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IN THE  
COURT OF APPEALS OF INDIANA

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Elizabeth Hollrah and Janice  
Stacy, Individually and as  
Personal Representatives of the  
Estate of Laura E. Barker,  
*Appellants,*

v.

Lisa Barker and Connie Barker,  
*Appellees.*

May 31, 2022

Court of Appeals Case No.  
21A-ES-2432

Appeal from the Decatur Circuit  
Court

The Honorable Timothy B. Day,  
Judge

Trial Court Cause No.  
16C01-1906-EU-38

**Brown, Judge.**

[1] Elizabeth Hollrah and Janice Stacy, individually and as personal representatives of the Estate of Laura E. Barker (“Laura’s estate”), appeal the trial court’s order that Laura’s estate pay certain attorney fees incurred by Lisa Barker and Connie Barker. We reverse.

### *Facts and Procedural History*

[2] In a previous memorandum decision, we stated:

Laura E. Barker [(“Laura”)] and Dewey P. Barker [(“Dewey”)] were husband and wife. They had three children: Dewey R. Barker [(“Dewey R.”)], Elizabeth Hollrah, and James Barker [(“James”)]. James predeceased his parents leaving three children, Connie L. Barker [(“Connie”)], Lisa R. Barker [(“Lisa”)], and Victoria Williams.

[Dewey] died on February 13, 2002. The last will and testament of [Dewey] provided, among other bequests, that the residue of his estate [(“Dewey’s estate”)] go to Union Bank & Trust Company to hold to benefit [Laura]. It also provided that, upon termination of the trust, the balance was to be divided among Dewey R., Hollrah, and Connie, Lisa, and Williams.

On April 20, 2019, [Laura] died. [Laura’s] last will and testament bequeathed a certain set of dishes to her grandchild, Lisa, and a certain vase to her grandchild, Connie. Among other bequests, the last will and testament also bequeathed the “rest, residue and remainder of my property, both real and personal of any type whatsoever in equal shares in value, with one share to each of my children Elizabeth J. Hollrah and Dewey R. Barker who shall survive me, and one-share to the issue per stirpes of each of my said named children who shall not survive me.” In her last will and testament, [Laura] nominated and designated her daughter Hollrah to serve as executor and provided that Hollrah may nominate another person to serve as co-executor.

On May 8, 2019, Hollrah filed a Petition for Probate of Will, Issuance of Letters and Unsupervised Administration in the Shelby Circuit Court under cause number 73C01-1905-EU-30. The petition alleged [Laura] was domiciled in Decatur County, Indiana, when she died. Hollrah asserted [Laura's] last will and testament designated her to serve as personal representative, and she nominated Stacy to serve as co-personal representative and noted that Item XI of the will provided for unsupervised administration without bond. That same day, Dewey R. filed a Consent and Authorization to Appointment of Personal Representatives for [Laura's estate].

On May 13, 2019, the Shelby Circuit Court entered an Order Granting Probate of Will, Issuance of Letters and Leave to Administer Estate Without Court Supervision and Without Bond. That same day, the court entered a Notice of Unsupervised Administration stating that Hollrah and Stacy were appointed personal representatives of [Laura's estate]. On June 6, 2019, Hollrah and Stacy filed a Proof of Notice of Administration Upon Beneficiaries.

Meanwhile, on May 23, 2019, Lisa and Connie filed in the Shelby Circuit Court a motion titled "Motion to Transfer Estate to Decatur County, To Remove the Non-Resident Personal Representative Until a Proper Bond Has Been Posted and To Convert To a Supervised Estate." They asserted in part that there were significant questions concerning the handling of the assets of [Dewey's estate] while under the control of [Laura] or Hollrah following the death of [Dewey]. On May 24, 2019, Hollrah and Stacy filed an objection to the motion and asserted that notice and a hearing were required upon petition for removal of a personal representative. On May 28, 2019, Lisa and Connie filed a reply.

