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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4103-15T3

IN THE MATTER OF THE
ESTATE OF HELEN HAUKE.

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Submitted December 14, 2017 – Decided January 29, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Monmouth County, Docket No. P-000125-12.

Paul R. Hauke, appellant pro se.

Anthony T. Colasanti, attorney for respondents Thomas Hauke, Richard Hauke and Gregory Hauke.

PER CURIAM

In this dispute over the distribution of the parties' mother's estate, Paul Hauke, one of the late Helen Hauke's adult children, appeals from the Chancery Division's May 20, 2016 order awarding counsel fees in the amount of $76,068.71 to Anthony T. Colasanti, the attorney for his brothers, Gregory Hauke, Thomas Hauke and Richard Hauke. The court entered the

order after the parties agreed that all of their counsel fees would be paid from the estate and Paul[1] challenged the accuracy and reasonableness of Colasanti's fees. The court awarded the entire amount of fees and costs requested by Colasanti, without explaining the reasons for rejecting Paul's challenge to the amount. On appeal, Paul argues that the court failed to find that his brothers "refused to abide by the terms of [their] settlement," and it abused its discretion in awarding the fees to Colasanti, who should not have been "allowed to bill for expert witness fees as attorney['s] out of pocket expenses."

We conclude from our review that we are constrained to vacate the award of fees and remand the matter for reconsideration because the court did not address the challenge raised by Paul or issue a statement of reasons as required by Rule 1:7-4.

The facts giving rise to the estate litigation are not pertinent to our consideration of this matter. Suffice it to say, the brothers' disagreement with Paul began before their mother's death in 2012 and led to their filing a complaint against Paul on October 11, 2012, alleging undue influence,

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[1] We refer to Paul Hauke by his first name to avoid any confusion caused by the parties' common last name.

unjust enrichment, conversion and damages to the their mother's residence.

In January 2016, following two days of trial, counsel for the parties advised the court that the matter was settled. Reading from a proposed consent judgment, counsel placed the terms of the settlement agreement on the record, which included a provision "that the legal fees incurred by the parties in this litigation . . . shall be paid by the estate . . . , following the submission of certification of services to be filed with the [c]ourt by counsel pursuant to . . . Rule 4:42-9."

In reviewing the terms of the settlement with counsel, the court took great efforts to make clear that it understood the settlement was not going to give rise to a new dispute over the amount of any party's counsel fees. For that reason, the court wanted counsel to make sure that the parties had some understanding about the amount of fees and expenses being sought by each attorney so as to avoid any dispute later. Paul's counsel responded that it was his understanding that the amount of each attorney's fees would be fixed by the court after it considered certifications filed by counsel, and the court determined "whether or not the fees are appropriate and reasonable."

The court rejected that procedure, finding that it meant the matter was not settled. It stated:

> . . . [W]e're not going to have certifications back and forth of whether they're reasonable or not. You know, you shouldn't have spent three hours preparing, you should have only spent two. <u>I mean, I'm not going to do that</u>.
>
> . . . .
>
> This is a settlement. So we're not going to argue about counsel fees.
>
> . . . .
>
> . . . I think the clients should know the ballpark figure of counsel fees so I don't have any objections to that. Because then the case isn't settled.
>
> . . . .
>
> But again, have you spoken to your clients so they have some idea about what these fees will be. I don't, you know, then the case isn't settled if we come in and start arguing about fees. . . . I guess we are not settled.
>
> [Emphasis added.]

The court recessed to allow the parties to further discuss the issue of counsel fees. When the court reconvened, Paul's attorney advised that the parties would come to an agreement after they reviewed the bills and certifications before submitting them to the court. Colasanti stated the procedure was agreeable and that his fee application would include "out of

pocket expenses directly related to the litigation." The parties testified to their agreement to all of the settlement terms and the court entered their proposed consent judgment.

The consent judgment did not incorporate the provision that the submissions regarding counsel fees would be made only after the parties agreed to each attorney's request. Rather, it only stated that the parties' legal fees would be paid by the estate "following the submission of Certification of Services to be filed with the Court by counsel pursuant to . . . Rule 4:42-9."

