

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re Estate of Wilma Rodman,

No. 41095-8-II

UNPUBLISHED OPINION

Hunt, J. — Darrell R. Rodman appeals the superior court’s (1) order approving his mother’s estate’s personal representative’s final accounting and report; (2) refusal to schedule a special hearing to consider his objections to that final accounting and report; and (3) refusal to consider his objections, in part, because he did not file them in a timely fashion. These arguments fail.

FACTS

Wilma Rodman passed away in October 1993. Her will was admitted to probate in December. Her two sons, Jack A. Rodman and Darrell R. Rodman,¹ survived her. The will appointed Darrell Rodman as personal representative; but the court removed him from that position less than a year later. In August 1995, the estate filed an action against Rodman for alleged malfeasance during his time as personal representative.

Wilma’s estate included 25 acres of land and a real estate contract, known as the

¹ To avoid confusion, we refer to Wilma and Jack Rodman by their first names. We intend no disrespect.

“Schnitzer contract.” Clerk’s Papers (CP) at 14. The will provided for certain bequests to Wilma’s grandchildren and to religious organizations. The will further stated:

I hereby direct that reasonable repairs and maintenance, including insulation and maintenance of a well for water supply, as well as real estate and/or property taxes, and including payment of homeowner’s insurance, on the residence located on the original family homestead . . . shall be paid from the income interest, or proceeds earned from the [Schnitzer contract].

CP at 224. The will devised the remainder of the estate to Jack² and Darrell.

In January 1997, Rodman and other members of Wilma’s family signed a settlement agreement providing that (1) Rodman would receive the family homestead mentioned in Wilma’s will; (2) the “funds from the Schnitzer contract shall be used as specified in [Wilma’s] will”; (3) the estate’s personal representative “shall determine what are reasonable expenses”; and (4) “[a]fter these expenses are paid, the income is to be paid to the beneficiaries as outlined in the will.” CP at 16-17. The settlement agreement also outlined a process for resolving disputes about the “reasonable expenses” provisions:

If there is a dispute regarding the expenses to be paid on the Schnitzer contract . . . then the matter shall be submitted, in writing, to Judge Donald Thompson of Gordon Thomas. No oral argument shall be had on the matter unless requested by Judge Thompson. . . . Judge Thompson’s decision shall be final. There shall be no appeal rights from Judge Thompson’s decision.^[3]

CP at 17. Despite this settlement agreement, the parties engaged in further litigation concerning Wilma’s estate. Attorney David Bastian was appointed the estate’s personal representative.

² Jack subsequently passed away, leaving Donna Rodman as his sole heir.

³ Judge Thompson later discovered that he had a conflict with the estate litigation. The Pierce County Superior Court appointed Judge Waldo Stone of Burgess Fitzer to replace Judge Thompson.

In May 2010, Rodman requested a formal accounting and “determination by the court of the reasonableness” of Bastian’s fees. CP at 4. Bastian filed a “Final Report and Accounting of the Personal Representative”⁴ dated June 17, 2010, which asked the court (1) to approve the accounting report as well as the “actions of the Personal Representative”⁵; (2) to approve \$20,301.00 in fees that the estate had already paid Bastian; (3) to order the payment of \$18,019.00 in additional fees to Bastian; (4) to authorize the distribution of “the remaining funds held by the Estate as set forth” in the accounting report;⁶ and (5) to discharge Bastian “from any further duties of the Estate.” CP at 12. Bastian’s accounting report also explained that (1) Rodman had submitted many “unclear”⁷ and hand-written reimbursement requests from 1993 to 2004 for repairs and maintenance of the homestead property; (2) from 2003 to 2006, Rodman had asked Judge Stone to review many of Bastian’s decisions about the reasonableness of Rodman’s 1993-2004 reimbursement requests; and (3) Judge Stone never reversed or modified any of Bastian’s decisions.

Over a period of years, Bastian reimbursed Rodman \$33,529.91 for various claimed expenses. Bastian apparently stopped granting Rodman’s reimbursement requests in September 2004, by which time the Schnitzer contract had been satisfied and the estate was no longer receiving income from it. *See* CP at 92. Bastian’s accounting report noted that Rodman “has

⁴ CP at 5.

⁵ CP at 12.

⁶ These remaining funds consisted of \$74,245.88 that Rodman was to receive. He had previously received \$28,879.17 in disbursements.

