

AFFIRMED as MODIFIED and Opinion Filed September 7, 2022



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-21-00030-CV

IN RE ESTATE OF COREY DEWAYNE MITCHELL, DECEASED

**On Appeal from the Probate Court No. 2
Dallas County, Texas
Trial Court Cause No. PR-15-03284-2**

MEMORANDUM OPINION

Before Justices Molberg,¹ Reichek, and Garcia
Opinion by Justice Reichek

In this probate case, the court appointed a receiver for two pharmacies owned by the decedent and authorized the receiver to hire legal counsel. The receiver, Jonathan Craig Goodson, appeals two orders—one compensating him for his services and awarding attorney’s fees to his counsel and one granting a Texas Rule of Civil Procedure 91a motion to dismiss a petition filed by his counsel to recover attorney’s fees from the Estate. Goodson raises five issues on appeal. He challenges the awards to him and his attorneys as being arbitrarily low and challenges the

¹ Chief Justice Burns participated in oral argument when this appeal was submitted, but did not participate in this opinion or judgment. Justice Molberg did not participate in oral argument, but has reviewed the record and the briefs in this case. *See* TEX. R. APP. P. 41.1(a).

probate court's decision to limit recovery to receivership funds. Goodson also complains the court erred in granting the Rule 91a motion to dismiss and in awarding appellate attorney's fees to the decedent's widow and minor child. We agree the probate court erred in awarding appellate attorney's fees and reverse that portion of the order doing so. In all other respects, we affirm the probate court's orders.

BACKGROUND

Corey Dewayne Mitchell died in August 2015, survived by his wife Noemi Mitchell and a minor child. At the time of his death, Mitchell, a pharmacist, had an ownership interest in two pharmacies in Texas, one in Ennis and one in Wylie. The Wylie pharmacy opened only four months before Mitchell's death. Mitchell owned 100% of the Ennis pharmacy and 90% of the Wylie pharmacy. Goodson owned the remaining 10% of the Wylie pharmacy and was the pharmacist in charge (PIC) there. A "Company Agreement" between Goodson and Mitchell gave Goodson an option to purchase Mitchell's interest in the Wylie pharmacy in the event of Mitchell's death.

As required by the Company Agreement, in late September 2015, Christopher Castro, the temporary administrator of Mitchell's Estate, gave written notice to Goodson of Mitchell's death. Under the agreement, Goodson had ninety days from the date of notice to exercise his option. Near the end of the ninety-day deadline, Castro sought an extension from the probate court for Goodson to exercise his option. Castro stated that Goodson had "been instrumental in assisting [him] in

dealing with multiple operational difficulties” with the Ennis pharmacy. Castro further stated that the Wylie pharmacy had grown steadily in sales, a trend he believed would continue for the foreseeable future. According to Castro, any extension of time for Goodson to exercise his option to purchase the Estate’s interest in the pharmacy “only serves to increase the value of the Wylie Pharmacy (and likewise the value of the Estate’s Membership Interest), thereby increasing the value to the Estate.” The probate court granted an extension until March 1, 2016. Goodson timely exercised his option to purchase the Wylie pharmacy.

In early May 2016, Castro submitted an application to the probate court asking the court to appoint him as receiver over the pharmacies. Castro cited an ongoing need for someone to continue the operation of the pharmacies, such as ordering pharmaceuticals and hiring and firing employees. Noemi Mitchell opposed Castro’s appointment as receiver. Castro then amended his application to ask the court to appoint Goodson. As prospective receiver, Goodson filed an application asking for court authorization to retain attorneys Mark R. Caldwell and Murray W. Camp of the law firm Burdette & Rice, PLLC to represent him as receiver.

In a May 31, 2016 order, the probate court appointed Goodson as receiver for the pharmacies. The court’s order states that Goodson “shall be entitled to compensation pursuant to Civil Practice and Remedies Code § 64.105 and Chapter 1155 of the Texas Estates Code and subject to Court approval; such compensation shall be separate and apart from his duties and salary as pharmacist in charge of the

[Wylie] Business and any responsibilities he has with respect to the Ennis Business.” The court ordered that the receivership would continue until December 31, 2016. The court later extended the receivership until such time as a representative of the Estate and/or the guardianship of the minor child were qualified to accept a distribution of the receivership property.²

Also on May 31, 2016, the probate court authorized Goodson to hire legal counsel to advise and assist him in connection with his duties as receiver. The court’s order named “Attorneys Mark R. Caldwell, Murray W. Camp, and the law firm Burdette & Rice, PLLC” (“the Law Firm”) as “appropriate and acceptable attorneys” to represent receiver. The probate court authorized Goodson to pay all reasonable and necessary legal fees and expenses “in compliance with the Dallas Probate Guidelines for Attorneys’ Fees and Expenses,” subject to court approval of quarterly fee applications. The court further ordered that all reasonable and necessary legal fees and expenses should be paid out of the receivership assets.

