COURT OF APPEALS
DECISION
DATED AND FILED

July 5, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1370 **Cir. Ct. No. 1983PR897**

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

IN RE THE AWARD OF ATTORNEY FEES IN:
IN THE MATTER OF THE TRUST UNDER THE WILL OF RENE VON SCHLEINITZ:

CHRISTINE LINDEMANN,

PETITIONER-APPELLANT,

V.

GEOFFREY MACLAY, JR., GEOFFREY MACLAY, SR., EDITH MACLAY,

RESPONDENTS-RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed*.

Before Kessler, Brash and Dugan, JJ.

¶1 PER CURIAM. Christine Lindemann appeals a judgment and order awarding attorney fees in favor of Edith and Geoffrey Maclay, Sr. ("Maclays"), Lindemann's parents, along with Geoffrey Maclay, Jr. ("Rip") (collectively, "the Maclays"), pertaining to the Trust of Rene von Schleinitz ("Trust").[1] This is the third time this Trust is before this court.[2]

¶2 In the second appeal, ***Trust of Rene von Schleinitz v. Maclay*** (***von Schleinitz Trust II***), 2016 WI App 4, 366 Wis. 2d 637, 874 N.W.2d 573, Lindemann, one of three trustees, contended that the circuit court erred when it found that a septic system servicing a home ("Hillside Cottage") on the Trust property belonged to the homeowners—her parents—rather than to the Trust. ***Id.***, ¶1. Lindemann also contended that the circuit court erroneously denied her request for an accounting of Trust expenses and for attorney fees to be paid for by the Trust. ***Id.***

¶3 The Maclays cross-appealed. ***Id.***, ¶2. The Maclays contended that the circuit court erroneously failed to dismiss Lindemann's action because Lindemann lacked the authority to unilaterally litigate issues pertaining to the Trust. ***Id.*** They also argued that the circuit court erroneously found that the well and water pump supplying water to Hillside Cottage was an improvement to the Trust property, thereby belonging to the Trust and not the home. ***Id.*** Finally, they contended that the circuit court erroneously failed to grant their request for attorney fees. ***Id.***

[1] For clarity, this court refers to Edith Maclay as Edith.

[2] This court refers to Judge Borowski as the trial court. The other judges who previously presided over the action are referred to as the circuit court and the probate court.

¶4 This court affirmed in part and reversed in part. *See* ***id.***, ¶3. This court affirmed the circuit court's finding that the septic system servicing Hillside Cottage belonged to the home, as opposed to the Trust. *See* ***id.*** This court also affirmed the circuit court's denial of Lindemann's request for an audit of the Trust, as well as her request for attorney fees. *See* ***id.*** However, this court concluded that the circuit court erroneously denied the Maclays' motion to dismiss Lindemann's action, erroneously found that the water system supplying water to Hillside Cottage belonged to the Trust, as opposed to the home, and erroneously denied the Maclays' motion for attorney fees. *See* ***id.***

¶5 Accordingly, this court reversed the circuit court's findings on these matters and remanded the matter to the circuit court for a determination of the attorney fees due to the Maclays because of Lindemann's unauthorized commencement and continuation of the proceeding. *See* ***id.*** Lindemann did not request reconsideration of that decision or petition the Supreme Court for review.

¶6 On remand, the trial court held a hearing and awarded the Maclays $148,810.00 and awarded Rip $21,040.02 for attorney fees for defending this proceeding. Lindemann appeals that judgment and order.

¶7 On appeal, Lindemann argues that: (1) no contract or statute supports an award of attorney fees to the Maclays; (2) any fee award should have been limited to fees incurred through the hearing on dismissal; (3) any fee award should be paid by the Trust; and (4) the requested fees were not reasonable. The Maclays argue that Lindemann is barred by the doctrine of claim preclusion from collaterally attacking this court's decision and that the amounts of fees that the trial court awarded are reasonable.

