

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0882-14T2

IN THE MATTER OF THE ESTATE OF
JANE P. SOGLIUZZO.

Submitted November 17, 2015 – Decided December 17, 2015

Before Judges Yannotti and Guadagno.

On appeal from the Superior Court of New
Jersey, Chancery Division, Probate Part,
Hudson County, Docket No. 296580.

John B. Sogliuzzo, appellant pro se.

Jardim, Meisner & Susser, P.C., attorneys
for respondent Jane E. Adkins, Executrix for
the Estate of Jane P. Sogliuzzo (Dennis F.
Gleason, of counsel and on the brief).

PER CURIAM

This matter returns to us after we affirmed the final
judgment of the Chancery Division against John Sogliuzzo,
awarding the Estate of Jane Sogliuzzo (Estate) \$520,414, but
remanded to determine responsibility for counsel fees and
expenses, and whether prejudgment interest should run from the
date of the complaint or when the monies were wrongfully taken.
In re Estate of Sogliuzzo, No. A-3863-11 (App. Div. Dec. 9,
2013) (slip op. at 10).

The facts in this case were set forth in detail in our prior opinion and we provide only a brief summary here. Jane P. Sogliuzzo died on February 29, 2008, leaving a son, John Sogliuzzo (John), and a daughter, Jane Adkins (Jane)¹. In September 2008, Jane, individually and as executor of her mother's estate, filed a verified complaint alleging that John had exercised undue influence over their mother to the detriment of the estate. John answered the complaint, but refused to answer interrogatories or deposition questions, or produce documents, invoking his Fifth Amendment right against self-incrimination. As a result, a default judgment was entered against John and he was later found to have exerted undue influence over his mother. John was ordered to pay damages and prejudgment interests. Our partial affirmance and remand followed.

On remand, Judge Hector R. Velazquez ordered Sogliuzzo to pay counsel fees because he committed the "pernicious tort of undue influence" and the counsel fee award was necessary to make the Estate whole. Judge Velazquez also found that the Estate was entitled to prejudgment interest running from the dates of

¹ We refer to the parties by their first names purely for ease of reference and intend no disrespect.

defalcation and not from the date the complaint was filed. On appeal, John challenges both findings.

Counsel Fees

The scope of our review of a counsel fee award is narrow and "fee determinations by trial courts will be disturbed only on the rarest occasions, and then only because of a clear abuse of discretion." Rendine v. Pantzer, 141 N.J. 292, 317 (1995). New Jersey has adopted the "American Rule" which prohibits recovery of counsel fees by the prevailing party against the losing party. Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 404 (2009). Rule 4:42-9 specifies certain actions in which an award of attorney fees is allowable. Rule 4:42-9(a)(3) provides for fees in certain types of probate and guardianship proceedings, but does not provide for fees when a fiduciary duty is breached. However, in In re Niles, the Court held that "when an executor or trustee commits the pernicious tort of undue influence, an exception to the American Rule is created that permits the estate to be made whole by an assessment of all reasonable counsel fees against the fiduciary that were incurred by the estate." 176 N.J. 282, 298-99 (2003).

The Niles Court stated the exception applied to cases "in which an executor's or a trustee's undue influence results in the development or modification of estate documents that create

or expand the fiduciary's beneficial interest in the estate." Id. at 299. The Court explained that there was a special status in cases where undue influence is proved, for "undue influence represents such an egregious intentional tort that it establishes a basis for punitive damages in a common law cause of action." Id. at 300.

John contends that the Niles exception only applies where a non-beneficiary under a will or trust exerts undue influence over a decedent, and, because the allegations against him concerned inter vivos transfers unrelated to his mother's will, the estate was made whole by the judgment entered against him related to those inter vivos transfers. We disagree.

The Niles Court defined undue influence as "'mental, moral or physical' exertion which has destroyed the 'free agency of a testator' [or settlor] by preventing the testator [or settlor] 'from following the dictates of his own mind and will and accepting instead the domination and influence of another.'" Id. at 299 (quoting Haynes v. First Nat'l State Bank of New Jersey, 87 N.J. 163, 176 (1981)).

In our prior opinion, we affirmed the trial judge's² finding that John had a confidential relationship with his mother; her inter vivos transfers to him were suspicious; the burden of

² Judge Velazquez was not the trial judge.

proof shifted to John to demonstrate the absence of undue influence by clear and convincing evidence; and he was unable to satisfy that high burden. Sogliuzzo, supra, slip op. at 10, 12.

Although John did not hold the position of executor or trustee as in Niles, he exerted undue influence over the decedent to obtain a significant financial benefit for himself. The rationale for the award of counsel fees in Niles was that the estate should be made whole when undue influence creates or expands the fiduciary's beneficial interest in the estate. Niles, supra, 176 N.J. at 299. We are satisfied that Judge Velazquez properly applied the equitable principles that guided the Court's decision in Niles in awarding counsel fees.

John also relies on In re Vayda, 184 N.J. 115 (2005), in support of his argument that Niles is inapplicable here. The Court in Vayda declined to allow fee shifting in a will contest where the executor had brought meritless claims against the estate in bad faith. Id. at 123-24. As Judge Velazquez noted, the trial court in Vayda found a breach of fiduciary duty, but not undue influence. Id. at 124. We agree that the instant case is factually distinguishable, and Sogliuzzo's reliance on Vayda is misplaced.

Finally, John argues that he should not be required to pay counsel fees because the estate has already been made whole by

the judgment against him. We find no merit to this argument. John's misappropriations compelled the Estate to file this action and counsel fees and costs are additional expenses that the Estate is entitled to recover.

Prejudgment Interest

John challenges Judge Velazquez's award of simple interest to the Estate, arguing that prejudgment interest should be calculated from the date of the filing of the complaint, not from the dates of defalcation. We disagree.

Our review of an award of prejudgment interest is limited to abuse of discretion, and we will not disturb the award "unless the interest charged is palpably unfair." State ex. rel. Matthews v. Nat'l. Sur. Corp., 17 N.J. Super. 137, 142 (App. Div.), certif. denied, 9 N.J. 287 (1952).

Rule 4:42-11 addresses post-judgment interest on tort action judgments and generally provides for simple interest calculated from the date of the institution of the action. However, under some circumstances, interest may be assessed from the date of the actual defalcations. In re Estate of Lash, 169 N.J. 20, 34 (2001).

Lash involved a misappropriation of an estate by its administrator, resulting in an action for breach of fiduciary duty against the administrator and his surety. Id. at 23. The

Court concurred with our conclusion that calculating interest from the date of the wrongdoing "is more equitable in that lost interest is an integral part of the estate's damage claim as a result of the defalcation, and comports with the fiduciary responsibility of an administrator to act prudently with respect to the assets of an estate." Id. at 35 (quoting In re Estate of Lash, 329 N.J. Super. 249, 263-64 (App. Div. 2000)).

John argues that Lash does not apply because it was an action on a surety bond and the award was based on "equitable principles." As Judge Velazquez noted, the Lash Court made no distinction between tort and contract damages and "nothing in the opinion limits the doctrine to contract cases only."

Lost interest is clearly an element of the Estate's claim in this case. From the time he misappropriated the funds, John had the benefit of funds that belonged to the Estate. Forensic accountant Chris Campos reviewed the estate's financial records and determined that between 1999 and 2008, John made payments to his law firm and his children's private school totaling \$147,952; unexplained withdrawals from a Hudson United Bank savings account totaling \$61,150; an unexplained \$20,000 withdrawal made at a time when John's father was still alive; an unexplained reduction of \$15,712 from the same account from September 1998 to November 21, 1999; and unexplained checks for

cash and insurance checks not deposited in the accounts totaling \$28,726.

The dates of misappropriation mark the point at which John benefitted from his wrongdoing as well as the point at which the Estate was injured. Equity compels calculating prejudgment interest from the date of defalcation in accordance with Mr. Campos's calculations.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION