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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2490-15T2
 A-2763-15T2
 A-2873-15T2
 A-2874-15T2

IN THE MATTER OF THE ESTATE OF
JEANE C. SIMON,

Deceased.

IN THE MATTER OF DREW H. SIMON,

An Incapacitated Person.

Argued January 29, 2018 – Decided April 25, 2018

Before Judges Whipple and Rose.

On appeal from Superior Court of New Jersey,
Chancery Division, Probate Part, Passaic
County, Docket Nos. P-185012 and P-203187.

Joseph A. Mecca, appellant (in A-2490-15)
argued the cause pro se.

John M. Loalbo argued the cause for appellants
Brian and Marie Beste (in A-2763-15),
respondents (in A-2873-15 and A-2874-15)
(Riker Danzig Scherer Hyland & Perretti, LLP,
attorneys; John M. Loalbo and Stephen J.
Pagano, of counsel and on the briefs; Stephen
M. Turner, on the briefs).

David M. Repetto argued the cause for appellants Karen and Eric Weisberg (in A-2873-15 and A-2874-15) (Harwood Lloyd, LLC, attorneys; David M. Repetto, of counsel and on the briefs).

PER CURIAM

Appellants in these back to back matters appeal from two orders of the trial court granting applications for attorney's fees and costs, and two orders denying their motions for reconsideration. Because the trial judge's blanket award of fees was in error, we reverse and remand for a new hearing to determine the proper amount of fees due.

I.

We discern the following relevant facts from the record. Drew Simon was born to Jeane (decedent) in April of 1966. Drew was adjudged an incapacitated person in 2003, and the judgment of guardianship appointed decedent as the guardian of Drew's person and property. Decedent passed away on October 20, 2011. What followed was protracted and contentious litigation, spanning more than four years, over decedent's Last Will and Testament (the Will) and the guardianship of Drew.

Karen Weisberg and her son, Eric Weisberg, are the niece and great-nephew of decedent, respectively, and were represented by Harwood Lloyd, LLC. Brian Beste and Marie Beste, are the nephew and sister of decedent, respectively, and were represented first

by Joseph Mecca, Esq., and later by Riker Danzig. Drew was initially represented by court-appointed counsel, and later by John O'Reilly, Esq.

A. The Estate Action

In November 2011, decedent's Will, dated September 24, 2009, was submitted for probate by Joseph Bionci, a family friend of decedent. The Will provided that Bionci would be executor, the bulk of decedent's estate would pour into a Special Needs Trust (the Trust) for Drew's benefit, and upon Drew's death, the remainder of the Trust would pass to Bionci, Eric Weisberg, and various charities.

In January 2012, Bionci filed a complaint in the Chancery Division, Probate Part, under Docket No. P-203-187, seeking to admit for probate a holographic codicil (the Codicil) to the Will. Decedent had allegedly given the Codicil to the attorney who prepared her Will. This Codicil was handwritten, marked with the notes of a third party, and named various parties, not named in the Will, as beneficiaries of bequests of stock and other items. It also left decedent's house, furnishings, and safe deposit box to Karen Weisberg.

That same month, the trial court entered an order to show cause setting a return date for the Codicil and to appoint Mary WanderPolo, Esq., as Drew's guardian ad litem.

In March 2012, the Weisbergs filed an answer to Bionci's complaint. That same month, the Bestes filed a complaint seeking to have the Will and Codicil declared invalid, removing Bionci as executor of the estate, and restraining him from making distributions from the estate. They alleged Bionci and other parties exerted improper influences over decedent and had coerced her into executing the Will.

In April 2012, Bionci, on behalf of the estate, filed a motion, joined by the Weisbergs, to dismiss the Bestes' complaint. In November 2012, the Bestes filed for summary judgment, opposed by the Weisbergs, to have the Codicil declared invalid.

In February 2013, the court heard arguments on both motions, and on March 14, 2013, it dismissed the Bestes' complaint for lack of standing, finding the Codicil invalid, and ordering the Will to probate.

