelines for determining the reasonableness of attorney fees).

{¶ 42} As an initial matter, we note that none of the parties to this appeal requested separate findings of fact and conclusions of law regarding the court's award of attorney fees. Civ.R. 52. Absent separate findings of fact and conclusions of law on this issue, we will presume that the court considered all the relevant factors. *Carman v. Carman*, 109 Ohio App.3d 698, 705 (12th Dist.1996).

{¶ 43} "Any request for a *quantum meruit* recovery necessarily invokes the equitable jurisdiction of the court." *Charles Gruenspan Co., L.P.A. v. Thompson*, 8th Dist. No. 80748,

3. As an aside, while appellants can no longer litigate the consent order's broad terms, we find no reason to preclude them from arguing that the court did not *abide b*y those terms.

2003-Ohio-3641, ¶ 65. The court's payment of reasonable attorney fees in *quantum meruit* is reviewable only for an abuse of discretion. *Doellman v. MidFirst Credit Union, Inc.*, 12th Dist. No. CA2006-06-074, 2007-Ohio-5902, ¶ 17. An abuse of discretion is more than just an error of judgment; it implies that the court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 44} "[T]he burden is upon the attorneys to introduce into the record sufficient evidence of the services performed and of the reasonable value of such services * * *." *In re Estate of Verbeck*, 173 Ohio St. 557, 559 (1962). An attorney also bears the burden of proving that the billed time was fair, proper and reasonable. *See In re Estate of Williams*, 11th Dist. No. 2003-L-200, 2004-Ohio-3993, ¶ 21.

{¶ 45} In support of his *quantum meruit* fees, Segreti submitted an itemized bill, which included a brief description of his services and the costs he incurred. However, appellants argue that the services listed were wholly frivolous and unreasonable. For example, appellants argue the 7.5 hours Segreti billed for trips to the courthouse to file documents were unreasonable, as it is the customary practice to mail such items to the clerk for filing. Appellants also challenge the 20 hours Segreti allegedly spent researching and preparing various filings, because the issues were not "at all complicated."

{¶ 46} While we agree with appellants that an attorney's time and labor are relevant in determining the reasonableness of his or her fees, it is but one of the factors a trial court must consider. *Williams*, 2004-Ohio-3993 at ¶ 22. Our review of the record reveals that the court, although not explicitly stating its reasoning, made sufficient references to additional relevant factors in determining counsels' fees. *See In re Estate of Brate*, 12th Dist. No. CA2007-08-103, 2008-Ohio-3517, ¶ 16.

{¶ 47} Prof.Cond.R. 1.5 provides a nonexhaustive list of factors used to guide the

court in determining the reasonableness of a fee, including:

> (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;
>
> (8) whether the fee is fixed or contingent.

{¶ 48} A review of the distribution hearing and the final order of distribution provides support for equal fees between Segreti and Wertz. Prior to making the awards, the court specifically stated that it had reviewed the record, and that the distributions would be based on "a blend * * * of some agreement and some just decision by the Court * * *."

{¶ 49} In determining Wertz's fees, the court first confirmed that Wertz had performed monthly legal research in accordance with his Westlaw bill. After having apparently been satisfied with Wertz's response, the court awarded him $17,518.12 in fees. In awarding the same fees to Segreti, the court explained this amount "represent[ed] the effort and time Mr. Segreti contributed to the advancement of the claims * * *." From this, it is clear the court considered the time each attorney spent, as well as the necessity and value of their services. *See* Prof.Cond.R. 1.5(a)(4); *In re Guardianship of Spagnola*, 195 Ohio App.3d 719, 2011-

Ohio-5602, ¶ 14 ("a trial court must base its determination of reasonable attorney fees upon actual value of the necessary services performed").

{¶ 50} During the distribution hearing, the court further considered the value of Segreti's and Wertz's services, relative to the other attorneys' contributions. Specifically, the court noted that Segreti had contributed to the wrongful death action "in an amount that at least equal to and probably far exceeding that of what the court is personally aware of Ms. Shenkan accomplishing. [And] Mr. Wertz has been the one that has represented Mr. Medrano * * *." Thus, in addition to Wertz's and Segreti's value, the court clearly considered the nature of their relationships with not only their clients, but with the court as well. *See* Prof.Cond.R. 1.5(a)(6).

{¶ 51} In sum, the court properly considered the nature and result of counsels' services, the benefit conferred, and the time and labor involved. Further, the court restricted its consideration of Segreti's fees to legal services that were warranted and necessary, as opposed to those that were duplicative, unexpected, or useless. Under these circumstances, we find that the lower court did not abuse its discretion in awarding $17,518.12 to both Segreti and Wertz.

{¶ 52} Appellants' second assignment of error is overruled.

{¶ 53} For ease of discussion, we will now address appellants' fourth assignment of error concerning litigation expenses.

{¶ 54} Assignment of Error No. 4:

{¶ 55} THE PROBATE JUDGE'S ARBITRARY DENIAL OF CERTAIN LITIGATION EXPENSES CONSTITUTES A FURTHER ABUSE OF DISCRETION.

{¶ 56} Appellants now argue that the lower court abused its discretion in denying Shenkan's request for the balance of its litigation costs, totaling $16,981.71, without providing

a basis for its denial.

{¶ 57} During the proceedings below, appellants did not object to the court's determination of litigation expenses. Thus, they have waived their challenge to this issue on appeal. *See Citimortgage, Inc. v. Haverkamp*, 12th Dist. No. CA2010-11-089, 2011-Ohio-2099, ¶ 8 ("errors which arise during the course of a trial, which are not brought to the attention of the court by objection or otherwise, are waived and may not be raised upon appeal").

{¶ 58} Even if we address appellants' argument, it is not well taken. A court's judgment entry may be "general" unless a party makes a request for separate findings of fact and conclusions of law. *Sayre v. Hoelzle-Sayre*, 100 Ohio App.3d 203, 212 (3rd Dist.1994); Civ.R. 52. Here, as with attorney fees, appellants did not request findings of fact and conclusions of law regarding the court's award of litigation expenses. Thus, we must presume that the court considered all relevant factors in making its determination. *Carman*, 109 Ohio App.3d at 705; *Mandzak v. Graves*, 12th Dist. No. CA2009-06-173, 2010-Ohio-595, ¶ 10.

{¶ 59} After review of the record, we cannot say the lower court abused its discretion in fashioning Shenkan's expense award. *See In re Estate of Covington*, 7th Dist. No. 03 MA 98, 2004-Ohio-3649, ¶ 21. We have already found that the court considered the relevant factors in calculating attorney fees. *See* Prof.Cond.R. 1.5. While the court did not restate each factor in awarding litigation expenses, it is reasonable to assume that it continued to consider them. *Sayre*, 100 Ohio App.3d at 212.

{¶ 60} Additionally, appellants fail to cite any authority for the proposition that the court was required to blindly accept all litigation expenses Shenkan claims to have incurred while pursuing the wrongful death action. In fact, Ohio case law rejects this idea. *See, e.g., In re*

Estate of Murray, 11th Dist. No. 2004-T-0030, 2005-Ohio-1892, ¶ 24 ("[a] probate court is not bound to accept an attorney's itemization of services performed on behalf of an estate and its fiduciary"); *In re Estate of Brady*, 8th Dist. No. 88107, 2007-Ohio-1005, ¶ 19.

{¶ 61} Under these circumstances, we cannot say the court abused its discretion in calculating Shenkan's litigation expenses. *See Wolf v. Wolf*, 12th Dist. No. CA2009-01-001, 2009-Ohio-3687, ¶ 26-27.

{¶ 62} Appellants' fourth assignment of error is overruled.

{¶ 63} Assignment of Error No. 3:

{¶ 64} THE PROBATE JUDGE ABUSED HER DISCRETION BY ALLOTTING ONLY $500 OF THE WRONGFUL DEATH RECOVERY TO THE SURVIVING SPOUSE.

{¶ 65} Here, Medrano individually, having exclusive standing to raise this argument, claims that the lower court erred in only awarding him $500 as Dye's surviving spouse.

{¶ 66} Medrano argues the court's basis for the award, namely, that their relationship was "unusual and perhaps tenuous," directly conflicts with the rebuttable presumption in Ohio that a surviving spouse suffers damages by reason of the wrongful death. Medrano also claims that as Emma Medrano's sole custodian, he was entitled to settlement funds for childcare. *See* R.C. 2125.02(B)(1)-(2).

{¶ 67} Conversely, appellees argue that Medrano's award was proper, where the marriage was short-lived, and the children suffered a much greater loss as a result of Dye's death. Appellee Logan Dye also argues that Medrano cannot seek compensation for Emma's loss of support, as that claim belongs to Emma. *See* R.C. 2125.02(B)(3).