¶8 Because ***von Schleinitz Trust II*** is the law of this case and Lindemann did not move for reconsideration or appeal that decision, Lindeman could not collaterally attack our decision before the trial court and may not do so on this appeal. This court's decision remanded this matter to the trial court "for a determination of the attorney fees due to the Maclays because of Lindemann's unauthorized *commencement and continuation* of this proceeding." *See* ***id.***, ¶39 (emphasis added). That decision is the law of this case and the trial court followed that directive. This court also finds that the trial court did not abuse its discretion in awarding the specific amounts for attorney fees. For these reasons we affirm the trial court's order and judgment.

BACKGROUND

¶9 This is the third time the Trust is before this court and although the only issue on this appeal is the amount of attorney fees awarded by the trial court to the Maclays, it is helpful to have a general understanding of the Trust and history of this case. This court takes many of our facts from Lindemann's second appeal in ***von Schleinitz Trust II***, which quoted liberally from our decision on Lindemann's first appeal, ***Trust of Rene von Schleinitz v. Maclay*** (***von Schleinitz Trust I***), No. 2008AP677, unpublished slip op. (WI App Feb. 5, 2009).

¶10 This court begins with the origin of the Trust:

> Rene von Schleinitz died in 1972. His will provided for a trust to hold real property, including "[a]ll real estate situated in the Town of West Bend, Washington County, Wisconsin, known as Sunset Ridge … together with improvements thereon, which presently consists of the Main cottage, Tree-top cottage, Hillside cottage, which presently consists of a new structure erected by my daughter, Edith Maclay, [and] North cottage." The will also provides that upon von Schleinitz's death, "[Edith] may occupy premises known as 'Hillside Cottage,' which

> presently consists of a new structure … for such length of time as she shall so desire."
>
> In 1975, the Milwaukee County Probate Court entered a final judgment [which] … placed the West Bend property in the Trust, "[i]nclud[ing] improvements thereon consisting of the Main cottage, Tree-top cottage and the North cottage and sundry buildings appurtenant thereto but *not including improvement known as Hillside cottage owned by* [*Maclays*]."

See ***von Schleinitz Trust II***, 366 Wis. 2d 637, ¶4 (citing ***von Schleinitz Trust I***, No. 2008AP677, unpublished slip op. ¶2-3) (third and seventh set of brackets added). Lindemann, a contingent beneficiary, did not appeal the judgment. ***Id.***

¶11 Some years later, Lindemann became a co-trustee in addition to being a contingent beneficiary and:

> In 2004, the Maclays' daughter and successor co-trustee of the Trust, [Lindemann], filed a petition to amend the Trust's inventory. In her petition, Lindemann asserted that the 1975 judgment improperly excluded the Hillside cottage from the Trust, contrary to the language of von Schleinitz's will. The court dismissed the petition as untimely.

Id. (citing ***von Schleinitz Trust I***, No. 2008AP677, unpublished slip op. ¶4) (brackets added). Lindemann did not appeal the dismissal. ***Id.***

¶12 This court summarized the history of the proceeding involving the Cedar Lake property, which resulted in the first appeal:

> In 2006, the Maclays [sought] … a declaratory judgment to determine the *property rights in the land underlying and adjoining the Hillside cottage.* Following a trial, the court declared that the Maclays own the land underlying and adjoining the Hillside cottage.

See ***id.***, ¶5 (citing ***von Schleinitz Trust I***, No. 2008AP677, unpublished slip op. ¶5). Lindemann, acting as a co-trustee, appealed. ***Id.*** In that appeal, the Maclays

argued that Lindemann could not bring the proceeding as a trustee because her co-trustee Rip did not support the proceeding. ***Id.***, ¶5. This court rejected that argument because the record did not then demonstrate the co-trustee's position. *See* ***id.*** This court concluded that "the entire Cedar Lake property belongs to the Trust, except the *improvement* known as the Hillside cottage." *See* ***id.*** (citing ***von Schleinitz Trust I***, No. 2008AP677, unpublished slip op. ¶8).

