

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2011AP377

Cir. Ct. No. 2008PR1693

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN RE THE ESTATE OF REBECCA R. DERZON:
LORI A. LAATSCH,**

APPELLANT,

v.

SYDNEY JOHNSON AND MARINA JOHNSON,

RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 FINE, J. Lori A. Laatsch appeals the order that removed her as personal representative and trustee of the Estate of Rebecca R. Derzon. She argues that the trial court erroneously exercised its discretion by: (1) removing her

as personal representative and trustee; (2) removing the law firm she hired to probate the Estate; (3) appointing a court-selected Special Administrator and Special Trustee instead of Laatsch's ex-husband or Laatsch's accountant, whom the Will named as successor personal representatives and trustees; and (4) ordering the Estate to turn over all Estate-related documents to the minor beneficiaries' lawyer.

I.

¶2 This case involves the estate of Rebecca R. Derzon who died on August 25, 2008. In March of 2008, the law firm of Cramer, Multhauf & Hammes, LLP, created a Trust and pour-over Will for Derzon that named Derzon's sister, Laatsch, as trustee and primary beneficiary, and Laatsch's two adult daughters, Robyn and Anna Laatsch, as residual beneficiaries. The Trust also named Derzon's brother, Paul Johnson, as a beneficiary and his children, Sydney and Marina, as residual beneficiaries. The Will and Trust named Laatsch as personal representative, and her ex-husband, Eric Laatsch, and her accountant, Edward Walkowicz, as successors to Laatsch.

¶3 Laatsch started informal probate proceedings in November of 2008, asked the probate court to appoint her as personal representative, and told the probate court that Marina and Sydney Johnson did not need a guardian appointed because Robyn and Anna Laatsch "virtually represented" the minors' interests. The Will filed in the probate court has the word "Draft" stamped across the signed signature page. In December of 2008, the probate registrar appointed Laatsch as Derzon's personal representative.

¶4 On May 6, 2010, the Johnsons, as beneficiaries of the Derzon trust, contended that they had "not received any financial benefit from or meaningful

information about the Trust since [Derzon's] death almost 22 months ago.” They filed a petition and order to show cause asking the circuit court:

- to compel Laatsch to give them “any and all documents and records related to [Derzon's] Estate and Trust and all trusts thereunder, the Will, the estate planning documents, and all related documents[.]”;
- to compel Laatsch to give them “a full and detailed inventory and accounting to date of the Estate and Trust[.]”;
- to “immediately remove Lori A. Laatsch as trustee and that a suitable neutral third party successor personal representative and trustee be appointed[.]”
- to order “the law firm of Cramer, Multhauf & Hammes, LLP [to] produce their entire legal files on” Derzon.

The circuit court ordered:

- Laatsch to “provide all of the information and relief requested in this Petition[.]”
- Laatsch and the Cramer law firm to “appear before the Court on 7-6-10” to show:
 - “Why the necessary actions have not been taken”;
 - “Why Lori A. Laatsch and [the Cramer law firm] should not be removed”; and
 - “Why the Court should not grant the relief requested in the Petition.”

- The Cramer law firm to “produce the entire legal files of [Derzon] at or before the same hearing.”

¶5 Despite this circuit court order and pending hearing, the Cramer law firm asked the Register in Probate on May 27, 2010, to close the informal “administration” of the Derzon estate, telling the probate court that administration was completed. On May 28, 2010, the Johnsons objected to closing of the Estate and filed a demand for formal administration. In June of 2010, the Johnsons filed a motion seeking to “disqualify” the Cramer law firm based on a conflict of interest: they asserted that the law firm “prepared the [Derzon] estate plan and are ostensibly acting as the law firm on behalf of the Estate and Trust while at the same time defending [Laatsch].”

¶6 At the hearing on July 6, 2010, Laatsch did not turn over any of the documents. Instead, the Cramer law firm asked for more time to brief the conflict-of-interest issue. At a subsequent hearing in August of 2010, the circuit court found the Cramer law firm could not represent both Laatsch personally and the Derzon Estate, but deferred a decision whether to remove the Cramer law firm altogether. After a series of additional hearings, the circuit court, in November of 2010, removed the Cramer law firm. It summarized the proceedings:

[W]e started with a petition and an order to show cause and compel filed ... May 6.

....

At [a July 6] hearing, I reviewed the materials that indicated there had been a lot of delay and frustration. I expressed my concern that there were things that were requested that should have been turned over.

I encouraged you to be very cooperative and helpful to work together to turn over what was necessary, and you ... had concerns about confidentiality. ... I said ... we'll look at it in camera[.]

... At the hearing on August 19, I did make a ruling to disqualify the firm from representing Lori Laatsch personally.

Then I deferred on the issue as to whether the firm should be disqualified.

It was at that time that you requested the in camera review [of the documents] ... then more than a month later, I received ... the stack of documents, undescribed, ... unanalyzed ... there was nothing to tell me what line, what paragraph, what portion of any document was going to be a problem for you. There was nothing.

Then we came back to court on ... 9/22, and I said I have to have a log, I have to have your theory of why these are privileged. ...

You can't just say 905.03 and expect the Court to read your mind. And you gave me a lot that ... said 905.03, and that was virtually all you said.

So the Court went through the documents, and there was nothing there that would be confidential.

The Court then issued an order on 10/14, and since then, I've gotten nothing but problems about how things are not being turned over as that order required that they be turned over.

¶7 The circuit court told the Cramer law firm's attorneys that they had a duty to represent *all* the beneficiaries of the Derzon estate, but their delay and obstruction showed the firm's allegiance to Laatsch. The circuit court found "this indicates a real problem ... a very big problem." It found that the Cramer law firm "ha[s] a conflict of interest, and ... cannot continue on this case."

Both the petitioners and the guardian ad litem have ... requested the Court now for six months to do this, and I have steadfastly given you chance after chance after chance to show that you can do the job properly, provide what is necessary, prior to court order ... you didn't do it, so you were ordered to do it, and there are still many, many things that have not been resolved.

And I don't see that this is a way that we can efficiently go forward.

For one thing, it's wasting the assets of the estate, to have all this needless litigation, to have months and months of delay, and the delay that was occasioned by the necessity of the Court to do an in camera review of -- of cover pages from e-mails?

I mean, there were things in there that there was just no possible way you could make an argument that were going to be confidential, and yet that was an occasion for another two months of delay.

And the delay and the repeated motions that keep coming and the repeated briefing schedules requested have not moved anything further to any resolution.

The circuit court concluded:

I do find that you have a conflict and that your conflict is with your former client, Ms. Lori Laatsch, and your current client, identified as the estate and the trust ... this conflict is not surmountable, and it's not waivable, and it has been clear in your ... continued inability to work with the other side in any reasonable manner, even though you're not personally representing Ms. Laatsch anymore, that simply removing that duty didn't seem to clear up the problems.

¶8 The circuit court also found "it is not ... possible for Ms. Laatsch to continue in her role as the [personal representative] and the trustee at this time":

This is also a request made back in May, and it's been briefed up and down and sideways by everybody, several times, and I do agree with the guardian ad litem and petitioners, that ... [Laatsch] has continued to act [as personal representative] ... using the powers of the [personal representative] when she is not suppose to, and she's been reminded repeatedly by the Court that she can't do so.

There is a ... failure on her part to respond responsibly, efficiently, and adequately to reasonable requests that are made by the heirs and the beneficiaries.

They have requested things that they absolutely have a right to have, and if you didn't believe that when I encouraged you to believe it, you should have believed it when I entered it in an order and required it.

....

There has been a refusal to turn over estate planning documents by both Ms. Laatsch and the firm representing her.

There's been a failure to follow through with the court order that I entered on October 14.

There have, as I said, been powers that she has been acting under -- seeking to distribute property, attempting to close probate, attempting to hire a firm -- while she does not have those powers.

She has ... continued unnecessary litigation[,] has been wasting the assets, and that is unacceptable, and it's completely contrary to her duty.

There's also some very serious allegations -- and support therefor[e] -- in the affidavit about a failure to identify property in the estate at the date of death that was in the home, that was in the safe deposit box, ... where the decedent's personal records are, what property was covered by insurance policies.