{¶ 68} Medrano is correct that the surviving spouse of the decedent is rebuttably presumed to have suffered damages by reason of the spouse's wrongful death. R.C. 2125.02(A)(1). R.C. 2125.02(B) provides a non-exhaustive list of criteria upon which

wrongful death damages may be awarded, including the loss of support and services, loss of consortium, and mental anguish suffered. R.C. 2125.03 directs the probate court to distribute wrongful death settlement proceeds "in such manner as is equitable, having due regard for the injury and loss to each beneficiary resulting from the death and for the age and condition of the beneficiaries." *See In re Estate of Cochran*, 12th Dist. No. CA2000-05-030, 2001 WL 273644, * 1 (Mar. 19, 2001).

{¶ 69} We review the lower court's distribution for an abuse of discretion. *Id.* As previously discussed, an abuse of discretion connotes that the lower court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore*, 5 Ohio St.3d at 219.

{¶ 70} While Medrano's award is admittedly low, we find no abuse of discretion, where the court made detailed findings from the evidence to support its award. First, the court concluded that, based on the evidence, Medrano and Dye's marriage was atypical and was more akin to a "legal union." The court stated that the evidence "overwhelmingly" showed that Dye resided with her boyfriend, Robert O'Connell, at the time of the accident. The court also noted that Dye's belongings were at O'Connell's house, and that Dye had not told her family about her marriage to Medrano.

{¶ 71} A review of the record reveals additional facts supporting the court's finding that Medrano suffered a minimal loss. First, the court's prior orders indicate that Medrano and Dye were at odds with each other financially, and frequently argued over Medrano's failure to provide financial support for their child. Moreover, as noted above, Dye and Medrano were married in December 2006, only eight months prior to Dye's death in July 2007. During a hearing on jurisdiction in August 2007, Medrano testified that the marriage was "spur-of-the-moment," and occurred shortly after Dye became pregnant with Emma. After they were wed, Medrano indicated that Dye stayed overnight with him only 12 times before her death. *See*

Engle v. Schilling, 4th Dist. No. 99CA50, 2000 WL 33226316, * 7 (Dec. 22, 2000) (trial court did not err in considering evidence of decedent's and surviving spouse's short, troubled marriage in distributing wrongful death proceeds).

{¶ 72} While we recognize that Medrano also testified that he and Dye wished to reconcile, the lower court was in the best position to judge Medrano's credibility, and made a finding that despite this evidence, he and Dye lived separate lives at the time of her death. *See, e.g., In re Estate of Lynch*, 3rd Dist. No. 16-10-05, 2010-Ohio-6376, ¶ 29. We see no reason to disturb this finding.

{¶ 73} Even less convincing is Medrano's claim for additional settlement funds to care for their minor child, Emma Medrano. While Emma was compensated for her loss in the amount of $79,180.61, Medrano's obligation to provide support for his daughter is independent of his claims pursuant to the wrongful death. Further, it is well settled that an appellant cannot raise issues on another's behalf. *See, e.g., In re. J.C.*, 10th Dist. Nos. 09AP-1112, 09AP-1113, 09AP-1114, 2010-Ohio-2422, ¶ 15.

{¶ 74} Moreover, even if Medrano could properly assert this error, we find the argument lacks merit. Medrano argues that his recovery should reflect his loss of Dye's "considerable" financial support. However, the record reveals that Dye was unemployed for the majority of their marriage, and that rather than contributing to Emma's care, Dye continually withdrew funds from the couple's joint account, which caused Medrano to open a separate account for his earnings. *Cf. Rolf v. Tri State Motor Transit Co.*, 91 Ohio St.3d 380, 382 (2001).

{¶ 75} In sum, the evidence shows that Medrano and Dye were estranged at the time of her death, and any equitable division of the wrongful death settlement proceeds should have reflected as such. *See* R.C. 2125.03(A)(1). Although this case was a difficult one, and

we may not have reached the same conclusion as the lower court, we cannot say that its decision was unsupported by the evidence or grossly unsound.

{¶ 76} Thus, we overrule the third assignment of error, which concludes our review of appellants' arguments.

{¶ 77} Cross-assignment of Error No. 1:

{¶ 78} THE PROBATE COURT ERRED AND/OR ABUSED ITS DISCRETION IN AWARDING ATTORNEY FEES AND EXPENSES TO THE VIRGINIA SHENKAN LAW CENTER, PC.

{¶ 79} In their first cross-assignment of error, appellees argue the lower court erred in awarding attorney fees and expenses to Shenkan and Wertz.

{¶ 80} Appellees first argue that Shenkan was not authorized to receive attorney fees, having failed to comply with the Ohio Rules of Superintendence requiring preapproval of fee contracts. *See* Sup.R. 71. However, the Rules of Superintendence are merely guidelines for judges and "are not intended to function as rules of practice and procedure." *Caudill v. Caudill*, 6th Dist. No. S-04-018, 2006-Ohio-1116, ¶ 5. Thus, Shenkan's alleged noncompliance with these rules, standing alone, does not convince us that the court committed reversible error in awarding the firm's attorney fees and expenses. *Id.*; *State v. Singer*, 50 Ohio St.2d 103, 110 (1977).

