

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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COURT OF APPEALS – DIVISION II
OF THE STATE OF WASHINGTON

IN RE: ESTATE OF WILMA J. RODMAN

BRIEF OF RESPONDENT

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RESPONDENT'S BRIEF -1

ORIGINAL

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A. INTRODUCTION.

The Appellant, Darrell Rodman, has a long-standing pattern of bringing frivolous and unwarranted legal proceedings in this matter. Over the 17 year tenure of this Estate, the administration of the Estate has been subjected to disruption, rancor and ill will, most of it engendered by the actions of Darrell Rodman. Darrell Rodman was removed as the Personal Representative due to malfeasance. His hostility towards the two different attorneys who have since served as Personal Representative has dramatically increased the cost of administering this Estate.

This Appeal is frivolous, as reflected in the Verbatim Transcript of the hearing in which the Personal Representative's Final Accounting was approved and the Estate closed. The Verbatim Transcript exposes the falsity of the proposition that is the central theme of Darrell Rodman's appeal: that he was not afforded an opportunity to put forth his objections to the closure of the Estate.

B. STATEMENT OF THE CASE.

Wilma J. Rodman died in 1993. CP 5. Appellant Darrell Rodman was initially appointed as the Personal Representative of Wilma Rodman's estate (the "Estate"), but was removed for malfeasance. CP 7. Darrell Rodman is also a beneficiary of the Estate. CP 11.

The Respondent, David T. Bastian (“Bastian”), is an attorney and was appointed successor Personal Representative of the Estate of Wilma Rodman in 1997. Verbatim Transcript of July 16, 2010 Hearing (“Verbatim Transcript”) p.4, line 15. Bastian followed attorney Gerald W. Neil in that role. CP 6. Attorney Neil had been appointed Personal Representative of the Estate following the removal of Darrell Rodman as the Personal Representative of the Estate. CP 7. Bastian was directed by the court to administer the Estate pursuant to a Settlement Agreement that had been negotiated amongst Darrell Rodman and the rest of the heirs of the Estate, through mediation, prior to Bastian’s appointment. CP 7. The Settlement Agreement is fully set forth in Exhibit 1 of the Final Accounting. CP 15-22.

Throughout Bastian’s administration of the Estate, Darrell Rodman initiated numerous challenges to Bastian’s decisions, leading in almost every instance to a hearing before retired Pierce County Superior Court Judge Waldo Stone, who had been designated in the Settlement Agreement to resolve disputes amongst the parties in the administration of the Estate. CP 7-9 and Verbatim Transcript p. 5. Without exception, Judge Stone ruled in favor of Bastian, thus illuminating Darrell Rodman’s long standing pattern of bringing meritless claims and engaging in

frivolous legal proceedings in this matter, using many different attorneys.

CP 9.

Bastian, who has practiced law in excess of 20 years, aptly described the tenor of the Estate administration in the Verbatim Transcript of the hearing on his Motion to approve the Final Accounting:

“* * * since my involvement in the Estate in 1997, this has been the most litigious estate I’ve heard of or been involved in. * * * This Estate has been extremely challenging. It has been contentious, litigious. There has been virtually nothing about it that has been pleasant.” Verbatim Transcript, p.4, lines 12-17, and p.8, lines 21-23.

The Estate was held open an unusually long time to allow for the collection of a Real Estate Contract. CP 9. On April 12, 2010, when the Estate had finally reached the point where the administration could be closed, Bastian filed a Declaration of Completion. Verbatim Transcript p.14, line 14. Having grown weary of Darrell Rodman’s unceasing contentiousness and rancor, and wanting no further unpleasant dealings with Darrell Rodman, Bastian informed Darrell Rodman that he was willing to forego some \$16,019.00 of the \$18,019.00 that was owed to Bastian as Personal Representative fees if, and only if, Darrell Rodman was willing to allow the estate to close without contention, using a Declaration of Completion, and without requiring Bastian to produce a full accounting of the Estate. Verbatim Transcript p.14-15. Darrell Rodman