In October 2017, Goodson filed an account of his work as receiver with the probate court. According to Goodson’s appellate brief, at a status conference later that month, the court directed him to file a motion to appoint an outside auditor to review his account. Goodson filed such a motion. On February 8, 2018, the probate

² As described in Goodson’s briefing, this situation was due to an ancillary suit brought by Noemi Mitchell against the Estate, challenging the enforceability of a premarital separate property agreement. In February 2017, the court approved a settlement between Noemi Mitchell and her minor child providing for division of the Estate between them.

court appointed Saville, Dodgen and Company, PLLC (“SD”) for purposes of auditing Goodson’s account. In March of 2019, also at the court’s instruction, Goodson filed another request for the court to appoint an accountant to audit his final account. The court again appointed SD. SD eventually prepared a report that was filed with the probate court.

In January 2018, almost two years after Goodson exercised his option to purchase the Wylie pharmacy, he filed a motion asking the probate court to order Castro to sell the Estate’s interest in that pharmacy to him. Goodson noted that the Company Agreement required the sale of the Estate’s interest in the pharmacy to take place 180 days after he exercised his purchase option. Goodson represented that the sale did not occur within that time frame because Castro did not have court authority to enter into the sale. Under the Company Agreement between Mitchell and Goodson, the purchase price for the Estate’s interest was to be determined by an independent appraiser selected by the parties, who would determine the fair market value of that interest. Goodson attached an appraisal report valuing the Estate’s interest in the Wylie pharmacy at \$96,390. The date of the valuation was August 21, 2015.

Noemi Mitchell opposed the sale on grounds that the August 2015 valuation grossly undervalued the Estate’s interest as of 2018. She provided a December 2017 valuation of the Wylie pharmacy at \$534,000, making the Estate’s 90% interest worth a minimum of \$480,600. Goodson and Noemi Mitchell eventually mediated

their dispute over the purchase price. In August 2018, they agreed on a sales price of \$260,000. The sale to Goodson closed in January 2019.

In July 2018, the Ennis pharmacy was sold to CVS. Prior to Mitchell's death, this pharmacy had a substantial profit history. However, it lost money during the receivership and was not sold as a going concern. Its assets were effectively liquidated to CVS. The net proceeds of the sale were \$225,915. According to Castro, the Ennis pharmacy's decline was caused by a "perfect storm," which included Mitchell's death and the "necessary termination" of the pharmacy's PIC.

On August 5, 2019, the probate court issued an order sua sponte removing Goodson as receiver for the pharmacies. The order notes that both pharmacies had been sold and the only asset in Goodson's possession was cash in various bank accounts. The court appointed David Pyke as the successor receiver of the remaining assets of the pharmacies.

Goodson submitted two applications to the probate court for compensation for his services. He filed his first application in August 2017, and his second application in February 2019. In these applications, Goodson sought total compensation of \$138,000.

Goodson also filed three applications asking the probate court to approve awards of legal fees and expenses to the Law Firm and to authorize the receiver to pay the Law Firm out of receivership assets. Goodson sought approval of \$91,952.20 in attorney's fees in total—\$20,649.23 in his first application,

\$49,226.48 in his second application, and \$22,076.49 in his third application. Noemi Mitchell and an Attorney Ad Litem representing the minor child objected to the applications for receiver's compensation and legal fees to the extent that the applications requested payment out of the Estate's assets.

While the first two legal fee applications were pending, the Law Firm, now a successor-in-interest to the firm named in the order authorizing Goodson to hire counsel, initiated a separate lawsuit in the probate court against Castro as temporary administrator to recover those legal fees from the Estate. In its "Original Petition for Suit on Rejected Claim," the Law Firm alleged Castro rejected its claim for \$69,875.71. The Law Firm asserted a claim for attorney's fees and expenses pursuant to Chapter 64 of the Texas Civil Practice and Remedies Code, as well as claims for money had and received and unjust enrichment.

Castro responded by filing a Motion to Dismiss under Texas Rule of Civil Procedure 91a. He argued that each of the Law Firm's claims had no basis in law or fact.

As successor receiver, Pyke prepared a final report and accounting. In preparing his report, he relied heavily on the report prepared by SD and he also conducted interviews and reviewed documents. Pyke's final report indicates he investigated whether there was anything improper about Goodson's conduct as receiver. One thing Pyke investigated whether the financial statements of the Ennis pharmacy reflected malfeasance on Goodson's part. SD had noted various

transactions that “may or may not be related to the operations of the pharmacy.” Pyke concluded that, without further litigation, investigation, and expense, none of the noted issues seemed to indicate fraud or self-dealing on the part of the receiver. He noted that any recovery would not exceed the cost of litigation and recommended no further inquiry into the accounts of the Ennis pharmacy.

Pyke had two primary areas of concern with the Wylie pharmacy—whether marketing expenses were improper and whether the growth of expenses, which eclipsed revenue growth, reflected any malfeasance by Goodson. Pyke concluded there was no evidence of fraud in connection with the Wylie pharmacy.

Finally, Pyke’s report set out various liabilities of the receivership, which included Goodson’s compensation and his legal expenses. Pyke noted that if all expenses were approved, the receivership had about \$164,000 more liabilities than assets. The Ennis pharmacy had an American Express credit card account and a Comerica credit card account with balances. Pyke was concerned with the fact that there were charges made to these accounts after the sale of Ennis pharmacy assets to CVS. According to Pyke, these charges should not have been incurred and some lacked an appropriate business purpose. In Pyke’s opinion, reasonable diligence required that repeating and recurring charges be promptly terminated when there is no business purpose for the charges. He stated, “No attempt to do this was timely made and charges that had no value to the receivership were incurred.”

On December 14, 2020, the probate court held a hearing on Goodson's applications for compensation and payment of attorney's fees, as well as on the Rule 91a motion. The probate court asked many questions. The judge wanted to hear what value the receiver added and how his counsel benefitted him. She also wanted to understand Goodson's compensation outside of the receivership.

Goodson testified about his duties as PIC of Wylie. In that role, he filled prescriptions, communicated with doctors and patients, ordered products, and managed the staff. In his role as receiver, he ordered non-pharmacy items, worked on tax returns and other administrative filings, and was responsible for the payroll and Medicaid credentialing. In addition, he had regular communications with the staff.

In each of his two applications for compensation, Goodson set out an amount of "standard compensation" he asserted was authorized under the Texas Estates Code. Each time that amount was over \$350,000.³ Goodson proposed an admittedly "far more reasonable" alternative standard for compensation based on an hourly rate of \$150 for his duties as receiver. His first application covered a period of 60 weeks,

³ Goodson's estimate of the "standard compensation" was based on § 1155.003(b) of the Texas Estates Code. A receiver is entitled to be compensated in the same manner and amount as provided by the estates code for similar services rendered by guardians of estates. TEX. CIV. PRAC. & REM. CODE ANN. § 64.105(c). Section 1155.003(b) provides that compensation to a guardian of 5% of the ward's estate and 5% of all money paid out of the estate is considered reasonable "if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title." TEX. EST. CODE ANN. § 1155.003(b).

from May 31, 2016, to July 31, 2017. Goodson sought \$54,225 (361.50 hours x \$150). Goodson's second application sought compensation from August 1, 2017 through December 31, 2018. This time, Goodson claimed 558.5 hours at \$150 an hour, for a total of \$83,775. Goodson believed \$150 an hour was a reasonable rate given the education, training, and experience required to perform his duties. Goodson provided logs of his hours. Certain duties were described as "perpetual," meaning they recurred weekly or bi-weekly. These duties included payroll submission, weekly communication with staff, payment of bills, and advertising/marketing calls. Goodson did not list each of these recurring tasks each time he performed it. Instead, his logs showed the total number of hours spent on each job duty. For example, the log submitted with his first application showed he spent 2.5 hours a week communicating with staff, for a total of 150 hours over the 60-week time frame. The log submitted with Goodson's second application shows these perpetual duties were carried out for a period of 111 weeks.

During Goodson's testimony, the probate court identified a problem with his calculations. In his second application, Goodson claimed he had performed perpetual duties for a period of 111 weeks, yet the application covered his services for a period of less than 18 months. Counsel acknowledged the miscalculation; apparently 111 was the total number of weeks in both applications, rather than just the time frame in the second application.

The court questioned how Goodson came up with the time spent on recurring tasks. She asked whether the report included actual time worked or just estimates. Goodson indicated the hours spent on these recurring jobs were a conservative estimate; in other words, he reported the minimum time spent.

Evidence also showed that Goodson made the decision to give himself pay increases for his job as PIC at the Wylie pharmacy. In 2016, his salary was \$115,829. He increased his pay to \$128,978 in 2017, and to \$189,150 in 2018. The court asked about the basis for the increase in salary. Goodson indicated that as the business grew, he worked on getting himself to “a normal market rate” for a PIC, which was \$65 an hour. At the conclusion of the hearing, the court noted its concern with the “61% increase” in Goodson’s salary between 2016 and 2018.

There was also testimony about the credit card charges mentioned in Pyke’s report. Pyke testified there were interest charges and questionable charges in the amount of over \$12,000 on the American Express account and similar charges on the Comerica account of more than \$5,000. By the time of the hearing, Castro had paid the American Express account. Castro testified that he paid American Express \$20,658.52.

Three days after the hearing, on December 17, 2020, the probate court issued an “Order Granting in Part and Denying in Part Former Receiver’s Compensation and Payment of Former Receiver’s Legal Fees and Expenses.” The court awarded compensation to Goodson and legal fees and expenses to the Law Firm in amounts

that were substantially less than requested. The court awarded Goodson \$2,546.48 and awarded the Law Firm \$45,415.26. The court ordered that Goodson and the Law Firm were to be paid from the assets held by Pyke in his capacity as successor receiver.

About three months later, on March 26, 2021, the probate court granted Castro's Rule 91a motion to dismiss the Law Firm's petition for suit on a rejected claim. The court found the petition had no basis in law and fact.

Goodson filed two appeals, one from the December 17, 2020 order and one from the March 26, 2021 order on the motion to dismiss. The appeal from the order granting the motion to dismiss was originally assigned appellate cause number 05-21-00298-CV. On Goodson's motion, this Court consolidated the two appeals. Appellees Noemi Mitchell, the Attorney Ad Litem representing the minor child, and Castro filed a joint appellees' brief.

ANALYSIS

In his first issue, Goodson contends the probate court abused its discretion in compensating him for his services as receiver. After making an adjustment for the miscalculation in his hours, Goodson sought a total of \$102,000 in compensation. Goodson maintains the court's award of \$2,546.48, which he considers a 97.5% reduction in his compensation, was an abuse of discretion. He notes there were no objections to the amount of compensation he sought.

The matter of a receiver's compensation is within the sound discretion of the trial court. *Young v. Young*, 765 S.W.2d 440, 444 (Tex. App.—Dallas 1988, no writ). To determine whether the probate court abused its discretion, we must decide whether it acted without reference to any guiding rules or principles. *Gunn v. McCoy*, 554 S.W.3d 645, 666 (Tex. 2018). In a bench trial in which no findings of fact or conclusions of law are filed, the trial court's judgment implies all findings of fact necessary to support it. *See In re Estate of Stavron*, No. 02-20-00404-CV, 2021 WL 5227081, at *8 (Tex. App.—Fort Worth, Nov. 10, 2021, no pet.) (mem. op.).

The probate court's order appointing Goodson as receiver referenced compensation pursuant to the Texas Estates Code and the Texas Civil Practice and Remedies Code. The civil practice and remedies code provides that a receiver is entitled to be compensated in the same manner and amount as is provided by Title 3 of the Texas Estates Code for similar services rendered by guardians of estates. TEX. CIV. PRAC. & REM. CODE ANN. § 64.105(c). The guardian of an estate is entitled to reasonable compensation. TEX. EST. CODE ANN. § 1155.003(a).