⁷ CP at 7.

been represented by many attorneys,” several of whom had filed attorneys’ liens against Rodman’s remaining unpaid distribution. CP at 9. On July 15, 2010, Rodman filed objections to Bastian’s accounting report. Rodman asserted that Bastian’s fee request was “unreasonable and excessive,” that Bastian “charge[d] the same rate for legal services as he does for the administrative duties as personal representative,” and that Bastian improperly refused to grant his reimbursement requests. CP at 229.

During a motion calendar hearing on July 16, Rodman’s counsel stated, “I have a suggestion, Your Honor. We have issues between the two of us that are going to require longer than a motion calendar hearing. What I would like to do is get a special set hearing, half a day.” Verbatim Transcript of Proceedings (VTP) at 3. Bastian responded that Rodman “want[ed] to dredge up”⁸ Bastian’s denials of Rodman’s reimbursement requests, all of which Judge Stone approved over four years earlier. Bastian further explained,

That’s why [Rodman] want[s] to have additional time to resolve this. [Rodman] want[s] to go through all of the issues all over again, another bite at the apple. It’s done. It’s been done for years. There’s no reason to challenge that at all.

VTP at 6. Bastian also stated that “Since 2006 and the conclusion of Judge Stone’s involvement in [the estate litigation], I have not made any decisions on reasonable maintenance and repair.” VTP at 6.

When the superior court advised Rodman’s counsel, “I didn’t get any papers from you,”⁹ counsel conceded that he had not filed his objections until 4:00 p.m. the day before the hearing.

⁸ VTP at 6.

⁹ VTP at 6.

No. 41095-8-II

The superior court responded that Rodman's objections were not "timely filed." VTP at 7. Bastian, however, asked the superior court's permission to address these objections, which the superior court allowed. After Bastian's argument, the superior court stated:

I guess I don't understand why there's a need for a hearing at this point.¹⁰

[. . .]

We're not going to go back. The Court is not going to go back. You have a settlement agreement in place. There was a mechanism for doing that. We're not going to go back and revisit old decisions. That's not going to happen.

So the only issue that's left is the attorney's fees. . . . I believe that the fees are reasonable. Mr. Bastian hasn't been paid since 2003. I think it's time that he got paid and your client got his distribution. I don't see a basis for holding any more court time or holding up the estate.

[. . .]

The Court is going to rule. I am going to approve the final report and accounting. I'm not going to allow any further hearing on this.

VTP at 14-15. After the hearing, the superior court issued an order approving Bastian's final accounting report.

Rodman now appeals this final accounting report order, the superior court's denial of his objections to Bastian's final accounting report, and the superior court's denial of his request for a special hearing.

¹⁰ VTP at 12.

ANALYSIS

I. Special Hearing

Rodman first argues that the superior court “wrongly refused to hold a hearing to consider evidence that would support [his] objections to closing the estate[.]” Br. of Appellant at 6. This argument fails.

We review courtroom management decisions for an abuse of discretion. *In re Marriage of Zigler and Sidwell*, 154 Wn. App. 803, 815, 226 P.3d 202, review denied, 169 Wn.2d 1015 (2010). A court abuses its discretion if the superior court bases its decision on untenable grounds or reasons or if the decision was manifestly unreasonable. *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 458, 229 P.3d 735 (2010). A decision is manifestly unreasonable if the superior court, ““despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take.”” *Yousoufian*, 168 Wn.2d at 459 (quoting *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (internal quotation marks omitted)).

The superior court did not abuse its discretion here. The transcript of the estate-closing hearing is nearly 20 pages long. The superior court questioned each party about the case and entertained oral argument from both sides. The superior court also asked Rodman’s counsel at least three times why it should schedule a special hearing to consider Rodman’s objections to Bastian’s final accounting and report. Rodman’s counsel’s answers were not persuasive.

Rodman argues that the superior court based its refusal to schedule a special hearing, in part, on his failure to file timely objections to Bastian’s final accounting report. Rodman concedes that his filing was not timely under a local court rule; but he contends that this local rule

conflicts with CR 6(d), which permits a party to file affidavits opposing a motion one day before a hearing. Because Rodman did not file any affidavits in opposition, this CR 6(d) one-day rule did not apply. On the contrary, his objection to Bastian’s final report and accounting was more in the nature of a written motion, which Rodman should have filed no later than five days before the hearing under CR 6(d). Thus, the superior court did not abuse its discretion in refusing to set a special hearing, in part, because Rodman failed to file his objections in a timely fashion.

Next, Rodman asserts that the superior court should have set a special hearing because Bastian addressed the merits of Rodman’s objections, even though the superior court had ruled that these objections were untimely. But Rodman cites no authority supporting this proposition, as required by RAP 10.3(a)(6); therefore, we do not further consider it.¹¹ *McCoy v. Kent Nursery, Inc.*, 163 Wn. App. 744, 771-72, 260 P.3d 967 (2011). We hold that the superior court did not abuse its discretion by refusing to set a special hearing.

II. Attorney Fees

A. Trial

Rodman next argues that the superior court abused its discretion by granting Bastian’s request for \$18,019.00 in attorney fees as the estate’s personal representative. This argument also fails.

“Generally, [we] will not interfere with an allowance of attorney fees in probate matters

¹¹ Rodman also assigns error to the superior court’s approving Bastian’s “final accounting and closing of the Estate of Wilma Rodman.” Br. of Appellant at ii. Again, Rodman does not provide argument in his brief to support this assigned error; thus, we do not further consider it. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3(a)(6).

unless there are facts and circumstances clearly showing an abuse of the trial court’s discretion.” *In re Estate of Larson*, 103 Wn.2d 517, 521, 694 P.2d 1051 (1985). In determining the reasonableness of attorney fees in probate proceedings, we review the record that was before the superior court¹² and consider the following criteria: (1) the amount and nature of the services rendered; (2) the time required in performing them; (3) the diligence with which they have been executed; (4) the value of the estate; (5) the novelty and difficulty of the legal questions involved; (6) the skill and training required in handling them; (7) the good faith in which the various legal steps in connection with the administration were taken; and (8) all other matters that would aid the court in arriving at a fair and just allowance. *In re Larson*, 103 Wn.2d at 522 (quoting *In re Estate of Peterson*, 12 Wn.2d 686, 728, 123 P.2d 733 (1942)).

Rodman asserts that the superior court awarded attorney fees to the estate based on Bastian’s hourly rate of \$200 per hour, even though the superior court “did not attempt to determine if the time spent by [Bastian] was for legal work, or for clerical, administrative, or other non-legal work.” Br. of Appellant at 12. Rodman is correct that a lawyer performing probate work is not necessarily entitled to compensation at legal rates for nonlegal work. *See In re Estate of Mathwig*, 68 Wn. App. 472, 476-79, 843 P.2d 1112 (1993). But an examination of Bastian’s invoices for the \$18,019.00 in requested fees reveals that a substantial amount of his work was legal work, such as attending show cause hearings and preparing and filing motions with courts. Bastian also engaged in other work, such as telephone conversations with Rodman and other attorneys, that, although not obviously legal in nature, possibly “require[d] the exercise of legal

¹² *In re Larson*, 103 Wn.2d at 521.

skill and judgment,” thereby entitling Bastian to a legal hourly rate. *In re Mathwig*, 68 Wn. App. at 476.

The burden was on Rodman, however, to offer facts “clearly showing” that the challenged work was nonlegal and that the trial court, therefore, abused its discretion in awarding fees to Bastian. *In re Larson*, 103 Wn.2d at 521. Rodman has failed to meet his burden. Accordingly, we decline to disturb the fee award below, and we affirm the superior court.

B. On Appeal

Bastian asks us to award the estate attorney fees and costs on appeal under RCW 11.96A.150(1). We grant this request and order Rodman to pay all reasonable attorney fees and costs the estate incurred in responding to Rodman’s appeal.

RCW 11.96A.150(1) provides:

Either the superior court or any court on appeal may, in its discretion, order costs, including reasonable attorneys’ fees, to be awarded to any party: (a) From any party to the proceedings. . . . The court may order the costs, including reasonable attorney’s fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

In making this award, we deem the following factors relevant and appropriate: Rodman’s appeal lacks merit because (1) he had the opportunity to challenge Bastian’s final accounting and report below, but he failed to file his objections in a timely manner; and (2) his meritless appeal not only does not “benefit[] the estate,” but rather would drain further resources from the estate if we did not award attorney fees and costs to his mother’s estate. RCW 11.96A.150(1). Thus, we order

No. 41095-8-II

Darrell to pay to his mother's estate all costs, including reasonable attorney fees, associated with this appeal in an amount to be determined by our commissioner.¹³

We affirm the superior court and award the estate attorney fees and costs on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Armstrong, P.J.

Johanson, J.

¹³ Because we award attorney fees and costs under RCW 11.96A.150(1), we do not address the estate's alternative request for sanctions under RAP 18.9.