On May 30, 2019, Dewey R. filed a Confirmation By Child of Decedent As To Approval of Personal Representatives. That same day, the Shelby Circuit Court entered an order stating that Lisa and Connie had "moved the Court to transfer this matter to Decatur County pursuant to I.C. 29-1-7-1 and Trial Rule 75(B), to remove the non-resident Personal Representative, Elizabeth J. Hollrah, for

failing to comply with I.C. 29-1-10-1 and to convert the matter to supervised administration.” The court ordered “that this matter shall be transferred to Decatur Circuit Court by the Personal Representative within twenty days” and that the “Personal Representative shall pay the costs chargeable for the transfer and shall see that all papers and records filed in this Court are certified and delivered to the Decatur Circuit Court upon transfer.”

On June 7, 2019, Hollrah and Stacy filed a response in the Decatur Circuit Court to Lisa and Connie’s May 28, 2019 reply and asserted in part that Lisa and Connie had no standing because they received the property mentioned in [Laura’s] last will and testament and attached documents allegedly signed by Lisa and Connie indicating receipt of dishes and a vase on May 6, 2019.

On June 18, 2019, the Decatur Circuit Court scheduled a hearing for August 16, 2019, pursuant to Ind. Code § 29-1-10-6, on Lisa and Connie’s motion to remove personal representative. On June 24, 2019, Hollrah and Stacy filed an amended inventory in the Decatur Circuit Court.

On July 11, 2019, the Decatur Circuit Court set a hearing on all pending matters in cause number 16C01-1906-EU-38, the cause from which this appeal arises, at the same time as a [previously scheduled] hearing . . . in the Dewey P. Barker Estate under cause number 16C01-0207-ES-41.<sup>[1]</sup> On July 15, 2019, Hollrah and Stacy filed a motion to reset hearing. On July 16, 2019, Connie and Lisa filed a response to the motion. That same day, the Decatur Circuit Court rescheduled the hearing to August 16, 2019.

On July 25, 2019, the Decatur Circuit Court entered an order stating that “having reviewed the pleadings filed in this cause of action and

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<sup>1</sup> The court’s July 11, 2019 order provided the “matters pending in this Estate . . . are similar to matter[s] pending in the Estate of Dewey P. Barker under Case Number 16C01-0207-ES-41” and scheduled a hearing “on all pending matters in this case at the same time as the hearing on all pending matters in the Dewey P. Barker Estate . . . .” Appellants’ Appendix Volume II at 143.

having conducted a telephonic pretrial with counsel of record [the court] determines that it is in the best interest of all parties involved that an unrelated, independent personal representative be appointed by the Court and this estate administered as a supervised estate.” The court appointed Attorney Don Wickens as the personal representative of [Laura’s estate] and vacated all scheduled hearings.

On August 19, 2019, Hollrah and Stacy filed a motion to reconsider the court’s July 25, 2019 order. On August 21, 2019, Connie and Lisa filed a response. That same day, Hollrah and Stacy filed a reply, and the court entered an order denying the motion to reconsider and stating that “[t]he Court’s removal/appointment was at the suggestion of the parties’ attorneys.”

*Hollrah v. Estate of Barker*, No. 19A-EU-1978, slip op. at 1-2 (Ind. Ct. App. April 6, 2020) (citations omitted).

- [3] Meanwhile, on August 20, 2019, Corinne Finnerty, as the personal representative of Dewey’s estate, filed a claim in Laura’s estate for failure to properly administer Dewey’s estate and for any losses to Dewey’s estate which occurred as a result of Laura’s actions or failures to act in connection with her duties relative to Dewey’s estate.
- [4] Hollrah and Stacy appealed the trial court’s July 25, 2019 order removing them as personal representatives. On April 6, 2020, this Court issued a memorandum decision reversing the July 25, 2019 order and finding the trial court did not hold a hearing on Lisa and Connie’s request to remove Hollrah and Stacy as personal representatives as required by statute. *Hollrah*, No. 19A-EU-1978, slip op. at 3. Wickens filed a petition for allowance of fees stating

this Court's April 6, 2020 decision reinstated Hollrah and Stacy as personal representatives, and the court approved the petition.<sup>2</sup>

[5] In August 2020, Lisa and Connie filed a Motion to Construe Will of Laura E. Barker arguing they had a residual interest in Laura's estate, Hollrah and Stacy filed a response, and in May 2021, Lisa and Connie withdrew their motion.