In April 2013, the Weisbergs moved for reconsideration of the March 14 order. This motion was repeatedly adjourned due to settlement discussions, and was finally withdrawn in October 2014.

B. The Guardianship Action

The Will named Bionci executor and guardian of Drew's person and property. In January 2012, Bionci filed a complaint, under Docket No. 185-012, to have himself appointed as substitute guardian for Drew's person and property, as indicated in the Will.

That same month, the Bestes filed under the same docket to have themselves appointed as Drew's legal guardian, and to have an attorney appointed to safeguard Drew's person and property.

Later that month, the court entered an order appointing WanderPolo as Drew's attorney, and appointing Michael DeMarco, Esq., as temporary guardian of Drew's person and property. Karen Weisberg appeared at the hearing out of concern for Drew.

In April 2013, the court authorized DeMarco to move Drew from the group home, where he was residing, to the home where he lived with his mother prior to her death. At this hearing, John O'Reilly, Esq., made his appearance as Drew's privately-retained attorney. Later that month, O'Reilly was permitted to substitute as Drew's attorney, and WanderPolo was discharged as his court-appointed counsel.

In June 2013, a partial settlement was reached purportedly disposing of all issues regarding the guardianship of Drew's person and property. It did not, however, determine who would serve as trustee for the Trust.

In March 2015, the parties reached a final settlement¹ resolving all issues except attorney's fees. Thomas Russo, Esq.,

¹ There was purportedly a final settlement agreement reached on the record in January 2015, but its existence and validity were disputed by Brian Beste.

appeared on behalf of Brian Beste, Mecca appeared on behalf of Marie Beste, and Harwood Lloyd appeared on behalf of the Weisbergs. At this point, both Mecca and Russo were excused, and Riker Danzig substituted in as attorneys for both Brian and Marie Beste. An order was entered in April 2015, memorializing the settlement.

Also in March 2015, the judge entered an order appointing Brian Beste as the sole substituted guardian of Drew's person, and appointing Brian Beste, DeMarco, and Valley National Bank as the substituted co-guardians of Drew's property.

Both orders provided that certifications of attorney's fees should be submitted within fourteen days of receipt of the judgment.

C. December 30, 2013 Order Granting Attorney's Fees

In May 2013, Mecca submitted an affidavit of services for the guardianship action up to that point, seeking payment of \$101,204.25 for a total of 295.4 hours spent from the beginning of the litigation at the end of 2011 through May 2013. This sum was broken down into \$99,017.50 in services and \$2,186.75 in expenses. In August 2013, Mecca submitted a supplemental affidavit for services rendered from June 2013 through August 2013 for a total of \$3,735.00, comprised entirely of services with no expenses billed.

Also in May 2013, Harwood Lloyd filed an affidavit of services in the guardianship matter seeking reimbursement for \$24,635.70² in services and \$362.74 in expenses, for 90.4 hours spent between February 2012 and April 2013.

On December 3, 2013, the judge decided all fee applications filed up until that point.³ She determined that the "lodestar" rate would be \$300 per hour, and based on that number, awarded each privately retained attorney a flat fee of \$6000 plus their costs. O'Reilly, in addition to the flat fee, was additionally awarded \$5310, with no explanation given. The court-appointed attorneys, WanderPolo and DeMarco, were awarded the full balance of their fees. These fees were memorialized in an order dated December 30, 2013.

D. The August 13, 2015 Order Granting Attorney's Fees

After the settlement discussion in January 2015, Mecca submitted an affidavit of services in February 2015, requesting the balance of the fees owed, in the amount of \$96,752.50, and

² The firm applied a 10% discount to the services billed. Hereinafter, any number in this opinion indicating a fee requested by Harwood Lloyd reflects this discount.

³ Despite the stated intention of the judge to dispose of all fees, it does not appear that the judge considered the August 2013 supplemental affidavit when calculating the amount of fees requested by Mecca.

additional fees for services rendered since the prior fees award, for a total sum of \$211,708.22 in services and \$3243.47 in costs.

Also in February 2015, Harwood Lloyd filed a supplemental affidavit of services in the guardianship matter, seeking an additional \$8299.38 in services and \$93.68 in expenses, for 26.9 hours spent between December 2014 and January 2015.