did not respond to Bastian's proposal. Bastian concluded that, absent a request from Darrell Rodman for a full accounting, it was most economical to attempt to close the Estate by filing a Declaration of Completion under RCW 11.68.110. Consistent with his proposal, Bastian filed a Declaration of Completion stating that he was owed \$2,000.00 in Personal Representative fees. Notwithstanding Bastian's offer to reduce his Personal Representative fee, Darrell Rodman filed an objection to the Declaration of Completion on May 10, 2010, and demanded an accounting. CP 4. Darrell Rodman was the only beneficiary of the estate who objected to the Declaration of Completion. Verbatim Transcript, p.15, line 2. Darrell Rodman's objection to the Declaration of Completion requested:

“a formal accounting and a determination by the court of the reasonableness of the Personal Representative fees, accounting and a hearing on attorney fees.” CP 4.

Shortly thereafter, Bastian produced an extensive and detailed accounting of the Estate entitled “Final Report and Accounting of the Personal Representative” (“Final Accounting”) including a full record of billing statements detailing the time Bastian had expended on the Estate, including the entire \$18,019.00 for which he had not yet been paid. CP 5-227 (Exhibit 9). In accordance with the procedure set forth in RCW

11.68.100, by Motion, Bastian requested that the court approve the Final Accounting, approve his Personal Representative fees, authorize distribution of the Estate's assets, and close the Estate. CP 5-227. The Final Accounting is fully set forth in Court Papers 5-227.

The hearing on Bastian's Motion to approve the Final Accounting was conducted on July 16, 2010 before the Honorable Elizabeth P. Martin of the Pierce County Superior Court. Verbatim Transcript p.3. Darrell Rodman was present at the hearing, and was represented by counsel. Verbatim Transcript p.3. Despite the fact that Darrell Rodman had failed to timely file his responsive pleading to Bastian's Final Accounting, the Verbatim Transcript of the hearing clearly shows that the court nevertheless considered all of Darrell Rodman's objections, and that Darrell Rodman's counsel was heard on the matter. Verbatim Transcript, p.3, line 11. In addition, Bastian specifically addressed each of Darrell Rodman's objections on the record. Verbatim Transcript, p.8, line 12 to p.10, line 17.

After considering the Final Accounting, after considering each of Darrell Rodman's objections to Bastian's Final Accounting as presented by Darrell Rodman's counsel, and after considering Bastian's oral response thereto, the Court approved Bastian's Final Accounting and Personal Representative fee, ordered the Final Distribution of the Estate,

and ordered the Estate closed. Verbatim Transcript, p.15, lines 13-17; CP 230-234. It is this Order that is the subject of this appeal.

C. SUMMARY OF RESPONSE TO ASSIGNMENTS OF ERROR.

The thrust of Darrell Rodman's appeal focuses on two discretionary decisions of the trial court: (1) the trial court's refusal to set a separate hearing requested by Darrell Rodman, and (2) the trial court's approval of Bastian's Personal Representative fee. As is clearly evidenced by the record of the hearing on Bastian's Final Accounting, Appellant Darrell Rodman's assertion that he was denied an opportunity to present his objections to Bastian's Final Accounting is factually erroneous. Having not timely filed his objection, the court would have been well within correct procedure to close the Estate without hearing from Darrell Rodman at all.¹ Nevertheless, the court *did* consider the objections presented in Darrell Rodman's written response to Bastian's Final Accounting, and Darrell Rodman's counsel *was* afforded full opportunity to present the objections and to address the court at length prior to the court's ruling. This is plainly evident upon a review of the Verbatim Transcript. The trial court's approval of Bastian's Personal Representative fee is supported by substantial evidence through documentation provided

in Bastian's Final Accounting, and by Bastian's oral explanations at the hearing. Darrell Rodman's appeal of these issues is without basis in law or fact.