[6] On January 11, 2021, Dewey's estate, by personal representative Finnerty, filed a motion for summary judgment as to liability related to a certificate of deposit and the sale of certain real property. Finnerty argued that Laura, while acting as the personal representative of Dewey's estate, had deposited money in her own account from a \$23,000 certificate of deposit which was property of Dewey's estate, committing conversion and violating her fiduciary duty, and had improperly executed a warranty deed in 2010 conveying certain real property and receiving \$33,700 when Dewey's estate owned an undivided one-half interest in the property.

[7] On January 21, 2021, Lisa and Connie filed an "Administrative Claim for Breach of Fiduciary Duty and Fraud Under I.C. 29-1-1-24" seeking reimbursement of attorney fees of \$50,159.54. Appellants' Appendix Volume V

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<sup>2</sup> In their brief, Hollrah and Stacy state that Lisa and Connie did not pursue their petition to remove them as personal representatives.

at 2. They argued that, without their intervention, the assets of Dewey's estate would not have been recovered.

[8] On June 18, 2021, the trial court issued an order finding that Laura, as the personal representative of Dewey's estate, breached her fiduciary duty to Dewey's estate as it related to the transfer of the \$23,000 certificate of deposit to her personal account and to the execution of a deed in her individual capacity for property which was owned in part by Dewey's estate and personally receiving \$33,700. The court scheduled a hearing for June 29, 2021, on the issue of damages for the breaches of fiduciary duty and on Lisa and Connie's administrative claim for attorney fees.

[9] On June 25, 2021, Hollrah and Stacy filed a response arguing the January 21, 2021 claim was not for expenses of administration of Laura's estate. They argued Lisa and Connie had at all times been adverse parties to Laura's estate and the claim sought reimbursement of attorney fees incurred in Lisa and Connie's litigation against Laura's estate. They argued Lisa and Connie were residuary beneficiaries of Dewey's estate and thus would benefit, to the detriment of Laura's estate, if Laura were found liable for any amounts.

[10] On June 29 and August 24, 2021, the court held a hearing under Cause Nos. 38 and 41. The court admitted the deposition of one of Lisa and Connie's attorneys. When asked "[y]our billing invoice doesn't delineate between what

work was performed for the Laura Barker Estate, and what work was performed for the Dewey Barker Estate,” he replied “[i]t doesn’t delineate it,” “I think probably everything was necessary – what I did in Laura was probably important to Dewey; and what was done in Dewey was important to the Laura, but it’s not broken down that way,” and “[a] lot of the things that I would have done would have been really for both estates.” Interested Parties’ Exhibit 1C at 39-40. When asked “[s]o you saw both estates as being one matter, more or less,” he answered “I did. I think the whole process was to make sure that the assets were properly accounted for; and in order to do that, the litigation was going to be involving both estates.” *Id.* at 40.

[11] On October 6, 2021, the trial court entered an order which found in part that, following the appearance and efforts of Lisa and Connie’s counsel, Laura’s estate repaid the \$23,000 certificate of deposit to Dewey’s estate and tendered \$11,874.87 related to the 2010 real property transaction and that, after the appointment of Finnerty, certain Anthem stock valued at over \$248,826.38 in 2019 was transferred to Dewey’s estate. The court found that, without the intervention of Lisa and Connie and the efforts of their attorneys, the statutory obligation of restoring co-mingled assets to Dewey’s estate would not have occurred. The order stated the court “grant[ed] the administrative expense



claim” of Lisa and Connie in the amount of \$50,169.54. Appellants’ Appendix Volume VI at 149.<sup>3</sup>

