



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-21-00300-CV

IN THE ESTATE OF TAMI L. LEMME, DECEASED

On Appeal from the County Court at Law 2
Randall County, Texas
Trial Court No. 2019-149-P, Honorable Matthew C. Martindale, Presiding

December 1, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and YARBROUGH, JJ.

Appellant, Royann Cox, appeals from the trial court's order removing her as independent administratrix of the estate of Tami L. Lemme and awarding attorney's fees to appellee, Rhonda Richardson. We affirm.

BACKGROUND

Randall County resident Tami L. Lemme died intestate on March 5, 2019, survived by her husband, William Allen, and sisters Cox and Richardson. Cox filed an application for letters of administration. The trial court authorized an independent administration and issued letters of independent administration to Cox in December of 2019. Cox hired

attorney Neil Durrance. Durrance was Cox's boyfriend, with whom she had been living for twelve years.

In December of 2020, Cox filed an account for final settlement of the estate. Shortly thereafter, Durrance filed a notice of attorney's fees for his services rendered. The notice reflected a total of \$43,037.50 for Durrance's services, which Cox had already paid with funds from the estate. Richardson and Allen both filed objections to the attorney's fees and sought removal of Cox as administratrix. Following an evidentiary hearing, the trial court found that the attorney's fees charged by Durrance were not reasonable and necessary and that Cox had overpaid him in the amount of \$17,062.50. The trial court ordered that Cox's share of the estate be offset in the amount of \$17,062.50. The trial court also found that Cox engaged in gross mismanagement and breached her fiduciary duties to the other beneficiaries of the estate. Cox was removed as administratrix and Richardson was appointed as successor. The trial court ordered Cox's share of the estate to be further offset by Richardson's attorney's fees, incurred in her efforts to remove Cox, in the amount of \$7,075.00. Cox filed this appeal.

ANALYSIS

Preliminary Issue: Supplementation of the Record

As an initial matter, Cox contends that the documents in the supplemental clerk's record "should be summarily be [sic] discounted." Cox argues that Richardson's request

to supplement the clerk's record was untimely and improper and that this Court should not consider the supplemental record.¹

The Texas Rules of Appellate Procedure allow supplementation of the clerk's record where, as in this case, a relevant item has been omitted. TEX. R. APP. P. 34.5(c)(1). Under Rule 34.5(c)(1), any party may direct the preparation of a supplemental record, and the Rule provides no time limitation as to its use. See *id.* Cox filed a motion, which we granted, to reset her briefing deadline to address materials in the supplemental record. The supplemental clerk's record was filed with this Court on May 9. Cox filed her amended brief on June 3. We discern nothing untimely or improper concerning the record's supplementation and deem Cox's complaint to be unfounded.

Standard of Review

We review an order removing an administrator for an abuse of discretion. See *In re Estate of Clark*, 198 S.W.3d 273, 275 (Tex. App.—Dallas 2006, pet. denied). We review an award of attorney's fees under the same standard. *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 761 (Tex. 2012). A trial court abuses its discretion if its decision is arbitrary, unreasonable, and without reference to any guiding rules and principles. *Lee v. Lee*, 47 S.W.3d 767, 786 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (citing *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997)). "Under an abuse of discretion standard of review, we must make an independent inquiry of the entire record to

¹ We note that both Cox and Richardson filed documents seeking to supplement the clerk's record on May 2, 2022. Both parties sought to include the trial court's findings of fact and conclusions of law. Richardson also requested inclusion of (1) her objection to attorney's fees, request to offset distribution, and request for removal of administratrix and (2) the motion to approve an offset of attorney's fees.

determine if the trial court abused its discretion and are not limited to reviewing the sufficiency of the evidence to support the findings of fact made.” *In re Estate of Clark*, 198 S.W.3d at 275.

Issue 1: Removal of Independent Administratrix

By her first point, Cox claims that the trial court erred in removing her as independent administratrix. Gross misconduct or gross mismanagement is a ground for removal of an executor. TEX. EST. CODE § 404.0035(b)(2). “Gross misconduct” and “gross mismanagement” include, at a minimum: (1) any willful omission to perform a legal duty; (2) any intentional commission of a wrongful act; and (3) any breach of a fiduciary duty that results in actual harm to a beneficiary’s interests. *Sammons v. Elder*, 940 S.W.2d 276, 283 (Tex. App.—Waco 1997, writ denied). “As a fiduciary, an executor has a duty to protect the beneficiaries’ interest by fair dealing in good faith with fidelity and integrity. His personal interests may not conflict with his fiduciary obligations to the estate.” *In re Roy*, 249 S.W.3d 592, 596 (Tex. App.—Waco 2008, pet. denied) (citations omitted). In addition, a fiduciary owes a principal a high duty of strict accountability. *Punts v. Wilson*, 137 S.W.3d 889, 892 (Tex. App.—Texarkana 2004, no pet.).

Richardson and Allen alleged that, considering the size of the estate and lack of complexity involved in handling it, the attorney’s fees charged by Durrance were not reasonable or necessary.² They further asserted that fees charged for non-legal activities, such as consulting plumbers and realtors, should not have been charged to or

² According to testimony, the inventory filed in this case showed assets totaling \$347,000. Cox claims that Richardson and Allen’s complaint is a dispute over \$1,532 in attorney’s fees, but this characterization is not supported by the record.

paid by the estate. Richardson and Allen claimed that Cox's relationship with Durrance influenced Durrance's billing practices in this case and Cox's decision to pay the excessive amounts, which significantly reduced the value of the estate and the ultimate amount received by the beneficiaries. Cox contends that she merely sought and paid for legal counsel and, as such, her actions could not constitute gross misconduct or gross mismanagement.