D. RESPONSE TO ASSIGNMENTS OF ERROR.

1. The Trial Court Did Not Abuse Its Discretion in Refusing to Hold a Hearing to Consider Evidence to Support Rodman's Objection to the Closing of the Estate. Under Washington law, there are only two methods by which a Personal Representative having nonintervention powers may close an estate. If the Personal Representative cannot close an estate using a Declaration of Completion under RCW 11.68.110 (for example, because a beneficiary has filed an objection to the Declaration of Completion), then the Personal Representative must petition the court to close the Estate under RCW 11.68.100. Accordingly, the only hearing that a beneficiary is "entitled" to in a probate closing is the hearing on the Personal Representative's petition to close an estate under RCW 11.68.100.

Darrell Rodman contends that the court erred by failing to set a separate hearing demanded by Darrell Rodman in his written objection to Bastian's Final Accounting, and demanded by Darrell Rodman's counsel in the hearing on Bastian's Final Accounting. There is no Washington

¹ Since the court did consider Darrell Rodman's objection, this brief will not discuss

statute or other authority which *requires* a trial court to set a special hearing upon the demand of a party objecting to a Personal Representative's Final Accounting. While a trial court has the discretion to set such a special evidentiary hearing under RCW 11.96A.020 and 060, it is not *required* to do so. A trial court has wide discretion in determining whether a hearing is necessary in the administration or closure of a probate estate, and a court will overturn such rulings only for a manifest abuse of discretion. Cox v. Spangler, 141 Wn.2d 431, 439, 5 P.3d 1265 (2000); In re Estate of Larson, 103 Wn.2d 517, 521, 694 P.2d 1057 (1985); In re Estate of Black, 116 Wn. App. 476, 489, 66 P.3d 670, review denied, 150 Wn.2d 1020, 81 P.3d 119 (2003). A trial court abuses its discretion if it exercises its discretion on untenable grounds or for untenable reasons, or if the discretionary act is manifestly unreasonable. Qwest Corp. v. City of Bellevue, 161 Wn.2d 353, 369, 166 P.3d 667 (2007) (quoting Lindgren v. Lindgren, 58 Wn. App. 588, 595, 794 P.2d 526 (1990)).

The record plainly shows that Darrell Rodman failed to convince the trial court, after argument, that there was a need for a special hearing. Verbatim Transcript p.15, line 13 to p. 15. Darrell Rodman was timely served with Bastian's Motion to approve the Final Accounting. Darrell Rodman does not complain that he had inadequate notice of the hearing to

whether the Local Rule regarding filing deadlines is enforceable.

close the Estate. Though not timely filed, Darrell Rodman presented his written response to Bastian's Final Accounting at the July 16th 2010 hearing, which objection consisted of three bullet points (CP 229) setting forth those items in Bastian's Final Accounting to which Rodman objected²:

1. That the request for personal representative's fees is unreasonable and excessive. The declaration of completion submitted before the accounting was for a total of \$22,301.00. Following this heir's obligation and request for an accounting, additional \$18,000.00 was added to the request. Moreover, the personal representative charges the same for legal services as he does for the administrative duties as Personal Representative.

2. That the personal representative failed to properly exercise his responsibilities under the will and settlement agreement. In so doing, Darrell Rodman was forced to pay expenses that should have come from the Schnitzer contract. The personal representative paid some expenses but after a point advised Darrell Rodman that the other beneficiaries' attorney objected to any future expenses for repair and maintenance and that he wouldn't grant any more requests.

3. The personal representative failed to invest the proceeds of the Schnitzer contract in the highest interest rate in an insured account causing a loss of interest to the estate which should be grounds for reduced fees.

Darrell Rodman was free to file as lengthy a response brief as would be necessary to fully set forth his objections to Bastian's Final

² These items were beyond the scope of relief Darrell Rodman had requested in his objection to the Declaration of Completion, which simply demanded an

Accounting. Yet, Darrell Rodman's one-page response brief contained only these three terse bullet points. In addition, counsel for Darrell Rodman had ample opportunity to address each objection in oral argument, but chose instead to spend a majority of his time demanding a special hearing as opposed to discussing the substance of his objections. Darrell Rodman now has the audacity to argue that his arguments were not adequately addressed by the court, despite the brevity of his response, his failure to file it timely.