{¶ 81} Secondly, appellees claim that Shenkan's and Wertz's fee awards were not supported by the evidence. Again, we disagree. Both Shenkan and Wertz submitted itemized billing statements, estimating their hours worked and the cost of their services. Moreover, the lower court used additional evidence in the record to determine the necessity of counsels' services, the actual labor performed, and the results obtained or not obtained, as alleged with the forfeited State Farm Insurance claim. *See Spagnola*, 2011-Ohio-5602 at ¶

14. Under these circumstances, we find the lower court had ample support for its calculations.

{¶ 82} Third, appellees take issue with the court's decision not to deduct $30,000 from Shenkan's and/or Wertz's fee award for failing to pursue the State Farm Insurance claim. Appellees argue that $30,000 was a conservative, non-speculative estimate "based on years of [Segreti's] experience in tort and insurance law."

{¶ 83} We disagree, and find that neither Segreti's speculations about the feasibility of the State Farm Insurance claim, nor his unsupported estimate of the potential payout, demonstrate that the lower court abused its discretion in declining to penalize Shenkan and/or Wertz in this regard.

{¶ 84} Finally, we reject appellees' argument that the lower court abused its discretion in awarding fees to Shenkan, given its alleged violations of the Ohio Rules of Professional Conduct for improper client solicitation.

{¶ 85} While we unequivocally condemn professional conduct rule violations, we find that this was not the proper forum for such accusations. Instead, appellees should have submitted a complaint to the Board of Commissioners on Grievances and Discipline. *See, e.g., Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251. As such, the lower court was not required to consider these allegations in determining Shenkan's attorney fees. Accordingly, we reject appellees' fourth and final sub argument and overrule their first cross-assignment of error.

{¶ 86} Cross-assignment of Error No. 2:

{¶ 87} THE PROBATE COURT ERRED AND/OR ABUSED ITS DISCRETION IN REDUCING THE ATTORNEY FEES AND EXPENSES SET FORTH BY COUNSEL AS UNDISPUTED EVIDENCE FOR A *QUANTUM MERUIT* AWARD PURSUANT TO THE

COURT'S ORDER.

{¶ 88} Next, appellees argue that the lower court erred when it only awarded Segreti attorney fees for his services that "furthered" the wrongful death claim. Appellees assert that the court was not entitled to disregard Segreti's other fee requests, when he showed that his services were reasonable. We disagree.

{¶ 89} It is true that Segreti did not receive all of his requested attorney fees and expenses. However, as previously noted, a probate court is not bound to accept any attorney's itemization of services performed, nor is it bound to follow a precise formula in determining the reasonableness of fees. *See Estate of Murray*, 2005-Ohio-1892 at ¶ 24. Here, we must be particularly mindful that Segreti's recovery was determined according to the equitable doctrine of *quantum meruit*. *Lansberry*, 68 Ohio St.3d at 575-576. As such, Segreti was only entitled to fees and expenses he incurred while engaged in proper activities, and only to the extent necessary to avoid unjust results. *See In re Keller*, 65 Ohio App.3d 650, 656-657 (8th Dist.1989) (assurance of equitable relief encourages attorneys to "diligently prosecute proper litigation"); *Barone v. Barone*, 11th Dist. No. 2004-G-2575, 2005-Ohio-4479, ¶ 17.

{¶ 90} Here, the lower court disallowed Segreti's fees for services that were not related to settlement activities, including his attempts to negotiate attorney's fees, or his time spent "diligently acting for [Dye's] maternal aunt * * *." Furthermore, the court properly rejected the fees that Segreti incurred for "[being] there for the young children and also [keeping] counsel for young Logan Dye informed, lessening the costs for his father, Michael Dye." Such services were, at best, tenuously related to the wrongful death action. There is very little evidence that these activities were necessary, given that the co-administrators had hired counsel to represent the beneficiaries' interests. *See In re Estate of Zonas*, 42 Ohio St.3d 8,

12-13 (1989); *Fugate*, 86 Ohio App.3d at 298.

{¶ 91} Having considered the rather unusual circumstances prompting Segreti's fee application, we find the lower court did not abuse its discretion in calculating Segreti's *quantum meruit* fee award. Appellees' second cross-assignment of error is overruled.

{¶ 92} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.