A receiver's compensation is to be determined by the value of his services. *Bergeron v. Sessions*, 561 S.W.2d 551, 554 (Tex. App.—Dallas 1977, writ ref'd n.r.e.). Factors to consider in determining the value of a receiver's services are: (1) the nature, extent, and value of the administered estate; (2) the complexity and difficulty of the work; (3) the time spent; (4) the knowledge, experience, labor, and skill required of or devoted by the receiver; (5) the diligence and thoroughness

displayed; and (6) the results accomplished. *Id.* at 554–55. In a receivership proceeding, a court should cautiously avoid excessive or improper fee allowances. *Id.* at 555. Sufficient fees should be allowed to induce competent persons to service as receiver or attorney. *Id.* Receiverships should, however, be administered as economically as possible, and fees for services performed should be moderate rather than generous. *Id.*

The probate court’s order awarded Goodson \$2,546.48 for his services after an offset in the amount of the Estate’s payment on the Ennis pharmacy’s credit card account. The order shows the court found that Goodson was entitled to \$70 an hour for 331.5 hours of work, for a total of \$23,205. From that amount, the court deducted \$20,658.52, which was the amount Castro testified he paid on the American Express balance.

Goodson claimed he put in 680 hours of work as a receiver and asked for \$150 an hour. The probate court reduced the amount of hours and the hourly rate by more than half. In the absence of findings of fact, we have no way to ascertain the probate court’s reasons for not awarding Goodson compensation for all claimed hours and for awarding a lower hourly rate. *See Estate of Stavron*, 2021 WL 5227081, at *8. There was evidence of inadequacies in Goodson’s performance as a receiver. His error calculating his hours in his second fee application, which the probate court called to his attention, and his failure to stop recurring expenses after the sale of the Ennis pharmacy reflect a lack of diligence and thoroughness. There were other

criticisms of Goodson that reflected on the results accomplished, including his giving himself a substantial pay increase as PIC, his making a lowball offer for the Estate's interest in the Wylie pharmacy, and his estimates of time spent on recurring tasks. For all these reasons, we conclude the probate court acted within its discretion in determining the value of Goodson's services and compensation. We overrule Goodson's first issue.

In his second issue, Goodson argues the probate court abused its discretion in awarding fees to his attorneys. In three applications for payment of legal fees and expenses, Goodson sought a total of \$91,952.20. The court awarded about half this amount, \$45,415.26. Goodson argues that, using the lodestar method of calculating attorney's fees, his request for \$91,952.20 was presumptively reasonable. Because that amount was not controverted, Goodson argues, the probate court abused its discretion in departing downward from a presumptively reasonable fee.

Murray Camp, the attorney primarily responsible for representing Goodson as receiver, testified in support of the fee applications. In addition, various documents were attached to the three applications, including affidavits from other probate attorneys and detailed billing records. Goodson notes Camp was asked only two questions on cross-examination; neither question challenged the reasonableness or necessity of the fees.

Appellees respond that the lodestar method does not apply because Goodson's request for attorney's fees does not involve a fee-shifting situation. *See Rohrmoos*

Venture v. UTSW DVA Healthcare, LLP, 578 S.W.3d 469, 498 (Tex. 2019) (lodestar calculation is standard for calculating reasonableness and necessity of attorney’s fees in fee-shifting situation). Appellees argue that as a receiver in a probate proceeding, Goodson was not pitted against the other parties like a litigation opponent and thus they were not required to attack his fee applications.

The Court need not determine whether the lodestar method applies in this situation. For even if we assume that it does, the probate court acted within its discretion in awarding a reduced amount of attorney’s fees.

The award of attorney’s fees generally rests within the sound discretion of the trial court. *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 761 (Tex. 2012). Sufficient evidence of attorney’s fees includes, at a minimum, evidence of (1) particular services performed, (2) who performed those services, (3) approximately when the services were performed, (4) the reasonable amount of time required to perform the services, and (5) the reasonable hourly rate for each person performing such services. *Rohrmoos*, 578 S.W.3d at 498. A trial court is not “a mere rubber stamp or bean-counter; even when evidence of attorney’s fees is uncontroverted, a trial court is not obliged to award the requested amount.” *Estate of Stavron*, 2021 WL 5227081, at *8; see *Creditplex Auto Sales L.L.C. v. Bishop*, No. 05-17-00461-CV, 2018 WL 4090528, at *4 (Tex. App.—Dallas Aug. 28, 2018, pet. denied) (mem. op.); *Barker v. Hurst*, 632 S.W.3d 175, 194 (Tex. App.—Houston [1st Dist.] 2001, no pet.). A trial court, in its role as factfinder, is entitled to evaluate the complexity and necessity

of the legal services in light of the amount requested. *Estate of Stavron*, 2021 WL 5227081, at *8. Again, because there are no findings of fact in this case, we have no way to ascertain the reasons for the probate court’s decision to award a reduced amount of fees. *See id.*; *Protect Env’tl. Servs., Inc. v. Norco Corp.*, 403 S.W.3d 532, 543 (Tex. App.—El Paso 2013, pet. denied).

Here, payment of reasonable and necessary attorney’s fees to Goodson’s counsel was authorized by court order. The court’s May 31, 2016 order provided that payment of those fees was “subject to Court approval of quarterly fee applications.” As noted by the probate court at the hearing, fee applications were not filed quarterly. About 15 months passed before the first application for legal fees was filed. Goodson’s second and third applications for payment of legal fees were filed in February 2019 and December 2020, respectively. In the probate court’s opinion, as a result, it was “fair to say” that in December 2020, the case was in “the 12th inning and we have a big mess. And we have a huge amount of fees by both the receiver and the attorney and money has been moved around from different accounts.” It was within the court’s discretion to reduce the amount of attorney’s fees for failure to observe the schedule the court put in place to regularly monitor the receiver’s legal expenses.

In addition, as discussed above, the court found that Goodson was not entitled to the full amount of compensation he sought for his services as receiver. The court could have reasonably concluded that Goodson’s poor performance as receiver

caused him to incur legal fees that were not necessary. Considering the nature and circumstances of this case, we conclude the probate court acted within its discretion in making its award of attorney's fees to the receiver's counsel. We overrule Goodson's second issue.

In his third issue, Goodson complains of the fact that the probate court ordered that his compensation and that of his attorneys was limited to receivership assets as opposed to Estate assets. Goodson asks this Court to broaden the source of funds to include the Estate, but his request is conditioned on the Court's ruling in his favor on one or both of his first two issues. In his appellate brief, he asks that he be allowed to recover from Estate assets only "should this Court find Goodson entitled to additional reimbursement for compensation and/or his attorneys' fees and expenses." Because the Court has upheld the probate court's awards to Goodson and his attorneys, it is not necessary to reach this conditional issue. We overrule Goodson's third issue as moot.

In his fourth issue, Goodson argues the probate court erred in granting Castro's Rule 91a motion to dismiss the petition for suit on a rejected claim. As stated, while Goodson's first two applications for payment of his legal fees were pending with the probate court, the Law Firm representing him filed a separate petition for suit on a rejected claim against Castro as temporary administrator, seeking to recover its fees from the Estate. *See* TEX. EST. CODE ANN. § 355.064 (suit on rejected claim). Castro moved to dismiss under Rule 91a, alleging the Law

Firm's claims had no basis in law or fact. *See* TEX. R. CIV. P. 91a. While the Law Firm's suit was pending, the probate court ruled on Goodson's applications for payment of legal fees, awarding \$45,415.26 to the Law Firm for representation of Goodson. The probate court later granted Castro's motion to dismiss.

Appellees argue Goodson has no standing to challenge the ruling on the Rule 91a motion. We agree. The Law Firm, not Goodson, filed the petition that was dismissed, and the Law Firm did not file a notice of appeal. Because Goodson was not a party to the suit on a rejected claim, he lacks standing to appeal the court's dismissal of that petition. *See Cruz v. Beza*, No. 05-03-00341-CV, 2003 WL 22111106, at *1 (Tex. App.—Dallas Sept. 12, 2003, no pet) (mem. op.).

Even if Goodson somehow has standing to raise this issue on behalf of his attorneys, a challenge to the dismissal of the petition is moot. The Law Firm's petition was filed to recover its legal fees from the Estate. At the time it dismissed the petition, the probate court had already ruled on Goodson's applications seeking payment of legal fees for his attorneys and awarded money to be paid out of the receivership. Thus the court had decided the issues raised by the Law Firm's petition. We overrule Goodson's fourth issue.

Finally, in his fifth issue, Goodson complains of the probate court's award of prospective appellate attorney's fees to Noemi Mitchell and the Attorney Ad Litem representing Mitchell's minor child. In its December 17, 2020 order, the probate court awarded Noemi Mitchell and the Ad Litem \$5,000 in the event of an

unsuccessful appeal of the order to this Court and \$7,500 in the event of an unsuccessful appeal to the Texas Supreme Court. Goodson contends the evidence is insufficient to support the reasonableness and necessity of these appellate fees.

There was no evidence presented regarding appellate attorney's fees at the December 2020 hearing. The only mention of such fees came during argument by counsel for Noemi Mitchell at the close of the hearing. Counsel asked the court to award attorney's fees for any appeal of the court's decision. He asked for \$10,000 for any appeal to this Court and \$15,000 for any appeal to the Texas Supreme Court. The probate court awarded half of those amounts.

When reviewing a trial court's award of attorney's fees, we must ensure the record contains sufficient evidence to support such an award. *Yowell v. Granite Operating Co.*, 620 S.W.3d 335, 354 (Tex. 2020). The party seeking attorney's fees bears the burden of proof and must supply enough facts to support the reasonableness of the amount awarded. *Id.* If there is insufficient evidence in the record to uphold the trial court's award of those fees, we must reverse. *Id.*

When a trial court awards appellate attorney's fees, an appeal is still hypothetical. *Id.* at 355. There is no certainty regarding who will represent the appellee on appeal, what counsel's rate will be, or what services will be necessary to ensure appropriate representation in light of the issues the appellant chooses to raise. *Id.* This uncertainty, however, does not excuse a party seeking to recover contingent appellate fees from the need to provide opinion testimony about the

services it reasonably believes will be necessary to defend the appeal and a reasonable hourly rate for those services. *Id.*

Neither Noemi Mitchell nor the Ad Litem put on any evidence of the services reasonably necessary to defend an appeal or a reasonable hourly rate for those services. Accordingly, the evidence is legally insufficient to support the probate court's award of conditional appellate attorney's fees. Appellees do not argue otherwise, but do argue this Court should remand for further proceedings due to the "recent clarification" of this issue in the Texas Supreme Court's *Yowell* opinion. *Yowell* was decided on May 20, 2022, almost seven months before the probate court signed the order awarding appellate attorney's fees. The Court concludes remand is not warranted under these circumstances. We sustain Goodson's fifth issue. We reverse the probate court's award of conditional appellate attorney's fees and modify the probate court's December 17, 2020 order to delete the award of appellate attorney's fees. *See In re Estate of Willingham*, No. 05-20-00235-CV, 2021 WL 5998008, at *6 (Tex. App.—Dallas Dec. 20, 2021, no pet.) (mem. op.).

In summary, we reverse the probate court's award of conditional appellate attorney's fees and modify the probate court's December 17, 2020 order to delete the conditional award of appellate attorney's fees. In all other respects, we affirm the trial court's December 17, 2020 order.

We affirm the probate court's March 26, 2021 order.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

210030F.P05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

IN RE ESTATE OF COREY
DEWAYNE MITCHELL,
DECEASED

No. 05-21-00030-CV

On Appeal from the Probate Court
No. 2, Dallas County, Texas
Trial Court Cause No. PR-15-03284-
2.

Opinion delivered by Justice
Reichek. Justices Molberg and
Garcia participating.

In accordance with this Court's opinion of this date, the trial court's December 17, 2020 Order Granting in Part and Denying in Part Former Receiver's Compensation and Payment of Former Receiver's Legal Fees and Expenses is **MODIFIED** as follows:

We **DELETE** that portion of the order awarding Noemi Mitchell and L.A.M., by and through her attorney ad litem John Norris, \$5,000 in attorney's fees in the event of an unsuccessful appeal to the Court of Appeals and \$7,500 in attorney's fees in the event of an unsuccessful appeal to the Texas Supreme Court.

It is **ORDERED** that, as modified, the December 17, 2020 order of the trial court is **AFFIRMED**.

Also in accordance with this Court's opinion of this date, the trial court's March 26, 2021 Order on Motion to Dismiss is **AFFIRMED**.

It is **ORDERED** that appellees Noemi Mitchell, L.A.M., appearing by and through her attorney ad litem John Norris, and Christopher Castro, as temporary administrator of the Estate of Corey Dewayne Mitchell, recover their costs of this appeal from appellant Jonathan Craig Goodson.

Judgment entered September 7, 2022