The Verbatim Transcript clearly shows that each of the Darrell Rodman's objections was considered by the court prior to the court determining that a special hearing was unnecessary:

(1) With regard to Darrell Rodman's objection set forth in bullet point 1, relating to Bastian's fees, the court reviewed Bastian's Final Report, heard arguments from Bastian and from Rodman's counsel, and specifically approved the fee, notwithstanding Darrell Rodman's objections thereto. Verbatim Transcript, p. 14, line 7 to page 15, line 17.

(2) With respect to the reimbursements referred to in bullet point 2 of Darrell Rodman's objection, the court engaged in a verbal exchange with Darrell Rodman's counsel. Verbatim

accounting and a hearing on fees.

Transcript, p. 11, line 6 to page 14, line 6. When pressed by the court, counsel for Darrell Rodman was unable to articulate a sufficient reason to set a special hearing. Verbatim Transcript, p.11-14. The court considered that the primary reason for the special hearing request was Darrell Rodman's desire to address maintenance reimbursements related to the Settlement Agreement executed by the beneficiaries in 1997. Verbatim Transcript, p.11, line 6 to p. 14, line 2. The court considered that the Settlement Agreement included a non-appealable dispute resolution procedure for resolving such disputes. Verbatim Transcript, p.12, line 13-16. Further, the court considered that the transactions Darrell Rodman sought to question were more than three years old, as Bastian had made no discretionary decisions that would potentially be appealable to Judge Stone under the Settlement Agreement since 2006. Verbatim Transcript, p. 11, lines 6-10.

(3) Finally, with regard to Darrell Rodman's objection raised in his third bullet point, regarding the rate of interest earned on the estate's investments, the court heard Bastian's explanation that he had investigated potential alternatives, and the rate earned was the highest available without compromising the liquidity of the estate funds. Verbatim Transcript, p. 10, line 12, to page 11, line 5.

Notwithstanding the deficiencies in, and untimeliness of, Darrell Rodman's written and oral objections, the record plainly shows that they were received and considered by the trial court before the court declined to set a special hearing and issued its Order approving Bastian's Final Accounting. The court accorded Darrell Rodman's objections due consideration.

Under these circumstances, the trial court determined, in its discretion, based on substantial grounds, that none of the issues presented by Darrell Rodman warranted the setting of a special hearing. There was no manifest abuse of discretion because it cannot be said that the court's decision was based untenable grounds or for untenable reasons. The trial court's Order approving the Final Accounting should be affirmed.

2. The Personal Representative Cannot Have Waived its Right to Have Rodman's Objections Heard by an Arbitrator. The Settlement Agreement contains a mechanism whereby disputes concerning the payment of Darrell Rodman's maintenance expenses from the Estate were to be resolved by retired Pierce County Judge Waldo Stone. CP 8-9. A full copy of the Settlement Agreement appears as Schedule 1 of the Final Accounting (CP 15-22). Darrell Rodman has failed to show any factual basis that would support his assertion that the Personal Representative has waived its right to have Rodman's objections heard by

an Arbitrator. In fact, it is not a right that can be waived, it is merely a contractual term of the Settlement Agreement which continues to govern the administration of the Estate. Bastian's role under the Settlement Agreement was simply to decide whether or not to pay or reimburse Darrell Rodman's expenses. The beneficiaries, including Darrell Rodman, then had the right, if they desired, to appeal Bastian's decision to Judge Stone. CP 8-9. Bastian had no appeal rights under the Settlement Agreement, and accordingly could not have waived those rights as asserted by Darrell Rodman. If Darrell Rodman had any issues with Bastian's payment of expenses, or refusal to pay expenses, he could have and should have appealed those to Judge Stone, as required in the Settlement Agreement. The trial court was well within its discretion to refuse to hear those objections in the hearing on the Final Accounting.

3. The Trial Court Did Not Abuse its Discretion by Awarding All of the Fees Sought by the Personal Representative. The Final Accounting filed by Bastian has a detailed accounting of the time Bastian spent on the Estate, what duties he was performing, and what rate he was charging. Bastian's fees are fully set forth in Exhibit 9 of the Final Accounting. CP 15-22. Bastian was specifically hired to administer the Estate *because* he was an attorney, in light of the litigious history of the Estate up to that time. Verbatim Transcript, p. 8, line 21 to p. 9, line 4.

The Court fully considered Darrell Rodman's objections to the Personal Representative fees requested by Bastian. Verbatim Transcript, p. 14, line 7 to p. 15, line 17. Bastian responded on the record to Darrell Rodman's objections to his Personal Representative fee, including the reason why Bastian had initially requested a smaller Personal Representative fee when the Declaration of Completion was filed than the fee he requested when the Motion to approve the Final Accounting was filed. The court was fully advised on every aspect of Bastian's fee request, including the tasks he performed and the rate he charged. After reviewing the Final Accounting, considering Darrell Rodman's objections, and Bastian's response thereto, the court approved Bastian's Personal Representative fees as reasonable. Verbatim Transcript, p. 15, lines 13-14.

Under RCW 11.48.210, a Personal Representative is entitled to charge "a just and reasonable fee." The trial court has wide discretion to determine whether a Personal Representative's fee is reasonable. In re the Estate of Douglas, 65 Wn.2d 495, 398 P.2d 7 (1965). A trial court's discretionary ruling on the appropriateness of a Personal Representative's fees will not be disturbed on appeal unless it is clearly shown that the court has abused its discretion in determining that the fee was reasonable. In re Estate of Larson, 103 Wn.2d 517, 581, 694 P.2d 1051 (1985). In re Estate of Black, 116 Wn. App. 476, 66 P.3d 670, review denied, 150

Wn.2d 1020, 81 P.3d 119 (2003). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. Cox v. Spangler, 141 Wn. 2d. 431, 439, 5 P.3d 1265 (2000).

Substantial detailed evidence was presented in Bastian's Final Accounting and in testimony supporting Bastian's fee. The trial court's conclusion that Bastian's Personal Representative fee was reasonable was not manifestly unreasonable or based on untenable grounds or reasons. The Order approving the Personal Representative fee should be affirmed.

4. The Trial Court Committed no Errors in Closing the Estate, the Trial Court's Order Approving the Final Accounting and Closing the Estate Should be Affirmed.

The Appellant Darrell Rodman has failed to show that the trial court erred in any respect in Closing the Estate of Wilma J. Rodman. The trial court's Order closing the Estate should be affirmed.

E. RESPONDENT'S REQUEST FOR ATTORNEY'S FEES
AGAINST RODMAN

This appeal is frivolous. This appeal has created a financial and time burden for this court and for Bastian, the Personal Representative. This court has the authority to Order Darrell Rodman to pay Bastian's attorney's fees and costs of defending this appeal. This court also has the authority to impose sanctions against Darrell Rodman if the court were to conclude that the appeal was brought in bad faith.

1. Bastian is Entitled to an Award of Attorney's Fees and Costs on Appeal.

Pursuant to RCW 11.96A.150(1), RAP 18.9 and RAP 18.1, Bastian requests an award of attorney's fees to compensate Bastian for the cost of responding to Darrell Rodman's appeal in this matter. RCW 11.96A.150(1) specifically gives the court the authority to award of attorney's fees and expenses on appeal, as follows:

Either the Superior Court, or any court on appeal may, in its discretion, order costs, including reasonable attorney's fees to be awarded to any party: (a) from any party to the proceedings, (b) from the assets of the estate or trust involved in the proceedings, or (c) from any non-probate asset that is subject to the proceedings. The court may order the costs to be paid in such amount and such manner as the court deems to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved, RCW 11.96A.150(1) specifically applies to appellate proceedings involving estates and trusts and gives the court broad discretion in awarding fees. RCW 11.96A.150 (Emphasis added).

