

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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Appeal No. 2005AP1073

Cir. Ct. No. 2002CV1568

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JEFFREY D. KNICKMEIER,

PLAINTIFF-APPELLANT,

V.

JAMES E. REINKE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 LUNDSTEN, P.J. This case involves attorney Jeffrey Knickmeier and his former client, James Reinke. Over the course of several years, Knickmeier represented Reinke on various civil and criminal matters, held a trust account for

Reinke, and managed Reinke's rental property. Knickmeier also borrowed thousands of dollars from Reinke. The issues on appeal relate to these arrangements and transactions.

¶2 This action commenced when Knickmeier filed suit seeking a declaratory judgment resolving how much he owed Reinke. Reinke counterclaimed for conversion based on Knickmeier's handling of Reinke's trust account and sought punitive damages. After a trial, the circuit court found that Knickmeier had breached a fiduciary duty to Reinke regarding several matters. The court awarded Reinke \$29,726.06 in compensatory damages and \$10,000 in punitive damages.

¶3 While this action was pending in the circuit court, the Office of Lawyer Regulation charged Knickmeier with several violations of the supreme court rules governing attorney conduct, and a disciplinary proceeding followed. Many of the violations alleged in that disciplinary proceeding were based on the same transactions involved in this action. Before the circuit court issued its final order in this action, the supreme court adopted the referee's report and recommendation in the disciplinary proceeding, which found that Knickmeier had committed numerous violations of the supreme court rules. Based on the supreme court's decision, the circuit court in this action precluded Knickmeier from arguing that he was entitled to attorney's fees for legal services performed for Reinke.

¶4 Knickmeier appeals all aspects of the court's judgment. We affirm all of the court's conclusions except one relating to Knickmeier's attorney's fees. On that topic alone, we remand.

Background

¶5 This action arose out of a series of personal and professional arrangements between attorney Knickmeier and James Reinke involving legal representation and other services performed or allegedly performed by Knickmeier for Reinke. Here we present an overview; specific details will be provided in the discussion section when necessary.

¶6 Knickmeier represented Reinke when Reinke's mother's estate was probated. In March 1999, Reinke received \$45,785 in real estate and estate proceeds from his mother's estate, which Reinke gave to Knickmeier to hold in a trust account. Knickmeier was to distribute the funds so that Reinke would receive \$200 weekly, and Knickmeier was permitted to make expenditures out of the account only when authorized by Reinke. Between March 1999 and June 1999, all of the funds in the Reinke trust account were depleted. Some of the money went directly to Reinke, some was spent by Knickmeier on Reinke's behalf with Reinke's permission, some was "loaned" to Knickmeier, and some was used by Knickmeier without Reinke's authorization.

¶7 Apart from the trust account funds, Knickmeier also borrowed \$12,000 from Reinke to purchase a Cessna airplane.

¶8 For a period of several months, while Reinke was incarcerated due to a criminal conviction, Knickmeier managed Reinke's home in Madison as a rental property. Knickmeier rented Reinke's home to another former client of Knickmeier's to whom Knickmeier was indebted, which allowed for a situation in which the tenant "could withhold rent to set off what Knickmeier owed her." During the period of Knickmeier's management, the house fell into disrepair.

¶9 Knickmeier commenced this action by filing suit seeking a declaration of the amount he owed Reinke. Reinke counterclaimed for conversion based on Knickmeier's handling of Reinke's trust account and sought punitive damages.

¶10 While this action between Knickmeier and Reinke was pending in the circuit court, the Office of Lawyer Regulation filed a disciplinary complaint against Knickmeier. Most of the alleged ethics violations in the disciplinary action related to Knickmeier's interaction with Reinke. Following a disciplinary proceeding, the referee recommended that the supreme court discipline Knickmeier for twenty-one acts of misconduct. Knickmeier appealed the referee's recommendation, and the supreme court adopted the referee's findings and revoked Knickmeier's license to practice law. *Office of Lawyer Regulation v. Knickmeier*, 2004 WI 115, ¶105, 275 Wis. 2d 69, 683 N.W.2d 445, *cert. denied*, 544 U.S. 1041 (2005).