There's a lot of questions that are unanswered, and I think at this point in time, the only way we're going to be able to preserve the assets of this estate and this trust is to have them in an independent, third party's hand, and someone who is not in any way compromised by any of the activities.

¶9 The circuit court then “assign[ed] an attorney to take the role of the [personal representative] and the trustee” in order “to preserve the assets until” “the remaining factual disputes” are resolved.

II.

¶10 Laatsch objects to the circuit court's rulings, and as noted, claims the circuit court erroneously exercised its discretion. The circuit court's assessments of what was going on and what was necessary to preserve the Estate for all the beneficiaries are evaluations within its discretion, *see Gehl v. Hansen*, 5 Wis. 2d

91, 96, 92 N.W.2d 372, 376 (1958), and we will not reverse if the circuit court “applied the correct law to the relevant facts and reasoned its way to a reasonable conclusion.” *Estate of Wheeler v. Franco*, 2002 WI App 190, ¶6, 256 Wis. 2d 757, 763, 649 N.W.2d 711, 714. The circuit court did so here.

A. *Removal of Laatsch as personal representative and trustee.*

¶11 “A trustee may be removed ... [by] the court ... upon its own motion or upon a petition by a beneficiary... [when] a trustee ... fails to comply with the requirements of this chapter or a court order, or who is otherwise unsuitable to continue in office.” WIS. STAT. § 701.18(2). A personal representative has a fiduciary duty to all the beneficiaries, *see Wolf v. McAuliffe*, 71 Wis. 2d 581, 595, 239 N.W.2d 52, 59 (1976), and a statutory obligation to “do ... things directed by the court or required by law.” WIS. STAT. § 857.03(1). If a personal representative “fails to perform,” “he or she may be summarily dismissed and ... the court shall then appoint another personal representative.” WIS. STAT. § 857.09.

¶12 As we have seen, Laatsch: (1) did not comply with the circuit court’s orders; (2) tried to mislead the probate court by saying Sydney and Marina Johnson were “virtually represented”; and (3) continued to act as personal representative after the circuit court suspended those powers. The circuit court did not erroneously exercise its discretion in removing Laatsch as personal representative and trustee.

B. *Removal of the Cramer law firm.*

¶13 The circuit court removed the Cramer law firm for what it found was a clear conflict of interest. A circuit court may disqualify an attorney for an actual conflict or for a serious potential conflict of interest. *See Guerrero v. Cavey*, 2000

WI App 203, ¶13, 238 Wis. 2d 449, 458–459, 617 N.W.2d 849, 854. Any “[d]oubts as to the existence of an asserted conflict of interest should be resolved in favor of disqualification” *Id.*, 2000 WI App 203, ¶14, 238 Wis. 2d at 459, 617 N.W.2d at 854 (quoted source and quotation marks omitted). In determining whether there is a conflict when an attorney has represented two clients serially, we apply a two-part test. First, there must have been an attorney-client relationship between the attorney and the former client. *See Burkes v. Hales*, 165 Wis. 2d 585, 591, 478 N.W.2d 37, 40 (Ct. App. 1991). Second, there must be a substantial relationship between the current client and the former client. *See ibid.*

¶14 Here, as we have seen, the Cramer law firm initially represented both Laatsch and the Estate. Although the Cramer law firm told the court it was not representing Laatsch personally, the circuit court determined that its conduct proved otherwise. This finding was not clearly erroneous. *See* WIS. STAT. RULE 805.17(2) (circuit court’s findings of fact must be upheld on appeal unless “clearly erroneous”). Indeed, the Cramer law firm refused to turn over letters sent to Laatsch because of what it claimed was its “attorney-client” privilege with Laatsch.

¶15 Further, the circuit court found “that there is a substantial relationship between the Firm’s representation of its former client, Lori Laatsch, and its current client, the Estate and Trust.” As the circuit court cogently explained:

There is a substantial conflict between the Firm’s earlier advocacy on behalf of their client Ms. Laatsch, and now representing the interests of the Estate and Trust. Necessarily, the Firm obtained confidential information in representing Lori Laatsch that would be relevant to its representation of the Estate and Trust. Therein lies a

serious potential for a conflict of interest, which would pit the interest of the Firm's former client, Ms. Laatsch, against the interest of the Estate and Trust. Fundamental to an attorney's duties is the duty of confidentiality, which is owed to both current and former clients. Wis. Sup. Ct. R. 20:1.9.

The Record fully supports the circuit court's decision. The Cramer law firm refused to comply with circuit court orders, acted to delay the administration while it attempted to sell Estate property to Laatsch's daughters, and when it looked like the Cramer law firm might be removed, it tried to substitute a law firm chosen by Laatsch even though she no longer had authority to act as personal representative.

C. *Appointment of Special Administrator and Special Trustee.*

¶16 Laatsch also complains because the circuit court appointed an independent third-party to act as personal representative and trustee. She argues that the circuit court should have appointed the successors named in the Will and Trust—namely, her ex-husband, Eric Laatsch, or her accountant, Edward Walkowicz. Again, the circuit court's order was well within its discretion.

¶17 “If it appears necessary, the court may appoint a special trustee until a successor trustee can be appointed.” WIS. STAT. § 701.17(2). “When a personal representative ... is removed by the court... the court may ... appoint another personal representative in the personal representative's place.” WIS. STAT. § 857.21. “If it is found by the court to be necessary to appoint a personal representative ... [and] there appears to be no suitable person to be so appointed, the court shall ... grant administration of an estate ... to ... a special administrator.” WIS. STAT. § 879.57.

¶18 Here, the circuit court appointed a special administrator and special trustee instead of asking Eric Laatsch or Edward Walkowicz because:

Eric Laatsch is Ms. Laatsch's ex-husband, and Edward J. Walkowicz is her accountant. The Petitioners have made serious claims of self dealing and mismanagement on the part of Ms. Laatsch. If the claims are in fact true, the assets of the Estate and Trust have been and could continue to be at risk. The only way the Court can properly review the claims, while also protecting the assets of the Estate and Trust, is through a full and fair review of the records the Estate Plan, Estate and Trust files, the very same records which [Laatsch]... failed to fully provide to the Petitioners.

At the present time, the Court finds that the connection that Mr. Laatsch and Mr. Walkowicz have to Ms. Laatsch casts doubt on their independence and suitability to effectively serve as personal representative, trustee or both.

¶19 The circuit court's reasoning is both supported by the Record and legally sound.

D. *Sharing of Estate file.*

¶20 Finally, Laatsch asserts that the circuit court erroneously exercised its discretion by ordering her to turn over the Estate records. We disagree.

¶21 Laatsch's argument appears to be that the circuit court did not have the authority to order production of these documents. Laatsch is wrong. The circuit court has jurisdiction over the entire estate, trust, and property of the decedent. *See Stearns v. Robertson*, 272 Wis. 197, 208–209, 75 N.W.2d 582, 589 (1956). The circuit court thus may direct the personal representative to do things that the circuit court finds is necessary. *See* WIS. STAT. § 857.03(1) (“The personal representative shall ... do any ... things directed by the court or required by law.”). The minor beneficiaries of the Trust, and therefore of the Will (the Will “poured over” everything into the Trust), filed the Petition asking for the circuit court's help because the Estate had been pending for twenty-two months and

Laatsch had not given them the information they needed to protect their interests. *See* WIS. STAT. § 701.14(1) (“A proceeding in the circuit court involving a living or testamentary trust may be commenced by a trustee or other person interested in the trust and, except as otherwise provided in this chapter, all probate procedure governing circuit courts, so far as it may be applicable, shall apply to such proceeding.”). The circuit court was well within its discretion in directing Laatsch and the Cramer law firm to give to the beneficiaries that information.

¶22 The Record indicates that the circuit court faced what could have been intractable problems because of what it found was impermissible stonewalling in an attempt to deprive the minor beneficiaries of their rightful interests. We commend the circuit court for its calm, cogent, and careful handling of this case.

By the Court.—Order affirmed.

Publication in the official reports is not recommended.

