NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5286-12T1

IN THE MATTER OF THE ESTATE OF
AGNES RIORDAN a/k/a AGNES R.
RIORDAN, Deceased.

Submitted November 17, 2014 – Decided May 13, 2015

Before Judges Lihotz and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Ocean County, Docket No. 195611.

Law Offices of Taff & Davies, attorneys for appellant John Riordan (Joel A. Davies, of counsel and on the brief; Matthew K. Kalwinsky, on the brief).

James Riordan, respondent pro se.

PER CURIAM

Appellant, John Riordan, one of decedent's sons, challenges the amount of a counsel fee awarded by the Chancery judge in connection with services related to the executor's complaint for instructions. On appeal, appellant argues the judge improperly relied upon "policy considerations" as "the basis for a fee reduction." In addition, appellant argues the results obtained justified the amount of fees sought in the fee application.

Another son, James Riordan, opposes the appeal. He essentially argues appellant's services were duplicative of those performed by the estate's executor, Peter Van Dyke, Esq. We have considered these arguments in light of the record and considered the applicable legal principles. We affirm.

We discern the facts, which are generally undisputed, from the motion record.

The decedent was a widow at the time of her death in 2012. She was survived by her five adult sons. Her will named Van Dyke as her executor and devised her residuary estate to her five sons in equal shares. In marshalling the decedent's assets, Van Dyke located seventeen United States Savings Bonds, and found decedent's handwritten notes referencing the bonds were for her grandchildren. When Van Dyke notified the sons about the bonds and their mother's note, three of them asked that they be distributed to the grandchildren, while the other two demanded they pass under the decedent's residuary estate to all five sons.

Confronted with this divergence of opinion, Van Dyke filed a verified complaint seeking instructions from the court. Appellant filed an answer demanding the bonds pass through the residuary estate. Another son, Thomas Riordan, agreed and filed an answer on his own behalf. Another attorney, Edward F.

Bezdecki, Esq. filed an answer on behalf of the decedent's grandchildren. Subsequently, the parties engaged in limited discovery, their counsel prepared briefs and attended court on two occasions for oral argument. After considering the parties written submissions and oral presentations, the Chancery judge ruled the bonds were to pass under the decedent's Last Will.

Appellant's counsel and Bezdecki submitted applications for awards of counsel fees to be paid from the estate. Their applications were supported by certifications of services as required by Rule 4:42-9. The fees sought by appellant's counsel totaled $5355 based on an hourly rate of $350 and 15.3 hours of time.[1] Counsel also sought reimbursement for $110 in costs. No interested parties objected to the application or the amount sought. After considering the submissions, the court awarded fees in the amount of $3170, based on an hourly rate of $200 per hour. Appellant filed a motion for reconsideration, in which Bezdecki joined as to his fees. No one opposed the motion.

One of appellant's attorneys, Joel A. Davies, Esq., filed a certification in support of appellant's motion, in which he argued the court improperly applied its own "policy considerations" in determining the award, which was in

[1] Bezdecki's rate was $450 per hour and he expended seventeen hours on the matter.

contravention of our holding in In re Probate of the Alleged Will and Codicil of Macool, 416 N.J. Super. 298 (App. Div. 2010). In that case, we held that the Probate Part could not reduce an attorney's fee request by fifteen percent in accordance with the judge's personal policy of "discouraging or 'deterring'" fee-shifting cases. Id. at 314. Davies also noted that "[f]or more than twelve years fees awarded by [the Chancery judge] in similar estate litigation and probate matters have been based upon an hourly fee of $200.00 per hour. The hourly rate . . . has not changed or even kept pace with inflation." Davies then cited to increases in social security benefits, the consumer price index and judges' salaries in New Jersey to support his argument that the court improperly froze counsel fee awards at the $200 per hour level.

After considering these arguments, the court denied the motion without a hearing or oral argument. The court delivered a lengthy oral statement of reasons, which it placed on the record on May 24, 2013. The judge stated he had carefully reviewed the certification of services filed by appellant's counsel and the other attorney, and he had considered the standards for award of attorney's fees established by the Supreme Court in Rendine v. Pantzer, 141 N.J. 292 (1995).

