

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE: THE MATTER OF THE
ESTATE OF RUTH JANE JACOBS,
DECEASED.

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APPEAL NO. C-090685
TRIAL NO. 2004-004048

JUDGMENT ENTRY.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Appellant co-executor, Jamus Jacobs, appeals from the entry of the Hamilton County probate court that (1) affirmed a magistrate's decision awarding attorney fees to appellee, the law firm of Katz, Teller Brant & Hild, for its work on his mother's estate, but reduced the amount of the fees to \$26,324.00, and (2) ordered him as a co-executor of the estate to pay one-half of those fees.

On appeal, Jacobs raises a sole assignment of error, in which he contends that the trial court erred in awarding attorney fees to the law firm because the fees were related to its reopening of the estate to distribute real estate overlooked in the original administration, and because the fees were related to services that did not benefit the estate.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Under Ohio law, “the probate court is granted discretion to determine the reasonableness of attorney fees, and such determination will not be overturned absent an abuse of discretion.”² Moreover, we review a trial court's adoption, denial, or modification of a magistrate's decision for an abuse of discretion.³ An abuse of discretion connotes more than an error of law or judgment; it implies that the court’s attitude was unreasonable, arbitrary, or unconscionable.⁴

Jacobs first argues that the probate court erred in awarding the law firm attorney fees because the fees were unreasonable. He contends that the majority of the law firm’s fees did not benefit the estate because they represented services that were rendered (1) to fix an error the law firm had committed in its original administration of the estate, and (2) to act as an advocate for his brother and co-executor, Todd Jacobs, in handling the real and personal property issues involved in the second administration of the estate. He also contends that the fees were unreasonable because multiple attorneys were involved in handling the estate.

But based upon our review of the record, we cannot conclude that the probate court abused its discretion in awarding \$26,324 in attorney fees to the law firm. The record reflects that the attorneys for the estate had kept separate time records for the extra work they had performed as a result of their error in not including real estate owned by the decedent in the initial administration of the estate, and that they were not seeking payment for these services in their fee application.

² *In re Guardianship of Bess*, 9th Dist. No. 23411, 2007-Ohio-5032, at ¶14; *In re Born*, 10th Dist. No. 06AP-1119, 2007-Ohio-5006, at ¶14.

³ *Bess*, supra, at ¶14; *In re Estate of Knowlton*, 1st Dist. No. C-050728, 2006-Ohio-4905, at ¶43; see, also, *Shah v. Smith*, 181 Ohio App.3d 264, 2009-Ohio-743, 908 N.E.2d 983, at ¶7; *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 1995-Ohio-272, 654 N.E.2d 1254.

⁴ *Knowlton*, supra, at ¶43.

Furthermore, one of the attorneys for the law firm testified at the hearing on the fee application that the time for which payment was sought in the fee application had been spent on issues concerning personal property, even though it had been disbursed in the initial administration of the estate, because the property was still in the house and needed to be removed if the house were to be placed on the market. Counsel also testified that Jacobs's approval of the sale of the house depended on issues regarding the personal property.

The magistrate found that the "high level of mistrust and dysfunction between the co-executors of the estate during the 'second' administration period * * * led to delay in closing the estate and invariably led to the estate's attorneys spending inordinate amounts of time and effort administering the reopened estate, which only consisted of residential real estate." The magistrate concluded that because the reopened estate had only included the residence as the asset to be administered, any time spent solely by the law firm on the personal-property issues was not compensable. The trial court, in addressing Jacobs's objections to the magistrate's decision, expressly stated in its entry that it had reviewed the record, which included the transcript of the hearing before the magistrate, and an itemized statement of the law firms' fees, which included entries from multiple attorneys, and that it found an award of \$26,234 in attorney fees to be reasonable. Based upon our review of the record, we cannot say the trial court abused its discretion in awarding the fees.

Jacobs also argues that Loc.R. 71.1 of the Court of Common Pleas of Hamilton County, Probate Division, dictated that no fee should have been awarded absent proof of a written fee agreement and an estimate of fees. But he failed to present that argument to the magistrate. He instead broached the subject for the first time in his objections to the magistrate's decision. As a result, he waived his right to have either

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the trial court⁵ or this court consider whether the lack of a written fee agreement precluded the trial court's fee award in this instance.⁶ Having therefore found Jacobs's arguments meritless, we overrule his sole assignment of error and affirm the judgment of the probate court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 15, 2010
per order of the Court _____.
Presiding Judge

⁵ Civ.R. 53(D)(4); *Abernathy v. Abernathy*, 8th Dist. No. 91735, 2009-Ohio-2263, at ¶11-12.

⁶ See *Myers v. Mautia* (June 22, 1994), 2nd Dist. No. 93-CA-44 (holding that “[a]ppellate courts are not required to consider issues not raised at trial”).