

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 8, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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

No. 96-0494

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**In the Matter of the Estate of
CHARLOTTE MACK, Deceased:**

BEVERLY DRECHSLER,

Appellant,

v.

**SWENDSON LAW, LTD., WILLIAM A.
SWENDSON, II, Successor Personal
Representative of Charlotte A. Mack,
ATTORNEY SUSAN HERRO, and the
ESTATE OF CHARLOTTE MACK,**

Respondents.

APPEAL from a judgment of the circuit court for Waukesha County: DONALD J. HASSIN, JR., Judge. *Affirmed and cause remanded with directions.*

Before Cane, P.J., LaRocque and Myse, JJ.

CANE, P.J. Beverly Drechsler appeals the court's judgment that attorney fees in the amount of \$10,000 be paid to Swendson Law, Ltd., for the probate of the estate of Charlotte Mack. Drechsler argues that the fee award to Swendson is excessive. She also challenges the attorney fees in the amount of \$2,000 paid to attorney Susan Herro. We reject Drechsler's arguments and affirm the judgment. We conclude that the appeal as to Herro is frivolous, and remand to the trial court with directions that it assess the reasonable amount of fees and costs to be paid to attorney Susan Herro by attorney George W. Love.

The essential facts are not disputed. Charlotte Mack died on December 22, 1991, leaving her estate to her six adult children. Sandra Olson, one of the beneficiaries, was appointed personal representative. Olson hired Herro, who represented the estate until she withdrew on August 30, 1993.

Olson hired attorney William Swendson, II, to represent the estate for real estate purposes on August 11, 1993. On August 18, 1993, Olson hired Swendson to represent her at a hearing scheduled for August 30, 1993, regarding a motion for her removal as personal representative for misconduct. At the hearing, Olson resigned and Swendson became the successor personal representative. Herro also withdrew and Swendson agreed to be the attorney for the estate. Herro requested \$3,905 for her services, but offered to settle with the estate for \$2,000.

Swendson represented the estate between August 31, 1993, and June 30, 1995. During this time, the court ordered fee arbitration by the State Bar of Wisconsin to determine appropriate fees for Herro. Herro reiterated her settlement offer of \$2,000, and the estate, by attorney and successor personal representative Swendson, and without objection from the beneficiaries, paid that amount.

In July 1995, Swendson provided the beneficiaries with a final account of his fees, totaling \$11,000. Drechsler objected to Swendson's accounting, and the court held a hearing on September 15, 1995, to determine whether Swendson's request was reasonable. The court subsequently awarded \$10,000 to Swendson as attorney fees.

We will affirm the trial court's determination of the amount of attorney fees unless there is an unreasonable exercise of discretion. *Standard*

Theatres, Inc. v. DOT, 118 Wis.2d 730, 747, 349 N.W.2d 661, 671 (1984). When the trial court "employs a logical rationale based on the appropriate legal principles and facts of record," it has properly exercised its discretion. *Chmill v. Friendly Ford-Mercury*, 154 Wis.2d 407, 412, 453 N.W.2d 197, 199 (Ct. App. 1990) (citation omitted).

Section 851.40(2), STATS., provides for the award of attorney fees in probate cases. According to the statute,

[T]he court shall consider the following factors in determining what is a just and reasonable attorney's fee:

- (a) The time and labor required.
- (b) The experience and knowledge of the attorney.
- (c) The complexity and novelty of the problems involved.
- (d) The extent of the responsibilities assumed and the results obtained.
- (e) The sufficiency of assets properly available to pay for the services, except that the value of the estate may not be the controlling factor.

Id.

At the hearing on September 15, 1995, the trial court considered these factors and made a number of factual observations. Specifically, the court noted that there were a considerable number of disputes between the beneficiaries from the outset, and that the real estate was an "attorney's nightmare." Swendson investigated and determined the nature and extent of the encroachments on and adverse possession of the property, negotiated a listing agreement and an offer to purchase for the sale of the real estate, and then amended the contract upon discovery of a defective furnace. The real estate presented special problems because there were undeeded portions of the land that were occupied. Swendson dealt with the tenants regarding the collection of rents, the defective furnace, and the removal of the tenants from the property before closing. The court decided that the hourly rate and fees requested by Swendson were not unreasonable, and did not dispute the quality of Swendson's work on the case.

We defer to the observations of the trial court because it "has observed the quality of the services rendered and has access to the file in the case to see all of the work which has gone into the action from its inception. [It] has the expertise to evaluate the reasonableness of the fees with regard to the services rendered." *Standard Theatres*, 118 Wis.2d at 747, 349 N.W.2d at 671 (quoting *Tesch v. Tesch*, 63 Wis.2d 320, 335, 217 N.W.2d 647, 654 (1974)). Because we are satisfied that the trial court properly evaluated the statutory factors in light of the facts of the case, we affirm the court's order awarding attorney fees to Swendson in the amount of \$10,000.

In the notice of appeal, Drechsler's attorney, George W. Love, appealed the final judgment awarding Swendson attorney fees of \$10,000 and Herro attorney fees of \$2,000. Herro properly responded as a named party to this appeal and argues that the appeal as to her attorney fees is frivolous. We agree. Love concedes in his appellate brief that he has no basis to challenge Herro's attorney fees, which were paid as a settlement without objection by the beneficiaries. We therefore conclude that the claim against Herro is frivolous as a matter of law because Love had no reasonable basis in law or equity to file the appeal as to Herro, and it could not be supported by a good faith argument for an extension, modification or reversal of existing law. *See* § 809.25(3), STATS. As to the claim against Herro, we therefore remand to the trial court to determine the amount of her costs and fees, incurred on this appeal, to be paid to her by Love. *See Stern v. Thompson & Coates, Ltd.*, 185 Wis.2d 220, 252-53, 517 N.W.2d 658, 670-71 (1994).

By the Court.—Judgment affirmed and cause remanded with directions to assess the costs and reasonable attorney fees incurred from the appeal and award such costs to attorney Herro.

Not recommended for publication in the official reports.