

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 16, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1839

Cir. Ct. No. 2003PR48

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE ATTORNEY FEES IN
IN RE THE ESTATE OF SARKIS APYAN:**

CAROL J. APYAN,

APPELLANT,

V.

GEORGE H. EASTON,

RESPONDENT.

APPEAL from an order of the circuit court for Kenosha County:
WILBUR W. WARREN III, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Carol J. Apyan appeals from an order awarding \$72,000 in attorney's fees to Attorney George H. Easton for his work on the probate estate of her late father. We affirm.

¶2 Sarkis Apyan had three children, Paul, Carol and Roseanne. Sarkis established a revocable trust and designated Paul as the trustee, and Sarkis' will named Paul as the special administrator of his estate. In February 2003, shortly after Sarkis' death, Paul contacted Attorney Easton regarding estate work. In November 2003, Paul, as special administrator of Sarkis' estate, entered into an agreement with Attorney Easton to pay him \$72,000, a fee which the agreement deemed fair and reasonable to resolve issues involving Sarkis' estate based upon the time and labor required to resolve issues, Attorney Easton's relevant experience, and the complexity and novelty of the issues.

¶3 Over more than two years, Attorney Easton provided legal services. When he sought payment pursuant to the fee agreement, Carol objected on the grounds that the trust's beneficiaries had not agreed to pay attorney's fees in the amount of \$72,000. Paul countered that Carol and Roseanne¹ had joined him at a meeting with Attorney Easton in February 2003 and discussed Attorney Easton's request for a \$72,000 fee. Paul stated that everyone present agreed that this was a reasonable fee and agreed to pay the fees out of the trust's assets. Attorney Easton responded that he had spent countless hours on the case and that the estate work was highly contentious, particularly where Carol was concerned.

¹ Roseanne filed an affidavit stating that at the February 2003 meeting, she, Paul and Carol agreed to the \$72,000 fee requested by Attorney Easton.

¶4 In its memorandum decision, the circuit court resolved numerous issues in dispute, including the attorney’s fees to be paid to Attorney Easton. The court acknowledged Carol’s objection to Attorney Easton’s \$72,000 fee as unreasonable and excessive, and the contention of Paul and Roseanne that the fee was agreed upon by all, including Carol. The court found that Attorney Easton is honest, ethical and competent, and that he undertook the representation “in good faith and with the understanding that the fee charged would approximate the value of the legal services performed.” The court noted that in light of Carol’s objection, it had to review the services provided pursuant to WIS. STAT. § 851.40(1) (2003-04).²

¶5 The court required Attorney Easton to reconstruct his time records so that the court could evaluate the scope of work required by the estate. The court stated that it would not use the time records to attempt a mathematical calculation as to time spent and the applicable hourly rate. Rather, the court intended to use the reconstructed time records to develop a better, general understanding of the complexity of the issues and the labor expended by Attorney Easton. The court found that such a review was required because of the suggestion that the \$72,000 fee was a percentage of the estate, a disfavored

² WISCONSIN STAT. § 851.40(1) provides: “Any attorney performing services for the estate of a deceased person in any proceeding under [WIS. STAT.] chs. 851 to 879, including a proceeding for informal administration under ch. 865, shall be entitled to just and reasonable compensation for such services.” All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

In her reply brief, Carol argues that WIS. STAT. § 851.40 does not apply to revocable trusts. However, the fee agreement was entered into by Paul as special administrator of Sarkis’ estate, not as the trustee of the trust. Additionally, Carol did not argue in the circuit court that the fee agreement was inadequate to permit payment from the assets of the trust.

practice under *Lontkowski Law Office v. Estate of Konopka*, 175 Wis. 2d 100, 103, 498 N.W.2d 853 (Ct. App. 1993).

¶6 On February 9, 2005, in response to the circuit court's decision, Attorney Easton filed an estimate of the time he spent on the estate. Attorney Easton stated that this was the most involved and contentious estate he had ever worked on because nearly every issue was contested. Attorney Easton estimated that he spent 401 hours on the estate. On February 22, Carol filed an objection to Attorney Easton's submission, arguing that the fees were excessive and asking the court to review the appropriateness of the fees "based upon the existing trial record and Attorney Easton's memorandum." On April 19, Attorney Easton submitted a proposed order approving the fees. On April 25, the court entered an order approving the \$72,000 fee to Attorney Easton based upon the proceedings held, the estimated time spent on the matter, the fee agreement, and the letters of counsel. Carol appeals.

¶7 We begin our review by noting that Carol does not challenge the validity of the fee agreement between Paul and Attorney Easton. Therefore, we focus on the circuit court's approval of the \$72,000 fee after Attorney Easton submitted time records.

¶8 The reasonableness of fees for an attorney providing services to an estate under WIS. STAT. § 851.40 is within the circuit court's discretion. *See Anderson v. Anderson*, 147 Wis. 2d 83, 93-94, 432 N.W.2d 923 (Ct. App. 1988).

¶9 On appeal, Carol complains that the circuit court's order approving the \$72,000 fee does not state any findings or reasons. The court's order approving Attorney Easton's fees cited the proceedings held, the estimated time

spent on the matter, and the fee agreement and the letters of counsel. We do not agree with Carol that the fee order is devoid of findings or reasons.

¶10 Additionally, we search for reasons to sustain a discretionary decision. *See J.A.L. v. State*, 162 Wis. 2d 940, 960-61, 471 N.W.2d 493 (1991). The circuit court presided over this case for more than two years. The court was aware of the issues and their complexity and the extent of Attorney Easton’s efforts.³ In addition, the court previously found that Attorney Easton is honest, ethical and competent and that he undertook the representation “in good faith and with the understanding that the fee charged would approximate the value of the legal services performed.” The court observed the quantity and quality of the services rendered and had “the expertise to evaluate the reasonableness of the fees with regard to the services rendered.” *Standard Theatres, Inc. v. DOT*, 118 Wis. 2d 730, 747, 349 N.W.2d 661 (1984) (citation omitted).

¶11 Carol argues that Attorney Easton’s time records do not describe the amount and character of the legal services or the complexity of the issues, and he did not meet his burden to establish the reasonableness of the fees. Carol did not raise these complaints in the objection she filed in the circuit court. We conclude that they are raised for the first time on appeal and are therefore waived. *See Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983).

³ The court decided numerous issues, including the payment of fees to directors of the Apyan Rug Company, Inc., the continuation of the rug company, the disposition of a rental unit above the rug company business, rent paid to the trust from the rug company, division of the trust into shares, Sarkis’ loan to the company, the trustee’s administration fees, and the request to remove Paul as trustee.

¶12 Carol also argues that she did not have the opportunity to challenge and contest Attorney Easton’s submission in support of his fee request. However, Carol never asked to be heard further, and the objection she filed on February 22 invited the circuit court to decide the attorney’s fee issue “based upon the existing trial record and Attorney Easton’s memorandum.” This issue is also waived. *See id.*

¶13 Essentially, the court confirmed that the fee agreement bore a relation to the work performed in the case. The circuit court did not misuse its discretion in awarding Attorney Easton \$72,000 in attorney’s fees.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

