

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 8, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP1522

Cir. Ct. No. 2005PR129

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE ESTATE OF EARL LANZENDORF:

**ESTATE OF EARL LANZENDORF, TIMOTHY LANZENDORF,
PERSONAL REPRESENTATIVE,**

APPELLANT,

V.

KAREN SHAW,

RESPONDENT.

APPEAL from an order of the circuit court for Columbia County:
ALAN J. WHITE, Judge. *Affirmed.*

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

¶1 SHERMAN, J. The Estate of Earl Lanzendorf and Timothy Lanzendorf, the personal representative of the Estate, appeal an order awarding

attorney fees to Karen Shaw under WIS. STAT. § 879.37 (2009-10).¹ The Estate contends that the underlying litigation for which Shaw received attorney fees is not a matter for which fees may be awarded under § 879.37 because it did not concern a contest over the will. The Estate also argues that the amount of attorney fees awarded to Shaw was unreasonable because the litigation efforts did not enhance the Estate. We disagree with both arguments and affirm.

BACKGROUND

¶2 The Estate brought a civil action against Shaw, alleging that Shaw had breached the premarital agreement between her and Earl by requiring Earl to pay for her share of their joint expenses as well as certain personal expenses, contrary to the couple's premarital agreement and in breach of the duty of good faith implied in every contract. Shaw counterclaimed, alleging the premarital agreement was void because Earl had withheld from her his underlying medical condition and, in the alternative, that Earl had underpaid his portion of the joint expenses under the agreement. The case was tried to a jury, which answered most of the special verdict questions on the allocation of various expenditures in Shaw's

¹ WISCONSIN STAT. § 879.37 provides:

Reasonable attorney fees may be awarded out of the estate to the prevailing party in all appealable contested matters, to an unsuccessful proponent of a will if the unsuccessful proponent is named in the will to act as personal representative and propounded the document in good faith, and to the unsuccessful contestant of a will if the unsuccessful contestant is named to act as personal representative in another document propounded by the unsuccessful contestant in good faith as the last will of the decedent.

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

favor with respect to the Estate's claims. The jury also found that Shaw was aware of Earl's health condition, and thus the premarital agreement was valid. The circuit court entered judgment on the jury's verdict in favor of Shaw in the amount of \$16,376.24 plus costs. This court affirmed on appeal and cross-appeal. *See Estate of Lanzendorf v. Shaw*, No. 2008AP2482, unpublished slip op. (WI App Aug. 13, 2009).

¶3 Following the resolution of the civil action, Shaw filed a claim in the probate court seeking reimbursement from the Estate under WIS. STAT. § 879.37 for attorney fees she incurred during the civil action. After arguments by the parties, the circuit court judge awarded Shaw \$15,865 in attorney fees. The Estate appeals.

DISCUSSION

¶4 WISCONSIN STAT. § 879.37 provides that “[r]easonable attorney fees may be awarded out of the estate to the prevailing party in all appealable contested matters.” The Estate contends that the circuit court erred in awarding Shaw attorney fees under § 879.37 because the litigation for which Shaw sought an award of attorney fees “[did] not involve a ‘contested matter’ intended to fall under the probate provisions of [ch.] 879.”² The Estate has suggested that because appellate interpretation of WIS. STAT. § 879.37 has thus far “only involve[d]

² The Estate also asserts that we should consider the doctrine of extraordinary circumstances, and the cases which applied that doctrine, in interpreting the meaning of the terms “appealable contested matters” in WIS. STAT. § 879.37. However, this court unequivocally stated in *Estate of Wheeler v. Franco*, 2002 WI App 190, ¶12, 256 Wis. 2d 757, 649 N.W.2d 711 that “the line of cases establishing the ‘equitable extraordinary circumstances’ doctrine has no application to WIS. STAT. § 879.37” because those cases were decided prior to the enactment of § 879.37. We thus decline to consider that doctrine.

situations where beneficiaries, or claimed beneficiaries, have contested how assets should be distributed under a will,” it is clear that only contests relating to the will of a deceased constitute “contested matters” within the meaning of § 879.37. Shaw, in contrast, argues that the plain language of the statute makes clear that attorney fees may be allowed in any appealable matter arising out of probate, including the civil litigation at issue in the present case, and not just contested will matters. Upon our review, we agree with Shaw that attorney fees are allowable in the present case under the statute’s plain language. That we have not previously addressed whether § 879.37 applies to contests other than those pertaining to will construction is indicative only of the nature of the appeals we have thus far been presented with.

¶5 Resolution of the dispute in this case requires that we construe WIS. STAT. § 879.37. Statutory construction presents a question of law, which is subject to our de novo review. *Estate of Becker v. Grawoig*, 2008 WI App 28, ¶7, 308 Wis. 2d 349, 746 N.W.2d 532. In construing a statute, we look first to the statute’s language. *Id.*, ¶10. If the meaning of the language is plain and unambiguous, our inquiry ends. *Id.*

¶6 The language of WIS. STAT. § 879.37 is clear and unambiguous—attorney fees may be awarded by the circuit court in “*all* appealable contested matters.” (Emphasis added) The language of the statute plainly authorizes the circuit court to award attorney fees out of a probated estate in *any* contested matter that falls within the parameters of probate. There is nothing in the statute’s language that limits contested matters to those having to do with will contests and we decline to read into the statute such a limitation when the legislature did not see fit to include it. *See County of Dane v. LIRC*, 2009 WI 9, ¶33, 315 Wis. 2d

293, 759 N.W.2d 571 (“We will not read into the statute a limitation the plain language does not evidence.”).

¶7 The Estate contends that even if WIS. STAT. § 879.37 is not limited only to will contests, the circuit court nevertheless erred in awarding Shaw attorney fees because she is not the prevailing party of a contested matter having to do with the administration of the Estate. The Estate appears to be asserting that the only contested matter on which Shaw prevailed was her counterclaim that Earl had underpaid his portion of the joint expenses under the premarital agreement, which the Estate claims was essentially a civil action between a creditor and debtor, not a probate action. The Estate argues that if Shaw is eligible to receive attorney fees under § 879.37 because she litigated a financial claim against the Estate, “any creditor of a deceased who had to hire an attorney to recover amounts due [from the Estate] would be entitled to recover those costs of collection from the estate of the deceased debtor.”

¶8 We agree with the circuit court that nothing in the plain language of WIS. STAT. § 879.37 limits contests to those which take place in probate court. To the contrary, the broad language of § 879.37 encompasses any contested proceeding relating to a decedent’s estate, regardless of whether the contest takes place before the probate court, circuit court, or an appellate court.

¶9 In this case, the Estate brought suit against Shaw in the circuit court, seeking to recover what it claimed were estate assets. Shaw counterclaimed, in part, to recover from the estate assets she claimed belonged to her. The civil action between the Estate and Shaw was clearly a “proceeding relating to [Earl’s] estate” because it concerned estate assets. *See* WIS. STAT. § 851.01 (defining “[a]dministration” under the probate statutes as “any proceeding relating to a

decedent's estate whether testate or intestate). We therefore reject the Estate's assertion that Shaw was not the prevailing party of a contested matter pertaining to the administration of the Estate.

¶10 Finally, the Estate argues that the amount of attorney fees awarded to Shaw was unreasonable. Whether to award attorney fees under WIS. STAT. § 879.37 is a matter of discretion for the circuit court. *Estate of Wheeler v. Franco*, 2002 WI App 190, ¶6, 256 Wis. 2d 757, 649 N.W.2d 711. We will not overturn a discretionary decision if the court applied the correct law to the relevant facts and reasoned its way to a reasonable conclusion. *Id.*

¶11 The Estate appears to be arguing that the circuit court abused its discretion in awarding Shaw attorney fees because her litigation actions did not enhance the estate and were not intended to enhance the estate. The Estate bases this argument on the following statement we made in *Wheeler*: “when the probate court makes [its] discretionary determination [to award or not award attorney fees], it is entirely appropriate for it to consider whether ... the efforts of the objectors ultimately enhanced the estate.” *Id.*, ¶13. In *Wheeler*, we stated that a court *may* consider whether the efforts of the party seeking the fees enhanced the estate in determining whether or not to award a party attorney fees under WIS. STAT. § 879.37. We did not, however, state that this consideration was mandatory or that attorney fees may only be awarded under § 879.37 to those who have enhanced the estate. The Estate has not provided us with any legal authority indicating the existence of such a prerequisite. We therefore reject the Estate's assertion that a court can only properly exercise its discretion in awarding fees under § 879.37 when the party receiving the fees has enhanced the Estate. The Estate does not claim that the court otherwise erroneously exercised its discretion in awarding attorney fees to Shaw. We therefore do not further address this issue.

CONCLUSION

¶12 For the reasons discussed above, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