At the same time, Harwood Lloyd filed an affidavit of services in the estate action for \$188,215 in services and \$5570.91 in expenses, the result of 673 hours spent between April 2012 and December 2014.

Harwood Lloyd also filed a supplemental affidavit of services in the estate action seeking an additional \$3221.52 in services and \$60.28 in expenses, for 15.3 hours performed in January 2015.

In May 2015, Riker Danzig submitted an affidavit of services in the estate action seeking \$21,389 in services and \$34.22 in expenses, the result of 51.5 hours spent between March and April 2015.

In July 2015, Riker Danzig submitted an affidavit of services in the guardianship action for \$14,606 in services, for 41.8 hours spent between March and June 2015.

On August 13, 2015, the judge issued a letter decision and order deciding all remaining fee applications. Using the same \$300 lodestar, she awarded the privately retained attorneys \$3000

plus costs. However, Mecca was ordered to split his fee award with Riker Danzig, which had substituted for Mecca in March 2015. As a result, Mecca received only \$1500, and was not awarded any costs. Riker Danzig, while only receiving \$1500, was awarded its costs.

E. The Motions for Reconsideration

In September 2015, Mecca filed a notice of motion under both dockets for reconsideration of the fee award orders. In October 2015, the Weisbergs filed a cross-motion for reconsideration in the estate matter, seeking to have the orders vacated. In November 2015, Riker Danzig filed cross-motions in both dockets, also seeking to have the orders vacated.

After the original trial judge recused herself, on January 29, 2016, a subsequent judge declined to find that the original judge erred in her decisions. He found that the original judge

did consider the . . . fees that were submitted. I do think her award was simply the amount that she would permit the . . . monies of a disabled person to be diluted, and left you to fend for yourself with your clients for the balance of the money. I don't think she took a position that they were either excessive, reasonable, or anything else.

He entered two orders denying reconsideration that same day. This appeal followed.

Mecca filed an unopposed appeal from both fee award orders, and from both orders denying the motions for reconsideration. Harwood Lloyd, opposed by the Bestes (as represented by Riker Danzig), also appeals from both fee award orders, and from both orders denying the motions for reconsideration. Riker Danzig, as counsel for the Bestes, filed an unopposed appeal from the August 13, 2015 order and from the January 29, 2016 orders. On appeal, all appellants argue the trial court's decision to make a blanket award of fees was an abuse of discretion and a misapplication of the lodestar test set forth in Rendine v. Pantzer, 141 N.J. 292 (1995), and should be reversed. Riker Danzig further asserts it was entitled to an award of its fees under Rules 4:42-9(a)(2) & (3).

"[F]ee determinations by trial courts will be disturbed only on the rarest occasions, and then only because of a clear abuse of discretion." Rendine, 141 N.J. at 317; Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (citation omitted). A court abuses its discretion "when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (citation omitted); Matter of Estate of Brown, 448 N.J. Super. 252, 269 (App. Div.), certif. denied, 230

N.J. 393 (2017); J.P. v. Smith, 444 N.J. Super. 507, 521 (App. Div.), certif. denied, 226 N.J. 212 (2016).

Under Rules 4:42-9(a)(3) and 4:86-4(e), the trial court may grant attorney's fees in probate actions and guardianship actions. "When, as here, there is explicit legal authority for the court to award counsel fees, the court calculates the award of counsel fees by determining the 'lodestar.'" In re Prob. of Will & Codicil of Macool, 416 N.J. Super. 298, 314 (App. Div. 2010) (citation omitted). The lodestar is defined as "a reasonable hourly charge multiplied by the number of hours reasonably expended." Rendine, 141 N.J. at 334-35; see Packard-Bamberger & Co., 167 N.J. at 445 (citing In re Estate of Reisen, 313 N.J. Super. 623, 629-30 (Ch. Div. 1998)). In considering the rate submitted, a court should look to the prevailing market rate in the community, ensure the rate is "fair, realistic, and accurate, and should make appropriate adjustments." Rendine, 141 N.J. at 337; Macool, 416 N.J. Super. at 314 (citation omitted).

Here, Mecca sought fees which totaled \$211,708.22 in services, and \$5,430.22 in costs, the result of over 300 hours of work performed on both the estate and the guardianship matters.

Harwood Lloyd requested fees which totaled \$224,371.60 in services and \$6087.61 in costs, the result of 790 hours performed on both the estate and the guardianship matters.

Riker Danzig applied for fees which totaled \$35,995 in services and \$34.22 in costs, the result of around 93 hours performed on both the estate and the guardianship matters.

In response to these applications, the judge issued two separate orders, both granting blanket awards to the attorneys. She made a determination, after considering all the rates charged by each party, that the reasonable charge, or lodestar, would be set at \$300 per hour. We discern no reason to declare that this rate is unreasonable or an abuse of the judge's discretion.

However, the judge determined that the appropriate next step would be to multiply this reasonable hourly rate "by the number[] of hours expended or what number of hours could reasonably be expended or expected to be expended in this type of litigation all to be determined within the [c]ourt's discretion." While the lodestar test does provide for some discretion in permitting the judge to reduce the number of hours claimed by the parties, in doing so here, the judge abused her discretion.

In the December 2013 order, the judge determined that the reasonable number of hours expended was twenty, and in the August 2015 order that the reasonable number of hours expended was ten. Harwood Lloyd alone billed almost 800 hours for its time spent on the entire file, from start to finish. Mecca billed almost another 300, and Riker Danzig, who came in at the eleventh hour of the

litigation for the final settlement discussions, billed over ninety hours. The judge's decision to accredit barely a fraction of the time spent on this complicated and prolonged case to each of these firms and attorneys was an unreasonable determination, and an abuse of judicial discretion.

Further, under the New Jersey Rules of Professional Conduct, "[a] lawyer's fee shall be reasonable," and shall be determined by the consideration of a number of factors. New Jersey Rule of Professional Conduct 1.5(a). These factors "must inform the calculation of the reasonableness of a fee award in this and every case." City of Englewood v. Exxon Mobile Corp., 406 N.J. Super. 110, 125 (App. Div. 2009) (citing Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 22 (2004)). "[A] trial court must analyze [these] factors in determining an award of reasonable counsel fees and then must state its reasons on the record for awarding a particular fee." Furst, 182 N.J. at 21; R. 1:7-4(a) (requiring a trial court to "find the facts and state its conclusions of law thereon in all actions tried without a jury."). "Without the benefit of such findings and conclusions, we can only speculate about the reasons for a trial court's decision." S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 293 N.J. Super. 395, 409 (App. Div. 1996) (citing Rosenberg v. Bunce, 214 N.J. Super. 300, 304 (App. Div. 1986)).

Here, the judge made no specific findings as to why her blanket award, or the number of hours she determined, was a reasonable number, let alone specific findings for each firm, attorney, or party. In fact, in the August 2015 order, the judge stated explicitly, "this Court will not make any finding as to the propriety, necessity[,] or reasonability of [the] fees." As such, we must remand for reconsideration and a supporting statement of reasons. See City of Englewood, 406 N.J. Super. at 126.

Lastly, the judge's award appears in part to rest on an impermissible basis. Flagg, 171 N.J. at 571. "In determining the amount of an award of counsel fees a litigant is entitled to receive, a trial judge may not impose his or her own policy considerations to arbitrarily reduce a litigant's otherwise legally justifiable application." Macool, 416 N.J. Super. at 314. Here, the judge indicated she was unwilling to allow the Trust to be depleted, as it was intended to support Drew. However, the record contains few references to the value of the estate, or to the cost of Drew's needs.

Based on the foregoing, we reverse and remand, and direct the court to (1) reconsider the fee determinations, and (2) issue the required statement of reasons to support any findings made. We further instruct the court to conduct a case management conference

within forty-five days. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

A handwritten signature in black ink, appearing to be 'JWA', is written over the text of the certification.

CLERK OF THE APPELLATE DIVISION