¶13 In May 2011, Edith filed a petition with the probate court to remove Lindemann as co-trustee of the von Schleinitz Trust. ***Id.***, ¶6. In October 2011, Maclays, Lindemann, and Rip engaged in a mediation, which resulted in a written stipulation. ***Id.*** The parties agreed, among other things, to the appointment of a tie-breaking third trustee—Reserve Circuit Court Judge Michael Sullivan. ***Id.*** The stipulation stated that "all rights and powers vested in the trustee by the Trust (or by law) shall be exercised by majority decision." ***Id***. The stipulation further provided "No Unilateral Acts. A single trustee *shall not* take unilateral action regarding the Trust or its assets except as provided herein." ***Id.*** On October 5, 2011, the probate court entered a final order approving and adopting "in its entirety" the terms of the stipulation, and appointing Reserve Judge Sullivan as the third trustee. ***Id.*** Lindemann did not appeal that final order. ***Id.***

¶14 As noted above, on February 20, 2013, Lindemann brought the action underlying this appeal, asking the circuit court for a declaratory judgment on the issues described above. *See* ***id.*** The circuit court rendered its decision and Lindemann appealed the decision and the Maclays cross-appealed.

¶15 In ***von Schleinitz Trust II***, this court affirmed in part, reversed in part, and remanded the matter to the trial court with instructions to make a determination of the attorney fees due the Maclays because of Lindemann's

unauthorized commencement and continuation of that proceeding. This court specifically stated, "we disagree with the circuit court that the Maclays were not entitled to attorney fees *from Lindemann*" and "[w]e conclude that the circuit court applied an incorrect theory of law when it denied the Maclays' request for attorney fees *from Lindemann*." *See* ***id.***, ¶¶35, 38 (emphasis added).

¶16 Although Lindemann attempts to collaterally attack this court's decision in ***von Schleinitz Trust II***, the sole issue on appeal is whether the trial court erroneously exercised its discretion in awarding attorney fees to the Maclays in the amounts it ordered.

I. LINDEMANN CANNOT COLLATERALLY ATTACK THIS COURT'S DECISION IN *VON SCHLEINITZ TRUST II*

¶17 In ***von Schleinitz Trust II***, this court held that: (1) Lindemann was not authorized to commence the underlying case nor continue it; and (2) as a result of Lindemann's unauthorized commencement and continuation of this proceeding, the Maclays were entitled to an award of attorney fees from Lindemann for defending against that action. *See* ***id.***, ¶¶28, 38, 39.

¶18 This court noted that:

> Lindemann signed a [s]tipulation agreeing to the appointment of a third trustee, and agreeing that any action by the trustees *must* be by *majority agreement* of the three trustees. The [s]tipulation was signed and consented to by all trustees, the present beneficiary, and all contingent beneficiaries of the Trust. On October 5, 2011, the circuit court signed an order adopting that [s]tipulation and appointing Reserve Judge Sullivan as the third trustee. Lindemann did not appeal or request reconsideration of the order. *See* ***Butcher v. Ameritech Corp.***, 2007 WI App 5, ¶44, 298 Wis. 2d 468, 727 N.W.2d 546. As such, the existing court order adopting the [s]tipulation is a part of the law of this case.

See ***von Schleinitz Trust II***, 366 Wis. 2d 637, ¶32 (footnote omitted). This court also noted that Lindemann was represented by counsel when she entered into the stipulation and that counsel also signed the stipulation. *See* ***id.***, ¶32 n.7.