¶11 Prior to the release of the referee's report and recommendation, the circuit court in this action heard testimony from both Reinke and Knickmeier. The court ruled in favor of Reinke, finding that Knickmeier breached his fiduciary duty to Reinke with respect to several matters. The court awarded Reinke \$29,726.06 in compensatory damages. The court indicated to the parties that it would conduct additional proceedings to resolve whether that amount should be offset by amounts Reinke might owe Knickmeier for legal services. However, the court did not conduct additional proceedings.

¶12 Instead, the circuit court, mindful that the pending disciplinary proceeding was addressing some of the same factual issues, took no further action until the supreme court adopted the referee's factual findings and conclusions.

After the supreme court did so, the circuit court issued a second order. In that order, the court denied Knickmeier's claim for attorney's fees. The court apparently concluded that fact finding in the disciplinary action necessarily involved a finding that Knickmeier had not rendered the disputed legal services. The court applied issue preclusion on that topic, with the net result being that the court denied Knickmeier's request for an attorney's fees offset without taking further evidence. The court also awarded Reinke \$10,000 in punitive damages, finding that the conduct constituting Knickmeier's breach of fiduciary duty was "deliberate, intentional and in gross violation of [Reinke's] rights."

¶13 In sum, the circuit court found that Knickmeier breached fiduciary duties to Reinke, awarded Reinke \$29,726.06 in compensatory damages, denied Knickmeier's claim for attorney's fees, and awarded Reinke \$10,000 in punitive damages. Knickmeier appeals.

Discussion

¶14 Knickmeier specifically challenges three of the circuit court's conclusions. First, Knickmeier argues that the court erred when it awarded Reinke \$29,726.06 in compensatory damages. Second, Knickmeier argues that the court erred in not finding that he was entitled to an offset of the award for attorney's fees. Finally, Knickmeier contends that the court erred in granting Reinke an award for punitive damages. We affirm the circuit court, except as to the attorney's fees issue. We remand solely for the court to determine if there are any attorney's fees yet owed to Knickmeier that should be offset against the amount Knickmeier owes Reinke.

The \$29,726.06 Award

¶15 The circuit court found that, based on the various transactions between the two, Knickmeier owed Reinke \$29,726.06. The court determined this by starting with the uncontested fact that Reinke gave Knickmeier \$45,785 in estate proceeds for Knickmeier to hold in trust. The court then added \$12,000, representing money Reinke loaned to Knickmeier, and \$7,200, representing interest on the \$12,000 loan. Finally, the court added \$1,187, representing cash seized by police from Reinke, which was turned over to Knickmeier because he represented Reinke.¹ These amounts total \$66,172. Reinke eventually conceded that Knickmeier was entitled to credits totaling \$36,445.94, leaving Knickmeier owing Reinke \$29,726.06.

¶16 Knickmeier makes several arguments in support of his contention that the circuit court should have found that the net amount he owes Reinke is \$8,815.53.² We address and reject each of Knickmeier's arguments.³

¹ When Reinke was arrested, \$1,187 in cash was seized. That money, plus an additional \$1,000 in trust account funds, was used to satisfy Reinke's bail. The entire \$2,187 amount was then repaid to Knickmeier as Reinke's representative. Reinke claimed to be owed the entire \$2,187 in addition to amounts Knickmeier improperly obtained from the trust account. The circuit court determined, however, that, because the \$1,000 from trust account funds was already accounted for, Reinke was only owed an additional \$1,187.

² Knickmeier's \$8,815.53 figure seemingly includes the credit for attorney's fees that he asserts Reinke owes him. We address that issue in the next section of this decision. It is not clear whether Knickmeier's calculation includes the interest on the two "loans" Knickmeier received from Reinke. Indeed, the arguments of both parties are often as unclear and lacking in specifics as they were before the circuit court. Consequently, we will generally limit our discussion to the arguments Knickmeier has made with reasonable clarity. We decline to scour the record for information the parties do not bring to our attention, and we do not develop arguments for Knickmeier that he might have made.

³ Knickmeier does not make an argument regarding any specific element of the tort of breach of fiduciary duty. See *Zastrow v. Journal Commc'ns, Inc.*, 2005 WI App 178, ¶23 n.12, (continued)

¶17 First, Knickmeier argues that the circuit court erred by failing to make “specific findings” regarding the amount owed. Therefore, Knickmeier asserts, the court’s findings of fact are inadequate under WIS. STAT. § 805.17(2).⁴ At trial, Knickmeier produced an “accounting,” in his handwriting, of what happened to the money in Reinke’s trust account. That accounting listed dozens of expenditures Knickmeier authorized from the trust account. Reinke conceded that some of these expenditures were legitimate, but disputed others. Knickmeier argues that, in order to comply with § 805.17(2), the circuit court was required to make specific findings on the record *for each contested expenditure*. We disagree.

¶18 Knickmeier cites *Minguey v. Brookens*, 100 Wis. 2d 681, 303 N.W.2d 581 (1981), for the proposition that “[s]pecific findings as to facts established ... at the trial are required.” *Id.* at 687 (citation omitted). But Knickmeier’s reliance on *Minguey* is misplaced. In *Minguey*, a termination of parental rights case, the supreme court concluded that the circuit court’s findings

286 Wis. 2d 416, 703 N.W.2d 673, *aff’d*, 2006 WI 72, No. 2004AP276 (“The elements of a claim for breach of fiduciary duty are: (1) the defendant had a fiduciary duty; (2) the defendant breached that duty; and (3) the breach of duty caused injury to the plaintiff.”). We therefore find it unnecessary to address the issue.

⁴ WISCONSIN STAT. § 805.17(2) (2003-04) provides, in pertinent part:

EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the ultimate facts and state separately its conclusions of law thereon.... Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee may be adopted in whole or part as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of ultimate fact and conclusions of law appear therein.

All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

of fact were insufficient for two reasons. First, the findings parroted the language of the termination of parental rights statute, rather than resolving factual disputes. *Id.* at 686-87. Second, the court's order did not include a specific finding that the termination of the father's parental rights was in the best interest of the child. *Id.* at 687. Thus, in *Minguey*, because all fact finding had to be inferred from a ruling that amounted to nothing more than the circuit court stating which party prevailed, the supreme court reversed and remanded.⁵ *Minguey* does not shed light on the level of specificity of fact finding required, because the lack of fact finding in that case was complete.

¶19 Here, the circuit court's order reflects specific fact finding. The court found that Reinke was more credible than Knickmeier, and accepted Reinke's version of events as true. Having resolved the disputed expenditures in Reinke's favor by virtue of its credibility finding, and having arrived at a corresponding net amount that Knickmeier owed Reinke, it is not apparent why the court needed to list each disputed expenditure and explain that its credibility finding resolved each. Thus, Knickmeier has not persuaded us that the circuit court's findings are inadequate as a matter of law.

⁵ The supreme court in *Minguey v. Brookens*, 100 Wis. 2d 681, 303 N.W.2d 581 (1981), recognized that even inadequate findings do not mandate reversal of the circuit court's judgment. *See id.* at 688. If faced with a lack of specificity, for example, we may look to the record anew, determine whether a preponderance of the evidence clearly supports the judgment, and affirm on that basis. *Id.* The court in *Minguey* reversed and remanded because it was a termination of parental rights proceeding. The court explained that, because of the fundamental rights implicated in such a proceeding, the court was "reluctant to sift through a memorandum decision in order to pick and choose those portions which appear to be tantamount to findings of fact and conclusions of law." *Id.* at 689. This reasoning is not applicable here. Thus, under *Minguey*, even if we were to conclude that the circuit court's findings here were inadequate, that alone would not mandate reversal.

¶20 Knickmeier next argues that, at trial, he “presented clear, lucid, and un rebutted testimony, with some 28 Exhibits supporting it.” To the extent that Knickmeier argues his testimony and evidence should have carried more weight with the circuit court because of the “28 Exhibits supporting it,” we find it sufficient to note that the majority of Knickmeier’s exhibits were non-contemporaneous handwritten or typed “accountings” of expenditures. As the circuit court observed, “[Knickmeier’s] reconstructed financial analysis is wanting given the lack of ‘hardcopy’ evidence as to checks, receipts and easily obtainable corroboration of [Knickmeier’s] position.”

¶21 Knickmeier next argues that Reinke admitted the expenditures Knickmeier listed were authorized by Reinke. Although that is true for a limited number of expenditures, which the circuit court did credit to Knickmeier, most expenditures were put in dispute by Reinke’s testimony.⁶

¶22 Finally, Knickmeier argues that questions of credibility, “if there are any, should be resolved in favor of [him] in this case as a matter of law.”

Knickmeier argues that he

was not ever shown to be in error about any facts or factual claims. Not once. And, the [circuit court] did not have the opportunity to actually observe the demeanor of the Defendant Reinke. That important advantage in determining credibility was absent, and the record really tells the story.

⁶ Prior to trial, Reinke took the position that Knickmeier was entitled to credit only for \$32,793 in legitimate expenditures against the total amount Knickmeier owed Reinke. Based on evidence presented at trial, Reinke conceded that Knickmeier was entitled to credit for an additional \$2,652. Knickmeier fails to acknowledge that the circuit court has already included this additional credit in its order.

Knickmeier's argument ignores established rules governing our review of credibility findings. A fact finder, not this court, resolves credibility issues. *See Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979). And a fact finder may reject even unrebutted testimony. *See State v. Fry*, 131 Wis. 2d 153, 182-83, 388 N.W.2d 565 (1986). Most importantly, Knickmeier points to no authority supporting the proposition that his in-person testimony is inherently more credible than Reinke's telephonic testimony. Thus, we reject Knickmeier's argument that the circuit court was required to accept his testimony as true.

Offset For Attorney's Fees

¶23 Knickmeier claims that he is entitled to an offset for attorney's fees in the amount of \$11,388.60 for legal services he provided Reinke between October 10, 1998, and July 13, 2000. To support his claim for that amount, Knickmeier cites an exhibit that lists the hours of work he performed for Reinke and his billing rate for those hours. Although that exhibit includes fees for work on Reinke's criminal cases and fees for managing Reinke's home as rental property, Knickmeier's argument on appeal addresses only the fees for work performed regarding the probating of Reinke's mother's estate. Thus, we address only the potential for an offset with respect to those fees. With respect to the fees regarding work performed relating to the estate, we reverse and remand. With respect to the court's conclusions that Knickmeier is owed no fees for other legal services, we affirm.⁷

⁷ The circuit court found that Knickmeier was not entitled to fees for work he had performed regarding Reinke's criminal matters because those fees had already been paid. The court also found that Knickmeier was not entitled to any fees for his work as Reinke's property
(continued)

¶24 Knickmeier argues that the circuit court erroneously relied on fact finding in Knickmeier’s disciplinary action to preclude further litigation of whether Reinke owed Knickmeier fees for services relating to Reinke’s mother’s estate. Knickmeier contends that the disciplinary proceeding did not include a finding that Knickmeier performed no legal work for Reinke relating to the estate. We agree.

¶25 After the circuit court heard testimony from Reinke and Knickmeier, none of which plainly addressed the attorney’s fees relating to Reinke’s mother’s estate, the circuit court issued its first order. That order indicated that the information before it was not sufficient to resolve Knickmeier’s offset claim relating to such fees. The court wrote that it would “bring the parties back for supplementation of the record on that issue.” Despite this statement, no further evidentiary proceedings were held. Instead, the court later suggested to the parties that the referee’s report and recommendation in the disciplinary proceedings against Knickmeier might resolve this issue, should it be affirmed by the supreme court, and that the potential for issue preclusion existed.⁸ Since Knickmeier’s appeal to the supreme court was pending, the circuit court ordered briefing on issue preclusion and awaited the result of Knickmeier’s appeal.

manager, because Knickmeier had breached his fiduciary duty to Reinke through his deficient management of the property. Knickmeier does not challenge these findings on appeal. Thus, because Knickmeier has not identified to this court any other legal work, beyond his work regarding Reinke’s mother’s estate, for which he may be entitled to an offset for fees owed, we conclude that Knickmeier has abandoned his argument regarding a claimed offset for fees for other legal work he performed.

⁸ The circuit court discussed this issue as “claim preclusion” as opposed to “issue preclusion.” This appears to be merely a situation where the court misused the terms rather than the concepts that those terms represent.

¶26 After the supreme court adopted the referee's report and recommendation, the circuit court concluded the referee's fact finding resolved the remaining attorney's fees dispute against Knickmeier in this action. The circuit court wrote:

This court's review of the Supreme Court decision and the materials from Reinke's counsel shows that the Supreme Court affirmed many findings of unethical conduct by Knickmeier. However, relevant to this proceeding, is the finding on claim number 18, which dealt with work done by Knickmeier for Reinke regarding the estate of Reinke's mother. Reinke and his sister were the sole and equal beneficiaries of this estate. The referee found that the estate was properly closed and that no federal estate taxes were required. Thus, the referee found that it was not possible to find any violation of the noted SCR. *Further, as no legal services were rendered by [Knickmeier] to Reinke related to the estate beyond those already paid and accounted for by Attorney Bennett, the referee concluded that OLR had not established a violation of SCR 20:1.3.*

(Emphasis added.) Thus, the circuit court interpreted the referee's conclusion on count 18 as including a finding that Knickmeier rendered no legal services to Reinke relating to the estate. We disagree with the circuit court.

¶27 Count 18 in the disciplinary proceeding charged Knickmeier with a violation of SCR 20:1.3. That rule provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." The factual question was whether Knickmeier failed to timely inform the attorney probating Reinke's mother's estate of legal fees for services Knickmeier rendered to Reinke that could be paid by the estate. If such fees were paid by the estate, Reinke would effectively pay 50% less than if he paid the fees directly. Thus, the theory was that if Knickmeier had failed to inform the probating attorney of such fees, and then charged Reinke for them, Knickmeier would have deprived Reinke of the

benefit of having the estate pay the fees and, consequently, be in violation of his ethical obligation to act with reasonable diligence and promptness in representing Reinke.

¶28 The referee did not affirmatively find that Knickmeier provided no legal services to Reinke relating to the estate. Rather, the referee found an absence of evidence. The referee's decision reflects only that there was no evidence before the referee showing that Knickmeier performed work that could have been paid by the estate and no evidence that Knickmeier ever billed Reinke for such work.⁹ Accordingly, we reverse and remand with directions that the circuit court revisit the question of whether Knickmeier is entitled to an offset for attorney's fees for legal services performed for Reinke relating to Reinke's mother's estate. On remand, the circuit court may proceed as it sees fit, but it may not rely on any findings or conclusions contained in the two paragraphs of the disciplinary decision relating to count 18.

¶29 We acknowledge that the circuit court's take on the underlying facts may prove to be accurate. It appears the circuit court inferred that if the referee had no information showing that Knickmeier performed legal services for the estate, the obvious reason was that none were performed, or at least none that were compensable. Indeed, the circuit court might have reasoned that Knickmeier's assertion that he did perform compensable legal services to Reinke relating to the estate was incompatible with the ultimate conclusion by the referee that Knickmeier had not violated a supreme court rule as alleged in count 18 because

⁹ The referee wrote: "The record does not disclose that [Knickmeier] (beyond the work for which he had already been paid for) in fact had done any work for Mr. Reinke related to this Estate or that any charges for such legal work were ever made by [Knickmeier] to Mr. Reinke."

there was no evidence of such services. Such reasoning may or may not have validity, but, even if valid, it does not change the fact that the referee's decision does not contain an affirmative finding that Knickmeier provided no compensable legal services to Reinke relating to the estate.

Punitive Damages

¶30 The circuit court found that Knickmeier breached his fiduciary duty to Reinke in handling Reinke's trust account funds, taking loans from Reinke, and in performing property management duties for Reinke's property. In its first order, the court found that compensatory damages relating to these breaches amounted to \$29,726.06. In its second order, the court awarded Reinke \$10,000 in punitive damages based on those breaches. Knickmeier makes several arguments challenging the punitive damages award.¹⁰ None of his arguments persuade us that the circuit court erred.¹¹

¶31 Knickmeier first argues that "[t]he argument and presentation of authorities by [Reinke concerning punitive damages] were untimely, not being presented until after the first segment of the Decision and Order was issued, over

¹⁰ Knickmeier does not plainly challenge *the amount* of the punitive damages award. The circuit court arrived at \$10,000 in punitive damages in part by looking to the applicable fine for theft from a vulnerable adult under WIS. STAT. § 943.20(3)(d)6. Knickmeier argues that Reinke does not fit the definition of "vulnerable adult" under WIS. STAT. § 940.285(1)(e). If this argument is intended to support the proposition that the award for punitive damages was excessive, it is undeveloped. If it is an argument that the circuit court should not have awarded punitive damages at all, it is misguided. There is no indication that the circuit court relied on these statutes for authority to impose punitive damages.

¹¹ In his brief, Knickmeier's arguments that a punitive damages award was inappropriate appear in list form. Although Knickmeier's list contains ten items, he does not make ten distinct arguments because several listed "arguments" overlap. We have reorganized Knickmeier's arguments so that we may systematically address them.

five months after the trial was concluded.” However, Knickmeier does not provide any legal or record support for the proposition that Reinke’s arguments regarding punitive damages were “untimely.” Thus, we reject this argument.

¶32 Knickmeier also asserts that Reinke abandoned his punitive damages claim. We conclude that Knickmeier has waived this argument. In his response to Knickmeier’s complaint, Reinke asserted a counterclaim for conversion and sought punitive damages. After the circuit court heard testimony from both Reinke and Knickmeier, and received initial briefs from both parties, the court concluded in its first written order that Reinke had abandoned his claims for conversion and punitive damages. In that same order, the court concluded that Reinke’s conversion claim was more accurately a breach of fiduciary duty claim. After that order was issued, Reinke moved the court to reinstate the claim for punitive damages. Knickmeier did not object. Nor did Knickmeier raise an objection to the revival of the punitive damages claim in his motion to reconsider following the court’s order awarding punitive damages. We conclude, therefore, that Knickmeier has waived this argument. *See State v. Agnello*, 226 Wis. 2d 164, 172, 593 N.W.2d 427 (1999) (“The necessity of lodging an adequate objection to preserve an issue for appeal cannot be overstated.”).

¶33 Knickmeier next argues that the evidence at trial does not support a claim for punitive damages. He asserts that the only reasonable inference from the evidence is that money he used for personal expenditures was legitimately loaned to him by Reinke. As support, Knickmeier points to testimony in which the parties spoke of the transactions between Knickmeier and Reinke as “loans.” Knickmeier also argues that “collateral factors” regarding the loans indicate that punitive damages should not have been awarded. Those factors include the fact that Knickmeier gave Reinke a security interest in the airplane, and that

Knickmeier began payments of certain amounts owed to Reinke. Knickmeier's arguments on this point, however, ignore our standard of review.

¶34 The applicable standard of review is this:

When considering the sufficiency of the evidence, we apply a highly deferential standard of review. Furthermore, the fact finder's determination and judgment will not be disturbed if more than one inference can be drawn from the evidence. The circuit court's findings of fact will not be set aside unless we conclude that they are clearly erroneous.

