COURT OF APPEALS OF VIRGINIA

Record No. 0538-25-2

MOUNA ANDERSON, BENEFICIARY OF THE ESTATE
OF NAJI PHILIP MALOOF, DECEASED, ET AL.
v.
BRYAN K. DOWELL, ADMINISTRATOR OF THE
ESTATE OF NAJI PHILIP MALOOF, DECEASED

Present: Judges Athey, White and Senior Judge Petty

Argued at Richmond, Virginia

Opinion Issued October 27, 2026[*]

FROM THE CIRCUIT COURT OF KING GEORGE COUNTY
J. Bruce Strickland, Judge

Andrew G. Mauck (Jennifer Upton; Mauck & Brooke PLC, on briefs), for appellants.

Amicus Curiae: Jeannie P. Dahnk[1] (Law Office of Jeannie P. Dahnk, on briefs).

MEMORANDUM OPINION BY
JUDGE WILLIAM G. PETTY

Mouna Anderson and John Bruce Hardy, executor of the estate of Sami P. Maloof, challenge the circuit court's judgment confirming a report by the assistant commissioner of accounts granting Jeannie P. Dahnk, Esq., legal fees for services she provided to the estate of Naji P. Maloof (Mouna and Sami's brother).[2] Perry G. Bowen, III, a former executor of the estate, hired Dahnk to represent him in an aid and guidance claim. Mouna and Sami

[*] This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] Dahnk was not a party to the proceedings below but was named as an appellee in this appeal. At oral argument, however, this Court determined that she was not a proper party to the appeal. We therefore treat her briefs as amicus curiae briefs.

[2] Sami passed away during the pendency of this appeal.

counterclaimed, requesting, among other relief, to have Bowen removed as executor, and Dahnk represented Bowen in defense of those counterclaims as well. Mouna and Hardy assert that the estate should not have to pay Dahnk's legal fees because Bowen pursued the litigation in his own personal interest rather than for the benefit of the estate. Mouna and Hardy further argue that Dahnk's invoices are insufficiently detailed to support recovery of her fees. We affirm in part, reverse in part, and remand for further findings because the estate is responsible for the fees arising from the initiation of the aid and guidance claim but not for the fees arising from either Bowen's pursuit of one interpretation of the contested document or the defense against the counterclaims, and the circuit court must now redetermine the amount of fees Bowen was entitled to charge to the estate in accord with this opinion.

BACKGROUND

Naji died testate on November 14, 2017, survived by his sister Mouna and his brother Sami. He had no children and was not married. Naji's will and a first codicil were admitted for probate, and Bowen qualified as executor of the estate.

In November 2018, Bowen filed a suit for aid and guidance requesting interpretation of a two-page handwritten document, which Bowen alleged that Naji signed the day before he died. *See Bowen v. Maloof, et al.*, No. CL18000464-00. The document included a provision that could be interpreted to excuse $400,000 out of a debt of $665,000 that Bowen owed to Naji. Bowen requested that the circuit court affirm the note as a second codicil to Naji's will.

Mouna and Sami denied that the document was a valid codicil. They also asserted counterclaims against Bowen, individually and as executor. Their counterclaims revolved around interpretation of certain provisions in Naji's will and the first codicil, which Mouna and Sami asserted that Bowen had violated to enrich himself. Mouna and Sami sought interpretation of the disputed codicil provisions, removal of Bowen as executor, an accounting, and an

injunction against Bowen's further administration of the estate. They asserted that removal and an injunction were justified because Bowen had engaged in self-dealing in violation of his fiduciary duty and had an irreconcilable conflict of interest preventing him from fairly administering the estate's assets.

The trial court in that case granted a temporary injunction prohibiting Bowen "from distributing and personally receiving any estate assets or proceeds therefrom." At trial, Bowen nonsuited his claim for aid and guidance, and the matter proceeded on Mouna and Sami's counterclaims. The court ruled in Mouna and Sami's favor regarding the disputed codicil provisions but declined to remove Bowen as executor of the estate. The court did, however, order the temporary injunction against Bowen to remain in effect until the administration of the estate concluded. Bowen and Mouna each filed petitions for appeal to the Supreme Court of Virginia.

While the appeal to the Supreme Court in that case was still pending, Mouna and Sami filed a new complaint against Bowen, individually and as executor, asserting that Bowen had violated his fiduciary duty by misappropriating estate funds. *See Maloof, et al. v. Bowen, et al.*, No. CL21000637-00. In that case, too, they sought Bowen's removal as executor.

Mouna, Sami, and Bowen then entered a global settlement agreement applicable to both of the pending cases as well as the estate's administration generally. Bowen agreed to withdraw his petition for appeal, resign as executor of the estate, and pay the estate $710,000. Mouna and Sami agreed to dismiss the new lawsuit and withdraw their assignments of error in the pending appeal except for one related to interpretation of a provision of the first codicil. Bowen was replaced by Bryan K. Dowell, who also signed the agreement and later qualified as administrator, c.t.a. d.b.n. for the estate.

The settlement agreement also contained two provisions referencing Dahnk. Dahnk represented the estate in the first lawsuit, assisting Bowen in filing his claim for aid and guidance, as well as in defending against Mouna and Sami's counterclaims. She also helped prepare Bowen's petition for appeal to the Supreme Court but withdrew from the representation while the appeal was pending. She then filed a claim with the assistant commissioner of accounts to recover her attorney fees from the estate, which is the claim at issue in this case.

Both settlement agreement provisions referencing Dahnk related to her outstanding claim for attorney fees.[3] In the first, which is labeled "Cash and Debts of the Estate," the parties agreed that the estate had no outstanding debts except for Dahnk's claim for fees; a separate debt of fees owed to the estate's then "current" counsel, Jack Billingsley; and unrelated potential tax liabilities. In the same paragraph, the agreement provided, "The parties agree that [Bowen] maintains no liability, individually or in his capacity as Executor, to any such taxes, debts, fees, costs, bills, or invoices."

The other provision that references Dahnk's outstanding claim for attorney fees is labeled "Attorney's Fees." Regarding Dahnk's fees, the provision stated, "the parties acknowledge that the Executor's prior counsel, Jeannie P. Dahnk, Esq., claims outstanding fees against the Estate." It further provided that the parties "agree that such claim will be contested and/or resolved by the Successor Executor [Dowell], the Commissioner of Accounts, and/or the Court, and that [Bowen] is not liable to the Estate for any fees, expenses, or costs claimed by Jeannie P. Dahnk, Esq."

The agreement also included general release provisions. The parties agreed that Bowen's settlement payment would "constitute full satisfaction of any claims, issues, disputes, and/or debts against [Bowen] in his capacity as Executor of the Estate and individually, for all matters

[3] Dahnk herself was not a party to the agreement.

involving Naji and/or the Estate pending anywhere or any issue or matter that is pending or may be in the future." The agreement further provided that Mouna, Sami, and Dowell released Bowen, individually and in his capacity as executor, "from any and all suits, claims, demands, interest, costs (including attorneys' fees and costs actually incurred), expenses, reimbursements, actions and causes of action, rights, liabilities, obligations, promises, agreements, controversies, losses and debts of any nature whatsoever" relating to the estate.

Dahnk's claim for attorney fees is the last remaining dispute in the estate's administration. Mouna and Sami opposed Dahnk's claim before the commissioner of accounts.[4] By agreement of the parties, the assistant commissioner defined the relevant issues as (1) whether Dahnk's claim is "a valid claim and obligation of [the] estate," and (2) whether the amount claimed is "accurate and reasonable."

Mouna and Sami argued that neither the fees relating to the prosecution of Bowen's aid and guidance suit nor the fees relating to his defense against the counterclaims were chargeable to the estate. They asserted that Bowen was personally responsible for the fees because the litigation in both instances was for his own benefit, rather than the estate's. They also pointed to the fact that Bowen nonsuited the aid and guidance claim and failed to refile it as proof that it was meritless and a waste of resources. Finally, Mouna and Sami argued that Dahnk's invoices were insufficiently detailed to support her claim and did not adequately distinguish between time spent on Bowen's claim versus time spent on the counterclaims.

Dahnk argued that Dowell, Mouna, and Sami had acknowledged her fees as a valid estate debt by signing the settlement agreement. Thus, according to Dahnk, Mouna and Sami were

[4] Dowell also opposed Dahnk's claim, arguing that the invoices were insufficiently detailed to show evidence that the time billed benefitted the estate and that Dahnk had delayed too long in attempting to collect the invoices. The assistant commissioner found in Dahnk's favor on these issues, and Dowell filed no exceptions to the assistant commissioner's report.

prevented from arguing that Bowen incurred the fees individually, rather than for the estate. Dahnk further asserted that Bowen was obligated to bring the suit for aid and guidance and to defend against the counterclaim for the benefit of the estate, and that his potentially personally benefitting from the litigation did not alter that obligation.

The assistant commissioner of accounts found that the estate was obligated to pay Dahnk's legal fees. The assistant commissioner concluded that Bowen, as executor, had the right and the obligation both to bring the suit for aid and guidance and to defend against any questions raised about the interpretation of the will and codicil in the counterclaims. That right included the right to retain legal counsel. The assistant commissioner noted that interpretation of the documents "impacted several beneficiaries in addition to Mr. Bowen individually." The assistant commissioner concluded that Bowen's obligation existed even if the result of the interpretations would benefit him. The assistant commissioner also noted that although Bowen nonsuited his claim and decided not to refile it, that decision was a tactical one that he was entitled to make as executor. Regarding the settlement agreement, the assistant commissioner stated that it explicitly acknowledged Dahnk's claim, released Bowen from any obligations to pay claims on the estate, and that it was Dowell's responsibility to resolve any remaining claims on the estate. The assistant commissioner did not state that the settlement agreement was dispositive of any issue.

Mouna and Sami filed exceptions to the report, making substantially the same arguments to the circuit court that they had made to the assistant commissioner. After a hearing at which the parties presented argument but no additional evidence, the circuit court confirmed the assistant commissioner's report in its entirety. The circuit court concluded that the report was "both supported by the evidence and not plainly wrong as a matter of law." The court did not otherwise explain its decision in its final order. Mouna and Sami appealed.

On appeal, Mouna and Hardy argue that the circuit court erred in confirming the assistant commissioner's report. They maintain that the estate is not liable for the fees arising from the aid and guidance suit, nor the counterclaims, because Bowen's participation in the litigation was self-serving. They further argue that if this Court agrees on either issue, then Dahnk's invoices are insufficient because they insufficiently distinguish between services rendered for Bowen's claim as opposed to defense of the counterclaims.

ANALYSIS

I. Attorney Fees

On appeal, we will affirm a circuit court's judgment approving the report of a commissioner of accounts unless it is plainly wrong. *Roberts v. Roberts*, 260 Va. 660, 667 (2000). "While the report of a commissioner in chancery does not carry the weight of a jury's verdict, Code § 8.01-610, it should be sustained unless the trial court concludes that the commissioner's findings are not supported by the evidence."[5] *Id.* (quoting *Hill v. Hill*, 227 Va. 569, 576-77 (1984)). Generally, "an appellate court must give due regard to the commissioner's ability, not shared by the [circuit court], to see, hear, and evaluate the witnesses at first hand." *Hill*, 227 Va. at 577. In this case, however, the commissioner decided the case by agreement of the parties, based on their written filings and accompanying exhibits. Thus, the commissioner, the circuit court, and this Court have the same opportunity to review the evidence. The question for this Court remains whether the circuit court's decision was "plainly wrong," but the commissioner is not entitled to the same special deference in his factual findings as he would be had he taken evidence at a hearing. *See Roberts*, 260 Va. at 667 (noting that deference to a commissioner's report "applies with particular force to a commissioner's findings of fact based

[5] "The same principles of law apply to a trial court's consideration of a report of the commissioner of accounts" as to a report of a commissioner in chancery. *Roberts*, 260 Va. at 667.

upon evidence taken in his presence"). The circuit court does not defer to the commissioner's conclusions of law, and we do not defer to the circuit court's. *Id.*; *Carlson v. Wells*, 281 Va. 173, 180 (2011).

"An executor is entitled to 'any reasonable expenses incurred by him in his capacity as a fiduciary.'" *Galiotos v. Galiotos*, 300 Va. 1, 12 (2021) (quoting *Clare v. Grasty*, 213 Va. 165, 170 (1972)); *see* Code § 64.2-1208. Such expenses can include attorney fees if the executor has hired a lawyer to provide "services that aid the executor in the performance of his duties and are beneficial to the estate." *Galiotos*, 300 Va. at 13. The employment of the attorney must be "reasonably necessary" to the executor's performance of his duties. *Clare*, 213 Va. at 170. But an executor may not recover attorney fees that "were incurred for his personal benefit and not to benefit the estate or to aid him in his duties as executor." *Dowling v. Rowan*, 270 Va. 510, 522 (2005) (quoting *O'Brien v. O'Brien*, 259 Va. 552, 557-58 (2000)). And an executor "is not entitled to attorneys' fees and legal costs simply because they were incurred in good faith." *Galiotos*, 300 Va. at 13.

The line between recoverable and unrecoverable fees often depends on whether the executor is acting neutrally or as a partisan. When a will has been admitted to probate, "it is the duty of the executor . . . to defend suits brought to revoke such probate or to test the validity of the will, and if he acts in good faith [the executor] is entitled to receive from the estate his necessary expenditures in defending such attack." *Butt v. Murden*, 154 Va. 10, 15 (1930) (quoting *Annotation*, *Unsuccessful Resistance of Attack After Probate*, 18 Ann. Cas. 741, 742 (1911)). Generally, a will contest is between those who would inherit under a decedent's will, if admitted, and those who would inherit under intestacy, and "[i]n such cases the executor should leave these interested parties to conduct the litigation at their own expense and to abide its results without imposing substantial charges against the estate represented by the executor." *Id.* Put

simply, an executor may not use estate funds to litigate one group of legatees' claims against another group. *Shocket v. Silberman*, 209 Va. 490, 493 (1969).

O'Brien demonstrates both sides of that line. There, the Supreme Court of Virginia affirmed an award of fees to two co-executor brothers who sued on behalf of their mother's estate to recover a debt from a third brother, who was also a co-executor. *O'Brien*, 259 Va. at 554, 557. The Court noted that the plaintiff brothers were obligated to collect the assets of the estate. *Id.* at 557. Although they stood to benefit personally from recovering the debt from the third brother for the estate, the recovery of the debt was part of their duty as personal representatives of the estate. *Id.* Additionally, the Court noted that "when provisions in a will may be susceptible of differing interpretations, it is prudent and proper for the personal representatives to seek the aid and guidance of a court to obtain the correct interpretation." *Id.* But the Court held that the defendant brother was not similarly entitled to reimbursement for his attorney fees in defending against the action, finding that his participation in the litigation was for his own personal benefit. *Id.* at 557-58.

Clare v. Grasty is instructive as well. In *Clare*, the Supreme Court held that an executor could not charge the estate for attorney fees incurred in pursuing a will interpretation that was contrary to the testator's expressed intent and therefore outside the executor's fiduciary duties. 213 Va. at 173. Grasty, a co-executor of the estate, sought an interpretation of the testator's will that would have expanded his authority over estate assets, which the court found would "frustrate [the] testator's intentions." *Id.* at 167-68. The Court determined that, in pursuing that position, Grasty was not "performing his duties as co-executor," and the resulting legal fees were incurred for his own benefit rather than the estate's. *Id.* at 171. The Court likewise denied fees incurred in defending removal proceedings arising from Grasty's detrimental conduct, explaining that the

proceedings were not groundless and that the fact that he was not ultimately removed did not establish that his defense benefited the estate. *Id.* at 172.

Applying these principles, we reach different conclusions for three categories of fees: those Bowen incurred in filing the suit for aid and guidance, those he incurred in advocating for the admission of the purported second codicil, and those he incurred in defending against Mouna and Sami's counterclaims.

Bowen's filing of the suit for aid and guidance is like the two plaintiff brothers' claims in *O'Brien*. As an executor, Bowen had a duty to bring to the court's attention a document in his possession that purported to be a codicil, and to seek guidance about its validity and meaning. That duty existed even though the document, if valid, would benefit him individually. *See O'Brien*, 259 Va. at 557. The alleged codicil also mentioned several other individuals, not just Bowen. The record contains little evidence about the merits of the aid and guidance suit. Because Bowen nonsuited his claim, there is no ruling on the validity of the document. There is no evidence that Bowen fabricated it or otherwise presented it in bad faith. We cannot say that the circuit court was plainly wrong in concluding that Dahnk's legal services in preparing and filing the aid and guidance claim aided Bowen in the performance of his duties for the benefit of the estate.

Bowen did not, however, stop at placing the document before the court. He asked the circuit court to affirm it as a second codicil to Naji's will. At that point he was no longer seeking guidance—he took a side. Whether the handwritten document was a valid codicil was a question between two groups: those who would take under the will and first codicil as probated, and those who would benefit if the document were established as a second codicil. That is the kind of contest *Butt* describes, in which the executor should leave the interested parties "to conduct the litigations at their own expense." 154 Va. at 15; *see Shocket*, 209 Va. at 493.

The duty *Butt* recognizes to defend a probated will does not help Bowen. Naji's will and first codicil had been admitted to probate. The handwritten document had not. Bowen was not defending the testator's established plan against attack; he was seeking to change it. And the interested party he championed was chiefly himself, because the document could be read to excuse $400,000 of the $665,000 Bowen owed to Naji. Grasty sought an interpretation that would have expanded his own authority over estate assets. *Clare*, 213 Va. at 167-68, 171. Similarly, Bowen advocated a position that would benefit himself rather than the estate. The fees generated by that advocacy were plainly incurred "for his personal benefit," and therefore were not chargeable to the estate. *Dowling*, 270 Va. at 522.

With respect to the counterclaims, Bowen likewise is comparable to Grasty and the defendant brother in *O'Brien*. Bowen incorrectly interpreted the will in self-interested ways to allow him to distribute large sums of money to himself. Mouna and Sami had to file an action and pursue part of it all the way up to the Supreme Court in order to obtain a ruling that Bowen's interpretation was incorrect and force him to give back the money. The other claims were resolved by rulings by the circuit court against Bowen's interpretations, and by a settlement agreement in which Bowen agreed to pay the estate $710,000, as well as legal fees for the second removal action. Like Grasty, Bowen lost on his interpretations of the will, and those interpretations were self-interested. "Although a trustee is entitled to reimbursement from the trust for reasonable attorney[] fees expended in protecting the trust, a trustee should not receive such reimbursement when he caused the litigation." *Wiglesworth v. Taylor*, 239 Va. 603, 609 (1990) (citations omitted) (holding that trustees could not recover attorney fees for litigation caused by their own "negligent post-notice distributions of income").

The circuit court did not grant Mouna and Sami's request to remove Bowen as executor, but Grasty was not removed either, despite two attempts by the beneficiaries in that case. *Clare*,

213 Va. at 172. The Court looked at Grasty's actions as a whole and concluded that the removal actions were not groundless and that his actions were clearly for his own benefit, rather than the estate's. *Id.* Similarly in this case, Bowen's interpretations of the will, which Mouna and Sami successfully challenged in the counterclaims, were interpretations that benefited him and not the estate. We conclude that Dahnk's legal services to Bowen in defense of the counterclaims were rendered for Bowen's personal benefit rather than for the estate and that Bowen was not entitled to charge the estate for the related legal fees.[6]

II. Sufficiency of Dahnk's Invoices

Because we conclude that Bowen was entitled to charge the fees for filing the aid and guidance claim to the estate, but not the fees charged in any promotion of an interpretation of the purported second codicil or his defense of the counterclaims, there must be a determination of the amount of fees which could be charged. Mouna and Hardy urge this Court to conclude that no fees could be charged to the estate because Dahnk's invoices do not adequately distinguish between the time spent on these separate matters. The assistant commissioner and circuit court did not rule on this issue because they concluded that all the requested fees could be charged. We will not make this factual finding for the first time on appeal. Thus, we remand the case to

[6] Bowen was never made a party to this case. This Court, sua sponte, requested the parties to submit supplemental briefing addressing whether Bowen is a necessary party to this litigation and, if so, whether this Court should exercise its discretion to keep the case. The siblings assert that Bowen is not a necessary party. We agree. The necessary party doctrine exists to prevent a court from adjudicating away an absent person's interest without the chance to be heard. *See Garner v. Joseph*, 300 Va. 344, 350 (2021). The settlement agreement between Bowen, in his capacity as executor of the estate, Mouna, and Sami expressly provides that Bowen is not liable for any debt owed by the estate to Dahnk. That provision forecloses any outcome in this appeal from affecting Bowen's legal position regarding the estate. Because no decree this Court or the circuit court could enter would either enlarge or diminish Bowen's liabilities to the estate or to Mouna and Sami, Bowen's presence is unnecessary to a resolution of the claim.

the circuit court to determine the amount of attorney fees Bowen could charge to the estate, in accord with the rulings in this opinion.

CONCLUSION

Bowen could charge the estate attorney fees for preparing and filing the aid and guidance suit, but not for pursuing the affirmation and his interpretation of the handwritten document or for his defense of Mouna and Sami's counterclaims. Therefore, the circuit court's judgment is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.