¶19 Moreover, this court found that, "[t]he mediation, and [s]tipulation resulting therefrom, were intended to stem the tide of persistent litigation surrounding this Trust." *See* ***id.***, ¶34. This court then stated that, "[t]he circuit court itself acknowledged Lindemann's lack of authority when it found that Lindemann knew a majority of the trustees had to authorize any action on behalf of the Trust, 'but she chose to ignore the agreement [and court order] to not take unilateral action.'" *See* ***id.***

¶20 This court then concluded that, "[i]n the face of Lindemann's refusal to follow the court order … the court should have dismissed Lindemann's petition. This is exactly the type of situation the law of the case doctrine was designed to prevent." *See* ***id.*** Having concluded that Lindemann knew that a majority of the trustees had to authorize any action on behalf of the Trust, but chose to ignore the stipulation and the court order, this court instructed the trial court to award attorney fees to the Maclays not only for the commencement of this case, *but also the continuation* of it even though the trial court had denied the motion to dismiss. *See* ***id.***, ¶39.

¶21 On appeal, Lindemann argues that no contract or statute supports an award of attorney fees to the Maclays, that any fee award should have been limited to fees incurred through the dismissal hearing, and that any attorney fees should be awarded against the Trust, not Lindemann. Lindemann addressed or could have addressed these issues in her appeal to this court in ***von Schleinitz Trust II***. In ***von Schleinitz Trust II***, this court specifically addressed and decided those issues.

Lindemann could have filed a motion to reconsider this court's decision, but did not. Additionally, she did not request review by our supreme court. This court's decision in ***von Schleinitz Trust II*** is the "law of the case."

¶22 "The law of the case doctrine is a 'longstanding rule that a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.'" ***State v. Stuart***, 2003 WI 73, ¶23, 262 Wis. 2d 620, 664 N.W.2d 82 (citation omitted). The purpose of the law of the case doctrine is that "courts should generally follow earlier orders in the same case and should be reluctant to change decisions already made, because encouragement of change would create intolerable instability for the parties." ***Id.*** (citation and quotation marks omitted). *See also* ***Ash Park LLC v. Alexander & Bishop, Ltd.***, 2014 WI App 87, ¶19, 356 Wis. 2d 249, 853 N.W.2d 618.

¶23 Additionally, Lindemann attempts to collaterally attack this court's holding by arguing that when the circuit court denied the Maclays' motion to dismiss, the circuit court essentially gave Lindemann a green light to move forward with her declaratory judgment action. Lindemann contends that she should not be punished by an award of attorney fees when the circuit court agreed with her. However, Lindemann does not cite any authority for the proposition nor does she develop the argument. In short, Lindemann has done no more than to state the proposition without any elaboration. She has not developed or presented an argument telling us why we should accept her conclusory proposition, and she has not referred us to any legal authority supporting the statement. We need not address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶24 For the reasons stated above, Lindemann is foreclosed from attempting to collaterally attack this court's ruling in ***von Schleinitz Trust II*** on these issues before the trial court or this court again on appeal.

II. THE TRIAL COURT DID NOT ERRONEOUSLY EXERCISE ITS DISCRETION IN THE AMOUNT OF ATTORNEY FEES IT ORDERED

A. Standards in Awarding Attorney Fees

¶25 All the parties cite ***Stuart v. Weisflog's Showroom Gallery, Inc.***, 2008 WI 22, ¶45, 308 Wis. 2d 103, 746 N.W.2d 762, for the standard to be applied by the trial court in awarding attorney fees. In ***Stuart***, the court stated:

> In ***Kolupar I***, this court adopted the lodestar methodology for determining reasonable attorney fees under fee shifting statutes and specifically directed "the [trial] courts to follow its logic when explaining how a fee award has been determined." *See* ***Kolupar***[] [***v. Wilde Pontiac Cadillac, Inc.***, 2004 WI 112, ¶30], 275 Wis. 2d 1, [], 683 N.W.2d 58. In ***Anderson***, we noted that "[u]nder this analysis, the [trial] court must first multiply the reasonable hours expended by a reasonable rate.... The [trial] court may then make adjustments using the SCR 20:1.5(a) factors." ***Anderson*** [***v. MSI Preferred Ins. Co.***, 2005 WI 62, ¶39,] 281 Wis. 2d 66, [], 697 N.W.2d 73 (citations omitted); *see also* ***Kolupar II*** [***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2007 WI 98, ¶15,] 303 Wis. 2d 258, [], 735 N.W.2d 93.

Stuart, 308 Wis. 2d 103, ¶45 (all brackets except fifth set of brackets added).

¶26 The legislature codified the standard expressed in ***Stuart*** in WIS. STAT. § 814.045 (2015-16)[3] which also incorporated most of the SCR 20:1.5(a) factors. The statute directs the trial court to consider the following factors in awarding attorney fees:

[3] All references to Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

> (a) The time and labor required by the attorney.
>
> (b) The novelty and difficulty of the questions involved in the action.
>
> (c) The skill requisite to perform the legal service properly.
>
> (d) The likelihood that the acceptance of the particular case precluded other employment by the attorney.
>
> (e) The fee customarily charged in the locality for similar legal services.
>
> (f) The amount of damages involved in the action.
>
> (g) The results obtained in the action.
>
> (h) The time limitations imposed by the client or by the circumstances of the action.
>
> (i) The nature and length of the attorney's professional relationship with his or her client.
>
> (j) The experience, reputation, and ability of the attorney.
>
> (k) Whether the fee is fixed or contingent.
>
> (l) The complexity of the case.
>
> (m) Awards of costs and fees in similar cases.
>
> (n) The legitimacy or strength of any defenses or affirmative defenses asserted in the action.
>
> (p) Other factors the court deems important or necessary to consider under the circumstances of the case.

SEC. 814.045. No single factor or set of factors establishes what is reasonable or how reasonableness is to be determined.

¶27 "The burden of proof is upon the attorney submitting the fees to prove the reasonableness of a fee." ***Standard Theatres, Inc. v. DOT***, 118 Wis. 2d 730, 748, 349 N.W.2d 661 (1984). Further, the trial court must exercise its discretion when determining whether the attorney fees requested are reasonable. ***Village of Shorewood v. Steinberg***, 174 Wis. 2d 191, 204, 496 N.W.2d 57 (1993).

See also ***Pierce v. Norwick***, 202 Wis. 2d 587, 599, 550 N.W.2d 451 (Ct. App. 1996).

¶28 Additionally, in ***Jandrt v. Jerome Foods, Inc.***, the Supreme Court explained that a trial court is in an advantageous position in determining the reasonableness of a firm's rate and preparations when awarding attorney fees:

> The trial judge 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. He has the expertise to evaluate the reasonableness of the fees with regard to the services rendered.

Id., 227 Wis. 2d 531, 575-76, 597 N.W.2d 744 (1999) (citation, quotation marks, and brackets omitted.)

¶29 Lastly, in ***Stuart*** the court explained that:

> Whether the [trial] court erred in its determination on the amount of the attorney fee award … is subject to a different standard of review. Unless the [trial] court erroneously exercised its discretion, the amount of an attorney fee award typically is left to the discretion of the [trial] court, given that court's greater familiarity with the locality's billing norms and its firsthand opportunity to witness the quality of the attorney's representation. ***Kolupar v. Wilde Pontiac Cadillac***, ***Inc.***, 2004 WI 112, ¶22, 275 Wis. 2d 1, 683 N.W.2d 58 (***Kolupar I***); *see also* ***Kolupar v. Wilde Pontiac Cadillac, Inc.***, 2007 WI 98, ¶15, 303 Wis. 2d 258, 735 N.W.2d 93 (***Kolupar II***); ***Anderson v. MSI Preferred Ins. Co.***, 2005 WI 62, ¶19, 281 Wis. 2d 66, 697 N.W.2d 73. However, we may examine the [trial] court's explanation to determine whether the court employed a logical rationale that was based on the appropriate legal principles and on the facts in the record. ***Id.***

Stuart, 308 Wis. 2d 103, ¶14 (ellipses and brackets added). *See also* ***Jandrt***, 227 Wis. 2d at 575-76.

B. The Trial Court Properly Exercised Discretion in Awarding Attorney Fees to the Maclays.

¶30 In rendering its decision awarding attorney fees, the trial court had the Maclays attorneys' affidavits before it. In his affidavit, John Rothstein, attorney for Maclays, stated in part:

> [1.] The difficulty of the questions involved in the above action are shown by the Description of Services contained in Exhibit A. The facts involving this Trust, and which were needed for the defense of [Maclays], span more than half a century going back to the 1950's. Among other things, to respond to [Lindemann's] new assertions and lawsuit, [Maclays] had to prepare objecting pleadings, respond to [Lindemann's] written interrogatories, requests to admit and discovery demands, search for and produce written and electronic historical records and documents, defend against "expert" testimony offered by [Lindemann], prepare and process motions to dismiss which [Lindemann] opposed, prepare defenses and evidence to summary judgment motions next filed by [Lindemann], prepare the matter for plenary trial, defend the case through multiple trial appearances and hearings, and then defend [Lindemann's] consequent [fourteen] month appeal.
>
> [2.] I have been in the practice of law for more than [thirty–five] years. I have represented [Maclays] in prior proceedings involving [Lindemann] against her parents [Maclays], which proceedings go back more than eight years. My law firm, Quarles & Brady, has represented [Maclays] in connection with this Trust and with respect to their daughter, [Lindemann], for more than [fifteen] years. There is a continuity of representation.
>
> [3.] The defense of this new unauthorized case required more that 275 hours of my firm's time and expenses.
>
> [4.] … The defense of this suit precluded me handling other matters for other clients during these times.
>
> ….
>
> [5.] With the lower court's proceedings and the consequent appeal, the duration of this litigation will have lasted more

than [three] years by the time of the hearing on this final remanded matter.

….

[6.] Among other areas, one area I have concentrated my practice over the last [thirty-five] years of practice is in the trust and probate disputes, resolution and proceeding. I have had the honor of being included in the *Best Lawyers in America* from 2005 to the present as well as being one of the *Wisconsin Super Lawyers* from 2005 to the present. I have a listing and rating from Martindale Hubbell of AV ....

….

[7.] During the course of *prior* proceedings involving this same Trust but involving [Lindemann], she has used seriatim lawyers from Godfrey & Kahn, Michael Best & Friedrich, Rakita & Rakita, Von Briesen & Roper, and Jacob Miota Law Firm. For this lawsuit, [Lindemann] is now using Mallery & Zimmerman.

[8.] Experience shows that the level of fees charged by any law firm depends on many factors. For firms that charge on an hourly basis, the size and sophistication of the firm correlates with the level of hourly rates charged. The larger the firm the higher the specialization costs and the higher the hourly rates. On the other hand, large law firms are able to offer more specialized practitioners with expertise that allows the best representation.

….

[9.] In summary, the rates of these comparable Milwaukee firms was as follows:

Firm	Most Sr. Partner	Avg. Partner	No. of Attys
Michael Best	$650	$445	198
Quarles & Brady	$600	$470	413
Foley & Lardner	$860	$600	872

[10.] The fees paid to Quarles & Brady by [Maclays] for the defense of this case was based upon fixed hourly rates. The hourly rates paid by [Maclays] for my time was $540 an hour starting in 2013 and increasing over the [three] years of this litigation to $575 an hour.

> ….
>
> [11.] The defense of the Petition filed by [Lindemann] in this matter, together with its resultant motions, discovery, trial, post-trial proceedings, appeal and cross-appeal, cost [Maclays] the sum of $147,257.50 inclusive of attorneys fees and out-of-pocket disbursements.

(Names of attorneys omitted from paragraph seven).

¶31 Additionally, Rothstein attached a twenty-six-page itemized statement of the services rendered in this case spanning from February 19, 2013, to January 29, 2016, identifying who performed the service, the amount of time expended, the hourly rate and the amount for the services.

