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DISTRICT II

June 7, 2023

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You are hereby notified that the Court has entered the following opinion and order:

2021AP247

Amy Holzman v. Estate of Phyllis G. Holzman (L.C. #2013PR119)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Amy Holzman, pro se, appeals from an order of the circuit court approving additional attorneys' fees and final distribution fees as well as additional personal representative fees on a percentage calculation. She claims the court erroneously exercised its discretion when it approved the additional fees. She also claims the Estate of Phyllis G. Holzman and the Personal Representative breached their fiduciary duties and as a result, the probate action should remain

open to allow for an independent audit. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.²

Phyllis G. Holzman died on September 11, 2013. In her Will, she left her estate to two of her daughters, Sue Sennett and Amy Holzman. The Will named Sennett and Holzman as co-personal representatives and beneficiaries of the Estate. Since the probate proceedings began in 2013, the parties have been in and out of court battling various issues, including multiple appeals.

This appeal arises from the circuit court proceeding awarding additional attorneys' fees to the Estate and the Personal Representative following Holzman's last appeal, wherein she attempted to challenge the final judgment of the probate action. *See Holzman v. Estate of Holzman*, No. 2019AP1762, unpublished op. and order (WI App Sept. 22, 2020). We dismissed that appeal after Holzman repeatedly failed to comply with rules of appellate procedure and orders of this court. After this court dismissed Holzman's appeal, the Estate and the Personal Representative moved the circuit court to approve additional fees and for final distribution of the Estate. The circuit court held a hearing on those motions in December 2020.

Although Holzman did not file any written response to the Estate or the Personal Representative motions, she did attend the hearing. At the hearing, the Estate suggested the circuit court should award the additional fees on a pro rata basis to match the percentage split

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² The Honorable Paul V. Malloy presided over this matter until June 2018. The Honorable Sandy A. Williams presided over the matter shortly thereafter and entered the final order.

previously determined in the probate action, which was 88% for Sennett and 12% for Holzman. The Personal Representative did not take a position on how to allocate the fees, but agreed that the Estate's proposal would apply to the additional Personal Representative fees it incurred. When addressed by the court, Holzman personally agreed with the proposed pro rata division, responding: "Okay. Well, I concur with [Estate's counsel] and the personal representative that any fees pertaining to the appeal are done in a pro rata percentage based on what is being distributed[.]" Sennett's attorney argued that awarding fees based on this pro rata division would unfairly penalize Sennett because the additional fees were incurred "for naught" as Holzman's appeal was dismissed without the court of appeals even hearing it.

The circuit court entered an order that approved the Estate's attorneys' fees in the amount of \$11,783, Personal Representative fees in the amount of \$2,225, as well as a sum of \$20,000 to be held back by the Personal Representative to cover additional fees incurred to close the probate action. The circuit court decided to allocate the additional fees on a different pro rata basis than the proposed 88% and 12%, and instead ordered 75% to be paid from Holzman's share and 25% to be paid from Sennett's share. The circuit court entered a written order approving the amounts and the 75/25 allocation. Holzman now appeals from that order.

Holzman makes two arguments on appeal: (1) the circuit court erroneously exercised its discretion when it awarded the additional fees and allocated them 75/25; and (2) the Estate and Personal Representative breached their fiduciary duties, necessitating the probate action to

remain open pending an independent audit.³ Holzman argues that the court erroneously exercised its discretion in the manner in which it allocated fees between the beneficiaries and insists that both the amount and the information the Estate provided to support its attorneys' fees and fee allocation was inaccurate. We reject Holzman's claim because the Record reflects that she has failed to prove that the circuit court erroneously exercised its discretion in its award or in its allocation of fees.

Circuit courts have the discretion to award reasonable fees to attorneys and personal representatives providing services for an estate. *Bell v. Neugart*, 2002 WI App 180, ¶35, 256 Wis. 2d 969, 650 N.W.2d 52. WISCONSIN STAT. § 851.40(1) provides that “[a]ny attorney performing services for the estate of a deceased person ... shall be entitled to just and reasonable compensation for such services.” And, WIS. STAT. § 857.05(1) provides that “[t]he personal representative shall be allowed all necessary expenses in the care, management and settlement of the estate.”

Here, both the Estate and the Personal Representative incurred additional fees because of Holzman's third appeal, which the circuit court described as a “total waste of funds” because this court dismissed the appeal after Holzman failed to comply with the rules of appellate procedure and orders from this court. The circuit court stated, “I think it's more than reasonable the amount that the Estate is asking for, but they had to do the work despite never getting to the issue.... So I have no problem approving those fees, the \$11,783 or the \$2,225[.]” To support

³ Holzman's second argument relates to the merits of the final estate judgment and was not raised at the December 2020 fees hearing. Accordingly, we decline to address it. See *State v. Holland Plastics Co.*, 111 Wis. 2d 497, 504, 331 N.W.2d 320 (1983) (“Generally, issues not raised or considered by the trial court will not be considered for the first time on appeal.”).

their motions for additional fees, the Estate and the Personal Representative submitted itemized statements with date and time entries for all services performed on the matter in advance of the motion hearing on December 16, 2020. Moreover, the Estate and the Personal Representative presented their fees to the court during the hearing. Holzman, however, provided no evidence challenging the fee amounts or the necessity, reasonableness, or sufficiency of the fees. The circuit court indicated, “no one has any objections to the amount of attorney fees being requested from either the Estate or the personal representative.”

With respect to the allocation of fees (Holzman pays 75% and Sennett pays 25%), Holzman contends that she should not have to pay a higher percentage than Sennett. The circuit court disagreed. It concluded that allocating a higher percentage to Holzman was reasonable given the circumstances. It said that it had “never seen a person given more opportunities to correct the mistakes in the appeal process. For [the court of appeals] to reach the final conclusion of dismissing it because you didn’t do it properly, it took over a year, that’s unheard of, without ever reaching the merits.” The circuit court found that the additional fees incurred were a “total waste of funds” because of Holzman’s conduct.

We conclude the Record establishes that the circuit court properly exercised discretion in making its determination. The circuit court reviewed both the Estate’s and the Personal Representative’s motions for additional fees with supporting documents and provided all parties with the opportunity at the hearing to address the fees. The circuit court found that the 88/12 pro rata allocation was inappropriate based on the circumstances surrounding the dismissal of the appeal. Instead, it found that because the additional attorneys’ fees arose from Holzman’s inability to comply with appellate rules, which caused this court to dismiss the appeal as a sanction, Holzman should be responsible for a greater percentage. This was a reasonable

decision based on the pertinent facts and the applicable statutes. *See Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. Holzman did not provide evidence that challenged the fee amounts, and as a result, she cannot complain about those amounts on appeal. *See Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476 (recognizing that an appellant who fails to fully develop a challenge in the circuit court forfeits the right to raise the issue on appeal); *State v. Holland Plastics Co.*, 111 Wis. 2d 497, 504, 331 N.W.2d 320 (1983) (“Generally, issues not raised or considered by the trial court will not be considered for the first time on appeal.”).

Holzman has not provided us with anything to suggest that the circuit court erroneously exercised its discretion when it awarded additional fees following the dismissal of her 2019 appeal. Holzman, as the Appellant, had the burden to show that the circuit court erred, and she has failed to meet her burden. *See Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals