

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

COMERICA BANK AND TRUST, NA,	:	APPEAL NO. C-140654
Plaintiff-Appellant,	:	TRIAL NO. 2012002508
vs.	:	<i>JUDGMENT ENTRY.</i>
JAMES R. HEIDENREICH,	:	
and	:	
CINCINNATI ZOOLOGICAL SOCIETY,	:	
Defendants-Appellees,	:	
and	:	
AMERICAN CANCER SOCIETY, et al.,	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Comerica Bank and Trust, NA, (“Comerica”) appeals from the judgment of the Hamilton County Court of Common Pleas, Probate Division, denying in part its request for attorney fees against defendant-appellee James R. Heidenreich, in a declaratory judgment action involving the Mary C. Heidenreich Trust (“the Trust”).

Comerica obtained a judgment against Heidenreich, a former fiduciary who stole \$650,000 from the Trust, and defended against Heidenreich’s counterclaims. Comerica

sought attorney fees of \$123,257.75 and costs of \$7,788.55 from Heidenreich pursuant to R.C. 5810.04.

The trial court found Heidenreich liable for reasonable attorney fees in the amount of \$41,910.30, as well as \$1,318.43 in costs. The court also found that of the remaining attorney fees and costs Comerica requested, \$7,437.75 of fees and all of the costs were payable from the Trust. Finally, the court found that if Comerica was unable after reasonable efforts to collect from Heidenreich, who appeared to be judgment proof, then those fees and costs, too, would be payable from the Trust.

In its sole assignment of error, Comerica argues that the trial court erred by limiting the amount of its attorney fees. As Comerica acknowledges, the probate court's award of attorney fees will not be reversed absent an abuse of discretion. *In re Estate of Wirebaugh*, 84 Ohio App.3d 1, 4, 616 N.E.2d 245 (6th Dist.1992.) To demonstrate an abuse of discretion, the complaining party must show that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Id.* An "unreasonable" decision is one that is not supported by a "sound reasoning process." *AAAA Ent., Inc. v. River Place Community Urban Redev. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

In this case, the trial court thoroughly reviewed the application for fees and issued a comprehensive decision explaining the reasonableness of the attorney fees in light of the factors set forth in Prof.Cond.R. 1.5. The trial court also properly considered that the duty of Comerica as trustee included the duty to preserve the trust assets. Ultimately, the court awarded what it could to compensate Comerica for its attorney fees despite defective attorney time entries and a lack of expert testimony on the reasonableness of the fees sought.

Considering the wide latitude afforded the trial court on this matter, we cannot say that the trial court acted unreasonably, arbitrarily, or capriciously, and abused its

OHIO FIRST DISTRICT COURT OF APPEALS

discretion, in awarding attorney fees. Because the assignment of error is meritless, we overrule it.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on December 23, 2015
per order of the court _____.
Presiding Judge