¶32 In his affidavit, David Lowe, attorney for Rip, stated in part:

> [1.] I endeavored in this case to keep litigation expenses to a minimum, and to simplify the issues to the extent possible. [Rip] was named by petitioner as a respondent in this proceeding in his capacity as trustee of the [Trust]. My efforts as his counsel were to seek dismissal of the proceeding, which a majority of the trustees opposed, and when that motion was denied, to resist the petition on the merits. I did not participate in the issues related to the disputed ownership of improvements as between the Trust and [Maclays], as the Trust[] did not authorize those issues to be taken to court. Also, where possible, I joined in motions, pleadings, and briefs filed by [Maclays] so that there would be no duplication of effort and so that my fees would be the minimum possible consistent with proper representation of [Rip's] interests and those of the Trust. [Rip's] positions were sustained by the trial court and by the Court of Appeals in all respects.
>
> [2.] I was admitted to practice in 1977, spent two years working as a law clerk for United States District Judge Myron L. Gordon, and ever since I have been in private practice. I have an AV rating from Martindale Hubbell, and I have trial experience in many counties throughout Wisconsin, and in the federal courts in the Eastern and Western Districts of Wisconsin, and appellate experience in the Wisconsin Court of Appeals, Wisconsin Supreme Court, and Seventh Circuit Court of Appeals.

> [3.] Based on my nearly [forty] years of experience as a civil litigator, I believe that my hourly rate is justified, and is reasonable for a sole practitioner.
>
> [4.] I believe that the attorneys' fees and costs of $21,040.02 ($21,425.02 less $385.00 taxed and ordered by the Wisconsin Court of Appeals) were reasonable and necessary for the representation of Rip.

Additionally, Lowe attached a five-page itemized statement of the services rendered in this case spanning from February 22, 2013, to February 1, 2016, identifying the service performed, the amount of time expended, the hourly rate and the amount for the services.

¶33 In its oral decision, the trial court began by stating that this court directed the trial court to determine the attorney fees due to the Maclays because of Lindemann's unauthorized commencement and continuation of the proceeding. It stated that the language that this court used was important: "[i]t's for a determination of the attorney's fees due, not whether attorney's fees are due, and it's also for the unauthorized commencement and continuation of this litigation."

¶34 The trial court also agreed with Lindemann's attorney that "there is certainly a degree of discretion that the court is allowed and the court … needs to determine reasonable attorney[] fees, not just any blanket amount is necessarily going to be awarded by the court."

¶35 The trial court then found that the attorneys representing the Maclays "are very experienced attorneys." The trial court noted that it reviewed the affidavits of both the attorneys and commented that the work that Rip's attorney did was different than that done by Maclays' attorney. The trial court then stated that the Quarles & Brady law firm "is a very, very reputable firm" and

"[o]bviously Quarles & Brady is comparable to, and this is important, too, firms that were previously retained by [Lindemann]."

¶36 The trial court also stated that it was familiar with the large law firms mentioned in Maclays' brief. It explained that "[t]he fees, hourly rates charged at somewhere like Quarles & Brady … are going to be higher than, for instance, a medium size firm" like Lindemann's present attorney's firm.

¶37 The trial court then stated that Maclays' attorney fee request was not out of line. It found that "[h]e's [Maclays' attorney] engaged in an enormous amount of work in this case." It noted that the attorney's rate ranged from five hundred forty dollars an hour to five hundred seventy dollars an hour at the time of the hearing and found that rate to be reasonable. The trial court stated, "[i]n fact, I think it is reasonable for an attorney with [thirty-five] years of experience and with one of the top firms in the state."

¶38 The trial court then went on to conclude:

> I think that he put in an enormous amount of work in this case and the work put in by [Rip's attorney] and his rates I also believe to be reasonable in Milwaukee, in Milwaukee County on a complex, complicated estate matter. This is not, obviously, an auto accident case, it's not a run-of-the mill contract dispute. It's an area of law that's relatively complicated, it's relatively specialized, and, frankly, most of the attorneys that operate in the area of trusts and estates are experienced attorneys and their fees are, let's put it this way, not insignificant, but in this case I think [Maclays' attorney] fees are completely reasonable as are [Rip's attorney fees].

The trial court concluded that "I cannot see any reason, using my discretion in equity or in[]justice, to cut off the fees and do anything other than award everything that's being requested by [Maclays' attorney] and [Rip's attorney]."

¶39 On appeal, Lindemann argues that the fees awarded to Maclays and to Rip should be the same because the attorneys handled the same proceeding over the same period of time, they both have the same experience, they both attended the same hearings, questioned all the same witnesses and got the same results. Lindemann's arguments ignore the different roles each attorney played in this proceeding. As Rip's attorney pointed out in his affidavit:

> I endeavored in this case to keep litigation expenses to a minimum, and to simplify the issues to the extent possible. [Rip] was named by petitioner as a respondent in this proceeding in his capacity as trustee of the [Trust]. My efforts as his counsel were to seek dismissal of the proceeding, which a majority of the trustees opposed, and when that motion was denied, to resist the petition on the merits. I did not participate in the issues related to the disputed ownership of improvements as between the Trust and [Maclays], as the Trust[] did not authorize those issues to be taken to court. Also, where possible, I joined in motions, pleadings, and briefs filed by [Maclays] so that there would be no duplication of effort and so that my fees would be the minimum possible consistent with proper representation of [Rip's] interests and those of the Trust.

Clearly, as noted by the trial court, Maclays' attorney spearheaded the defense of this proceeding which required him to put in an enormous amount of work in this "complex, complicated estate matter."

¶40 Additionally, Lindemann argues that one factor the trial court did not consider in awarding the attorney fees is "the results obtained." However, the trial court gave significant weight to the fact that Lindemann knew she had no authority to commence or continue this proceeding. The trial court stated:

> At some point the [c]ourt needs to take an action, and in this case the Court of Appeals is taking it, and I think I'm following through on it to emphasize the validity and sincerity and importance of a court order.
>
> And the willful—I was going to say 'ignorance,' but that's not the right word, the 'willful defiance' of a

> court order is not something that should be condoned. It's not going to be condoned by this [c]ourt.

The trial court clearly considered that the outcome of this proceeding was this court's decision that Lindemann had no authority to commence or continue this proceeding and that Lindemann never should have started it in the first instance. Had she not started the proceeding, the outcome would have been that there would have been no fees to award to anyone.

¶41 Lindemann also argues that the trial court was swayed by the Maclays' attorneys portraying Lindemann as litigious and emphasizing her use of different attorneys. She argues that "[the trial court] misunderstood the record and improperly exercised [its] discretion when [it] awarded Quarles & Brady all of its fees."

¶42 Lindemann misconstrues the trial court's statements in its oral decision. As stated above, the trial court's statements about Lindemann's actions in this proceeding relate to its conclusion that this court found Lindemann had no authority to commence this proceeding let alone continue it in the appeals process. The trial court's comments about Lindemann's use of other attorneys were made in the context of whether the Maclays' attorney fees were reasonable and did not express an opinion that Lindemann was litigious. The trial court's comments regarding attorney fees were limited to this proceeding commenced and continued by Lindemann, not any earlier proceeding between the parties.

¶43 For the reasons stated above we find that the trial court properly exercised its discretion in awarding attorney fees against Lindemann in favor of the Maclays for Lindemann's unauthorized commencement and continuation of this proceeding.

CONCLUSION

¶44 In conclusion, we find that this court's decision in ***von Schleinitz Trust II*** is the law of the case regarding the award of attorney fees and Lindemann could not attempt to collaterally attack that decision before the trial court or here on appeal. We also find that the trial court properly exercised its discretion in determining the attorney fees award on remand from this court.

¶45 Although the Maclays request this court remand the action to the trial court with directions for the trial court to determine attorney fees and costs incurred by them in connection with this appeal, we exercise our discretion and decide not to do so.

By the Court.—Judgment and order affirmed.

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