In his explanation of his reasons, the judge stated the

reduction in fees was not the result of a policy to only use the $200 rate in the award of counsel fees, although he did acknowledge that was the rate used by the court when appointing attorneys in guardianship and similar matters. The judge explained he reduced the hourly fee based on his finding that (1) the "rate [is] considered . . . to be on the high end of what is reasonable in the Ocean County area"; (2) it "did not find that the difficulty of the questions presented was overly complex"; (3) appellant's attorneys' services were already being performed by Van Dyke, who had "equal, if not greater, experience" than appellant's counsel; (4) "the amount of the estate, the amount in dispute or jeopardy. . . or risk" was limited to the value of the bonds, which was $89,000; and, (5) appellant's counsel did not provide the court with a copy of any agreement with its client establishing an hourly rate or setting forth a contingent fee agreement, as required by RPC 1.5, which is incorporated into Rule 4:42-9. The court concluded by noting:

> As indicated, the entire analysis of fees [in] which [the court] engaged initially . . . took into account all of the factors and an ultimate award which this [c]ourt found to be fair and reasonable. Same was not conducted in a summary manner, but rather entailed a comprehensive review of all of the submissions, the nature of the overall estate and the nature of the modest amount of same

> which was in dispute, i.e., the amount of the bonds totaling approximately $89,000.

The court entered its order denying reconsideration and this appeal followed.

We review a trial judge's decision to award attorneys' fees under an abuse of discretion standard. Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 443-44 (2001). "Trial courts have considerable latitude in resolving fee applications." Grow Co., Inc. v. Chokshi, 424 N.J. Super. 357, 367 (App. Div. 2012). A reviewing court "will disturb a trial court's award of counsel fees only on the rarest of occasions, and then only because of a clear abuse of discretion." Litton Indus. v. IMO Indus., 200 N.J. 372, 386 (2009) (citations and internal quotation marks omitted).

Rule 4:42-9(a)(3) provides for the discretionary award of counsel fees in probate actions. "Except in a weak or meretricious case, courts will normally allow counsel fees to both proponent and contestant in a will dispute." In re Reisdorf, 80 N.J. 319, 326 (1979).

When a court calculates an award of counsel fees, the court must determine the "'lodestar,'" that is, "the number of hours reasonably expended multiplied by a reasonable hourly rate." Rendine, supra, 141 N.J. at 334-35.

> Generally, a reasonable hourly rate is to be calculated according to the prevailing market rates in the relevant community. Thus, the court should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.
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> [Id. at 337 (quoting Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990)).]

The hourly rate must be "fair, realistic, and accurate." Ibid.

After fixing a reasonable hourly rate, the trial court must determine whether "the specific circumstances incidental to a counsel-fee application demonstrate that the hours expended, taking into account the damages prospectively recoverable, the interests to be vindicated, and the underlying statutory objectives, exceed those that competent counsel reasonably would have expended to achieve a comparable result." Id. at 336. On this basis, a trial court may delete excessive hours from its calculation. Ibid. A court is then free to "reduce the lodestar fee if the level of success achieved in the litigation is limited as compared to the relief sought." Ibid. A successful fee application, however, does not require "proportionality between the damages recovered and the attorney-fee award." Furst v. Einstein Moomjy, Inc. 182 N.J. 1, 23 (2004).

Here, the judge stated that he had conducted this type of analysis in accordance with Rendine, finding no basis to dispute appellant's reporting of hours worked on the case or, as a general matter, that such work might reasonably be charged at the rate of $350 per hour by attorneys with comparable skill and experience. However, the judge reduced the fee request to the $200 hourly rate because of the particular facts of this case.

Appellant is correct about our holding in Macool, supra, 416 N.J. Super. at 313, that a trial judge's award of counsel fees could not be based on the judge's personal policy. We conclude, however, those considerations did not motivate the judge in this case, as the judge identified the specific factors that led to his decision.

We find no abuse of discretion in the judge's decision to limit the hourly rate for the reasons he explained.

Affirmed.