At the evidentiary hearing, Durrance's invoice for \$43,037.50, for services provided between March of 2019 and November of 2020, was admitted into evidence. Many entries were one-word descriptions of the work performed, such as "review," "preparation," and "plumber." The invoice also reflected entries for "travel" and one 20-hour "site visit." Richardson presented evidence that of the \$43,037.50 paid to Durrance from estate funds, roughly \$20,000 was paid for activities that were not legal in nature, such as communicating with plumbers, realtors, and utility companies. Durrance testified that he did not recall discussing any of the entries with Cox or Cox making any complaint about his invoices.

Cox testified that she and Durrance were "a couple in every sense except legally married." They have lived together for twelve years and they pay bills together. When Cox was asked whether she questioned Durrance about specific billing entries and why they were charged to the estate, Cox answered, "No. I understand from the legal perspective that there's a lot going on to close an estate and to make sure that all parties are protected." As for her role in handling estate-related tasks, Cox testified, "I didn't understand or was given direction that that was my responsibility." Cox acknowledged that she is capable of hiring an HVAC contractor, plumber, and realtor herself, although

those were tasks that Durrance undertook and for which he charged the estate \$250 per hour.

In sum, the evidence reveals that Durrance charged, and Cox paid, attorney's fees that were not reasonable or necessary, including substantial charges for non-legal work. The evidence further shows that Cox failed to exercise meaningful oversight of the administration, instead delegating her fiduciary responsibilities to Durrance. Moreover, because Durrance and Cox are romantic partners who share a household, the payments to Durrance indicated that Cox favored her partner's—and arguably her own—personal financial interests over those of the estate beneficiaries.³ Thus, our review of the record leads us to conclude that the evidence supports the trial court's conclusion that Cox breached her fiduciary duty and engaged in gross mismanagement of the estate. *See In re Estate of Roach*, No. 07-16-00315-CV, 2017 Tex. App. LEXIS 4028, at *6 (Tex. App.—Amarillo May 3, 2017, no pet.) (mem. op.) (evidence that independent executor allowed company he controlled to overcharge estate supported conclusion that he committed gross misconduct and mismanagement).

The trial court did not abuse its discretion by removing Cox as independent administratrix. Cox's first issue is overruled.

³ This opinion should not be read to suggest that an estate representative is prohibited from hiring legal counsel of her choice. Rather, we emphasize that the facts of this case support the conclusions that (1) Cox paid Durrance attorney's fees that were not reasonable or necessary and (2) Cox's decision to pay the excessive fees was influenced by her personal relationship with Durrance.

Issue 2: Payment of Attorney's Fees

By her second point, Cox contends that the trial court erred in ordering her to pay Richardson's attorney's fees from her portion of the estate. Cox claims that Richardson failed to establish the necessary elements to prove her attorney's fees and failed to properly segregate the fees charged.

Section 351.003 of the Texas Estates Code allows certain costs and reasonable attorney's fees to be assessed against an administrator when the administrator is removed for cause. TEX. EST. CODE ANN. § 351.003. Because Cox was removed for cause, it was proper for the trial court to charge her with the attorney's fees incurred in removing her as administratrix. See *Lawyers Sur. Corp. v. Larson*, 869 S.W.2d 649, 652 (Tex. App.—Austin 1994, writ denied) (“These costs are assessed against the administrator and the surety because of the inequities inherent in penalizing the estate for the administrator's negligence.”); *Fillion v. Osborne*, 585 S.W.2d 842, 845 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ) (purpose of provision is to ensure that estate is not charged with fees or costs which are incurred by reason of administrator's fault) (both discussing earlier version of statute).

Further, we conclude that the trial court did not abuse its discretion in awarding Richardson \$7,075 in attorney's fees. When reviewing a trial court's award of attorney's fees, we must ensure the record contains sufficient evidence to support the award. *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 505 (Tex. 2019). The party seeking attorney's fees bears the burden and must supply enough information to support the reasonableness of the amount awarded. *El Apple I*, 370 S.W.3d at 762–

63. To begin, the fee claimant must provide sufficient evidence of the reasonable hours worked and the reasonable hourly rate. *Rohrmoos Venture*, 578 S.W.3d at 498. Further evidence should include “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.” *Id.*

At the hearing on the motion for approval of attorney’s fees, Richardson’s attorney testified that he has been in practice in Amarillo since 2009, handling various types of civil litigation. He testified that his hourly rate is \$250 per hour and that, based on his familiarity with this area, his rate is reasonable for the Texas Panhandle and Amarillo. He noted that his client had incurred \$7,075 in reasonable and necessary attorney’s fees in connection with the removal of Cox as independent administratrix. He explained that billing for his work on the removal matter was segregated from billing for work related to the administration of the estate, most of which was performed by a different attorney in his firm. The trial court admitted into evidence Richardson’s attorney’s invoice reflecting 32.3 hours of work for a total of \$7,075 in attorney’s fees. The invoice shows what legal services were performed, when, and by whom. It also shows the time spent on particular services and the amount charged. Cox made no challenge to this testimony regarding attorney’s fees. Accordingly, we conclude that the trial court’s award of \$7,075 in attorney’s fees, to be paid by Cox, was not an abuse of discretion. Cox’s second issue is overruled.

CONCLUSION

We decide Cox's issues against her. The trial court's order removing Cox as independent administratrix and assessing attorney's fees against her is affirmed.

Judy C. Parker
Justice