Jacobson v. American Tool Cos., 222 Wis. 2d 384, 389-90, 588 N.W.2d 67 (Ct. App. 1998) (citations omitted). Punitive damages are appropriate where the fact finder finds "an intentional disregard of the rights of the" claimant. WIS JI—CIVIL 1707.1. Thus, if the evidence here supports the inference that Knickmeier intentionally disregarded Reinke's rights, it supports the court's award of punitive damages. We conclude the evidence here does support such an inference.

¶35 Knickmeier borrowed thousands of dollars from Reinke which the court found Knickmeier had "scant or non-existent ability to repay." The court's finding on Knickmeier's ability to pay was based, in part, on the fact that Knickmeier had filed for bankruptcy "probably five or six" times. Knickmeier also admitted he used Reinke's trust fund money to pay either his own yellow pages advertisement or his telephone bill. Furthermore, the court found Reinke more credible with respect to the other disputed expenditures from the trust account, in essence finding that Knickmeier made expenditures out of the trust account that were not authorized by Reinke, as required by the trust account agreement. These findings are sufficient to support the inference that Knickmeier intentionally acted in violation of Reinke's rights. We do not reverse the court's findings of fact even if there are competing inferences that may be drawn from the

evidence. See *Meurer v. ITT Gen. Controls*, 90 Wis. 2d 438, 450, 280 N.W.2d 156 (1979).

¶36 Knickmeier next complains that the circuit court did not make a specific finding that punitive damages were appropriate. We conclude that Knickmeier is simply ignoring the circuit court's order. In its second order, the court expressly found that the conduct constituting a breach of fiduciary duty was "deliberate, intentional and in gross violation of [Reinke's] rights." Knickmeier does not develop an argument that the circuit court was required to do more.

¶37 Knickmeier next contends that, because there were no "actual tort damages" established, a punitive damages claim cannot be sustained. We agree with Knickmeier that the general rule is that punitive damages are not available absent an award for actual damages. See *Tucker v. Marcus*, 142 Wis. 2d 425, 438-39, 418 N.W.2d 818 (1988). But here the court *did* award Reinke actual damages. In its second order, the court "reaffirm[ed] the \$29,726.06 as an award to Reinke against Knickmeier for Knickmeier's intentional breach of fiduciary duty." This amount was a reference to compensatory damages the court awarded in its first order. Consequently, this argument has no merit.

¶38 Knickmeier's final punitive damages argument is based on his factual assertion that the circuit court relied on the referee's findings in the disciplinary proceeding when the court found that Knickmeier breached his fiduciary duty. According to Knickmeier, this reliance is clear because of the similarity of some phrasing used by the circuit court with phrasing used by the referee. We acknowledge that the court's phrasing is similar, but we do not agree that the circuit court relied on the referee's findings. The circuit court did not purport to rely on the referee's decision when it concluded that Knickmeier

breached his fiduciary duty to Reinke. And Knickmeier does not contend, apart from arguments we have already rejected, that the court did not have sufficient evidence before it to support its breach of fiduciary duty finding. Even assuming that the circuit court's *phrasing* was sometimes influenced by the referee's decision, there is no reason to think that the circuit court did not resolve this claim independently.

Conclusion

¶39 For the reasons above, we affirm the circuit court's award for \$29,726.06 based on Knickmeier's breach of fiduciary duty, we affirm the court's \$10,000 punitive damages award, and we affirm the court's conclusions regarding attorney's fees, except with respect to those fees relating to the probating of Reinke's mother's estate. We reverse and remand solely on that issue with directions that the circuit court revisit the question of whether Knickmeier is entitled to an offset for attorney's fees for legal services performed for Reinke relating to Reinke's mother's estate. On remand, the circuit court may proceed as it sees fit, but it may not rely on any findings or conclusions contained in the two paragraphs of the disciplinary decision relating to count 18.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.