Despite the judgment's silence on the agreed upon process, Colasanti submitted his certification of services to Paul's attorney, who later informed Colasanti that Paul objected to the amount. Paul's counsel filed a motion to fix the parties' counsel fees payable from the estate, which included a challenge to Colasanti's fee request.[2] Paul's attorney explained in his supporting certification that despite the parties' agreement to attempt to resolve the issue of counsel fees prior to submission to the court, Paul objected to Colasanti's fee request. Paul believed that, based on information supplied by Colasanti in his certification of services and in "the record in this matter," Colasanti already received payments towards his fee "in excess

[2] Paul's attorney filed his own certification as to his fees, which the brothers never challenged.

of the $20,000" Colasanti claimed he was paid from the estate. Also, Paul "believe[d] that the fees sought by [Colasanti were] excessive for the work performed, the amount of the controversy, and the results achieved." According to his attorney, Paul requested that the court cap Colasanti's fees at $50,000, "plus verifiable and documented costs."

Colasanti responded in a certification of services submitted to the court and dated May 16, 2016. He certified that his services and disbursements totaled $96,068.71, for "legal services relating only to the [deceased's estate]." He provided a description of the services, the events that caused additional fees to be incurred, and his hourly rate and expenses that he paid, including those paid to experts.[3] Colasanti also certified that he was paid $20,000 and requested the court to award fees for the balance owed in the amount of $76,068.71.

At oral argument on May 20, 2016, Colasanti again confirmed he was owed $76,068.71, including $8000 for out-of-pocket disbursements, and stated that it was unfair to ask him to reduce his fee simply because Paul's attorney had agreed to a fee reduction. When Colasanti attempted to explain the source

[3] Colasanti had represented the brothers in earlier actions relating to the estate of the parties' father and their mother's competency. According to Colasanti, his fee application did "not include legal services related to" those actions.

of the $20,000 he received, the court responded it did not "have time for this[,]" and that the court was "not supposed to be having hearings on counsel fees." It then awarded Colasanti's requested fee of $76,068.71, pursuant to the parties' settlement agreement. It entered its order awarding both attorneys the amount they requested without reduction or comment upon the merits of Paul's challenge to Colasanti's fee request.

This appeal followed.

We afford trial courts "considerable latitude in resolving fee applications." Grow Co. v. Chokshi, 424 N.J. Super. 357, 367 (2012). For that reason, we review a trial court's decision to award attorney's fees for abuse of discretion. Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 443-44 (2001). We will not disturb the trial court's award of counsel fees "except 'on the rarest occasions, and then only because of a clear abuse of discretion.'" Grow Co., 424 N.J. Super. at 367 (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). A trial court's decision will constitute an abuse of discretion where "the 'decision [was] made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" U.S. v. Scurry, 193 N.J. 492, 504 (2008) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

Applying these controlling principles, we conclude the trial court's fee award was the result of an abuse of the court's discretion as it was made without consideration of the issues before the court or a decision explaining the court's reasons for disregarding Paul's challenge to Colasanti's fees and awarding the full amount requested.

It is evident from the record that the court never expressly or even implicitly resolved the parties' dispute about Colasanti's fee request. While we recognize that the parties settled the case by agreeing to resolve any dispute about counsel fees, it is equally evident and, considering the history of the parties' disputes, not surprising that those attempts failed. With that, the court was obligated to resolve the dispute by considering and ruling upon the merits of the disagreement, rather than simply awarding the fees requested, without further explanation, see R. 1:7-4, because the court believed it did "not have time" to do so. We discern no urgency or emergency that prevented the court from taking the time it needed to properly dispose of the matter the day the parties appeared or, if necessary, on a later date.

Second, the judgment entered by the court contemplated a consideration of the parties' counsel fee applications in accordance with Rule 4:42-9. That process requires the court to

consider, among other things, the reasonableness of the fee sought and any payments received by counsel at the time of the application. See R. 4:42-9(b); RPC 1.5(a); see also Litton Indus., Inc. v. IMO Indus., 200 N.J. 372, 386 (2009); Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21-22 435 (2004) (stating a fee awarded must be "reasonable," and reasonableness is a "calculation" to be made in "every case").

While we surmise that the court relied upon the parties' agreement to agree on counsel fees, even though they failed to do so, the court provided no legal authority or other reason for ignoring the dispute despite its obligation to provide a statement of its reason for its decision. Furst, 182 N.J. at 21-22. The court must "issue[] reasons for its decision, . . . 'stat[ing] clearly [its] factual findings and correlate[ing] them with relevant legal conclusions, so that parties and th[is] . . . court [are] informed of the rationale underlying [the trial court's] conclusion[s].'" Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594 (App. Div. 2016) (second alteration in original) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)).

Under these circumstances, we must remand to the trial court so that it can reconsider Colasanti's fee application and issue a decision setting forth its reasons.

The order under appeal is vacated and the matter is remanded to the trial court for further proceedings consistent with our opinion. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION