COURT OF APPEALS
DECISION
DATED AND FILED

August 26, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3373

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE ESTATE OF GEORGE MILAS, DECEASED:

VANESSA HENNINGFIELD,

APPELLANT,

v.

JUDITH FISCHER AND RAYMOND MILAS,

RESPONDENTS.

APPEAL from an order of the circuit court for Rock County: JAMES E. WELKER, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Vanessa Henningfield appeals from an order in a probate proceeding concerning the Estate of George Milas. The order requires the estate to reimburse Judith Fischer and Raymond Milas for their attorney's fees and costs incurred in a will contest. Henningfield does not contest the respondents'

rights to claim fees, but contends that the amount was excessive. We conclude that the trial court's award was a proper exercise of its discretion and therefore affirm.

George Milas, father of the respondents, left a will dated August 23, 1993, bequeathing his entire estate to Henningfield. An article of the will referred to a will of October 14, 1988, also leaving the estate to Henningfield. The article provided

> I suspect that I may have unknowingly and unwillingly, through the coercion and deceit of a previous attorney, signed another will subsequent to that of October 14, 1988. I fear that any such subsequent will, prior to this will, may [dispose] of my estate...contrary to my wishes. Therefore, I specifically and unequivocally revoke any and all of my previous wills....

The respondents retained counsel and objected to probate of the 1993 will, alleging undue influence. After a trial on the issue, the trial court invalidated that will upon finding that Henningfield exerted undue influence on Milas.

Henningfield then offered the October 1988 will for probate, and again the respondents objected. After further proceedings, the trial court refused to accept the will and held that Milas died intestate. Henningfield appealed and this court reversed and remanded for further proceedings on the 1988 will.

The respondents subsequently petitioned the court for payment of their attorney's fees out of the estate, from the time they retained counsel until shortly after release of the Court of Appeals' decision. The amount requested was $20,124 in fees, $1,524 in disbursements and $165 for mileage. The trial court

heard arguments on the reasonableness of the award and granted the petition in the amount claimed.

On appeal Henningfield contends that the trial court erroneously exercised its discretion when it found those costs and fees reasonable "without first having carefully considered and stated on the record the pertinent factors legally recognized to be considered when deciding the reasonableness of attorney's fees," and without discussing those factors on the record. She also contends that the court should have reduced the award because Fischer and Milas could have mitigated their attorney's fees by avoiding unnecessary litigation of the 1993 will's validity.

The trial court awards attorney fees in the exercise of its discretion, and we therefore reverse only for an erroneous exercise of that discretion. ***Standard Theatres Inc. v. DOT***, 118 Wis.2d 730, 747, 349 N.W.2d 661, 671 (1984). The trial court properly exercises its discretion when it considers the facts of record in light of the applicable law and reaches a reasoned and reasonable decision. ***Bohms v. Bohms***, 144 Wis.2d 490, 496, 424 N.W.2d 408, 410 (1988). However, where the trial court does not articulate its reasoning, we may independently examine the record to determine if it provides a basis for the trial court's exercise of discretion. ***State v. Pharr***, 115 Wis.2d 334, 343, 340 N.W.2d 498, 502 (1983). Additionally, we will not infer from the trial court's failure to mention evidence that the court failed to consider it. *See* ***Chernetski v. American Family Mut. Ins. Co.***, 183 Wis.2d 68, 80, 515 N.W.2d 283, 289 (Ct. App. 1994).

The record supports the trial court's award of fees. Counsel for Fischer and Milas submitted highly detailed time sheets describing the tasks he performed in this proceeding. Those sheets, alone, provide a reasonable basis for

the award of fees and costs. Although Henningfield contends that the trial court did not apply the proper analysis to that evidence. She points to nothing in the record to support that conclusory statement. The evidence was before the court and the proper factors to evaluate it were cited to the court. Although the trial court did not articulate its reasoning, again, we infer that it considered the factors and evidence in rendering its decision. *See* ***Chernetski***, 183 Wis.2d at 80, 515 N.W.2d at 289.

The trial court properly rejected Henningfield's mitigation argument. Before the trial on the August 1993 will, counsel for Henningfield informed respondents' counsel that "maybe we should focus on the will of 1988 and forget the will of 1993." According to Henningfield, respondents should have taken that advice and avoided what she now describes as unnecessary litigation. However correctly her counsel analyzed the situation, Henningfield remained a proponent of the will, and the respondents had the right to litigate their objection.

By the Court.—Order affirmed.

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