As noted above, RCW 11.96A.150 and RAP 18.1 specifically apply to attorney's fees and costs related to appeals of trust and estate matters governed by RCW 11.96A, et seq. In Re Irrevocable Trust of McKean, 144 Wash. App. 333, 183 P.3d 317 (2008).

RAP 18.9(a) also gives this court the authority to award attorney's fees and sanctions against Darrell Rodman. RAP 18.9(a) provides:

The appellate court *** on motion of a party may order a party or counsel *** who *** files a frivolous appeal, *** to pay terms or compensatory damages to any other party who has been harmed by the delay. RAP 18.9(a).

The case for this court awarding Bastian's attorney's fees against Darrell Rodman is particularly compelling because Darrell Rodman's central theme of the appeal, that he was not afforded an adequate hearing for his objections, is clearly belied by the record of the hearing. Darrell Rodman's appeal of the trial court's discretionary decision on Bastian's Personal Representative fees was almost certain to fail in light of the extensive accounting records and testimony on which the trial court based its decision. Darrell Rodman did not have any factual basis for his appeal or any other relevant legal authority supporting his appeal. Further, the thrust of Darrell Rodman's argument, his appeal of the denial of his demand for a hearing on his maintenance reimbursements, does not benefit the Estate as a whole, but rather, benefits Darrell Rodman alone.³

In this case, the record is rife with examples of Darrell Rodman's continuing pattern of litigious conduct. CP 7-9, Verbatim Transcript, pages 4-7. Darrell Rodman's pattern of litigious conduct in this case has been responsible for much of the Personal Representative's fee that Darrell Rodman is now complaining of. CP 9. Darrell Rodman did not

base this appeal on any substantial legal or factual grounds, he simply did not like the trial court's decision, and, as he has consistently done throughout the long and tortured history of this Estate, is resorting to additional litigation rather than accepting any opinion that is contrary to his own. Given Darrell Rodman's continuous pattern of frivolous filings, including this appeal, which required significant legal work to address, this court should order Darrell Rodman to pay Bastian's attorney's fees incurred in this appeal, along with other sanctions the court finds appropriate.

In the alternative, if this court should decide that is not inclined to charge Bastian's attorney's fees directly to Darrell Rodman, the court would have the authority to charge those fees against the Estate. However, the entire Estate has now been distributed pursuant to the trial court's Order closing the Estate, including a large payment to Darrell Rodman, and Bastian would be forced to reopen the Estate for the purpose of retrieving funds that have already been distributed to the beneficiaries pursuant to the court Order closing the Estate. Accordingly, in the interest of fairness and economy, Darrell Rodman should be ordered to pay Bastian's attorney's fees and costs expended in responding to this appeal.

³ Although it might be argued that if Rodman was successful in reducing the attorney's fees, all beneficiaries would have been benefitted, in point of fact no other beneficiary contested the fees.

F. CONCLUSION

For the reasons set forth above, Bastian respectfully requests the court to affirm the trial court's Order which approves Bastian's Personal Representative fee, directs distribution of the Estate, and closes the Estate, and Order Darrell Rodman to pay Bastian's attorney's fees and costs associated with this appeal, pursuant to RCW 11.96A.150(1), RAP 18.9 and RAP 18.1.

DATED this 29 day of April, 2011.

Respectfully submitted,

KUSSMANN & LINDSTROM, P.S.

By 

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CERTIFICATE OF SERVICE

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STATE OF WASHINGTON

I hereby certify that on this date I served Appellant a copy of the foregoing documents by depositing with the United States Postal Service, first class mail with postage affixed and prepaid, a true and correct copy of the foregoing Respondent's brief for delivery at the following address:

Eric Hultman
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611 Market Street, Suite 4
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I arranged for the original and one copy of the foregoing document to be filed with the Court of Appeals, Division II by hand delivering said documents at the following address:

Clerk of the Court
Washington Court of Appeals, Division II
950 Broadway, #300
Tacoma, WA 98402

Dated this 29th day of April, 2011.



Paul R. Willett