### *Discussion*

- [12] The trial court’s findings control as to the issues they cover and a general judgment will control as to the issues upon which there are no findings. *Montgomery v. Estate of Montgomery*, 127 N.E.3d 1238, 1243 (Ind. Ct. App. 2019) (citing *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). Findings are clearly erroneous when the record contains no facts to support them. *Id.* A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Id.*
- [13] Hollrah and Stacy argue the legal fees incurred by Lisa and Connie in contesting the filings of the personal representatives were not expenses of administration of Laura’s estate. Lisa and Connie assert that their attorney fees were expenses of administration of Laura’s estate and their efforts, including those “forcing the accounting for assets that should be divested to the Dewey Barker Estate,” brought Laura’s estate “into accord with the requirements of Indiana law.” Appellees’ Brief at 26.

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<sup>3</sup> The trial court entered a separate judgment of \$97,314.49 against Laura’s estate and in favor of Dewey’s estate related to damages. The judgment included attorney fees and expenses of \$27,607.30 and expenses for experts of \$4,350. Hollrah and Stacy have initiated a separate appeal of the judgment in favor of Dewey’s estate. *See* No. 21A-ES-2433.

[14] This Court has stated the personal representative must pay the expenses of administration. *See Konger v. Schillace*, 875 N.E.2d 343, 350 (Ind. Ct. App. 2007) (citing *Trinkle v. Leeney*, 650 N.E.2d 749, 752 (Ind. Ct. App. 1995) (citing Ind. Code § 29-1-13-1)). Ind. Code § 29-1-14-10(f) provides: “Claims for expenses of administration may be allowed upon application of the claimant or of the personal representative, or may be allowed at any accounting, regardless of whether or not they have been paid by the personal representative.” Expenses of administration “generally include all the costs of preserving estate assets incurred after the decedent’s death.” *Konger*, 875 N.E.2d at 350 (citing *Trinkle*, 650 N.E.2d at 752). Ind. Code § 29-1-1-3(a)(12) provides:

“Expenses of administration” includes expenses incurred by or on behalf of a decedent’s estate in the collection of assets, the payment of debts, and the distribution of property to the persons entitled to the property, including funeral expenses, expenses of a tombstone, expenses incurred in the disposition of the decedent’s body, executor’s commissions, attorney’s fees, and miscellaneous expenses.

[15] Here, the attorney fees incurred by Lisa and Connie did not constitute expenses of administration of Laura’s estate. The personal representatives of Laura’s estate did not authorize Lisa and Connie’s fees, and the various filings and requests by Lisa and Connie did not serve to preserve the assets of Laura’s estate. The efforts resulting in the transfer of assets from Laura’s estate to Dewey’s estate were designed and served to preserve the assets of Dewey’s estate, not Laura’s estate. We conclude on these facts that the attorney fees

incurred by Lisa and Connie did not constitute expenses of administration of Laura's estate.<sup>4</sup>

[16] For the foregoing reasons, we reverse the trial court's order that Laura's estate pay Lisa and Connie's attorney fees.

[17] Reversed.

Mathias, J., and Molter, J., concur.

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<sup>4</sup> Further, we note that Ind. Code § 29-1-10-14(b), which was cited by the trial court, relates to actions on probate and was adopted to "encourage the probating or the resisting of the probate of a will where there are reasonable grounds or probable cause for such proceedings in good faith, without requiring any party to underwrite the expense associated with loss," *In re Estate of Goldman*, 813 N.E.2d 784, 787 (Ind. Ct. App. 2004) (citation omitted). Lisa and Connie did not seek fees in proceedings to contest the validity of Laura's will and were not entitled to attorney fees from Laura's estate based on the statute. Also, Lisa and Connie's attorneys did not provide services for Laura's estate "at the instance of the personal representative" and thus were not entitled to compensation out of Laura's estate pursuant to Ind. Code § 29-1-10-13 (providing "[a]n attorney performing services for the estate at the instance of the personal representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable").