

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Matter of the
Guardianship of Herbert H.
Carter, Adult

Tina Bedwell,
Appellant-Respondent,

v.

Sandra Galicia,
Appellee-Petitioner

March 14, 2023

Court of Appeals Case No.
22A-GU-2374

Appeal from the
Hancock Superior Court

The Honorable
Thomas Clem, Senior Judge

The Honorable
D.J. Davis, Judge

The Honorable
Cody Coombs, Magistrate

Trial Court Cause No.
30D01-2105-GU-25

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Tina Bedwell was the attorney in fact for her father. Her sister, Sandra Galicia, filed an action seeking, among other things, a guardian for their father and an accounting of the transactions Bedwell had entered on their father’s behalf. Although the parties resolved most of the issues by agreement, they agreed that Galicia could pursue an award of attorney’s fees. Galicia later did so, and the trial court ordered Bedwell to pay \$12,403 in attorney’s fees. Bedwell now challenges that award on several grounds. We affirm.

Facts and Procedural History

- [2] Herbert H. Carter had five children, including Bedwell and Galicia. On November 1, 2017, Carter executed a General Durable Power of Attorney designating Bedwell as his attorney in fact, which would become effective “upon a determination of [Carter’s] physician that [he is] unable to handle [his] own affairs.” Appellant’s App. Vol. II p. 22. Carter’s physician made such a determination on May 16, 2018.
- [3] About three years later, on April 13, 2021, Galicia, represented by counsel, sent Bedwell a letter asking her to produce, within sixty days, a written accounting of all transactions she had entered on Carter’s behalf pursuant to Indiana Code section 30-5-6-4(c). Section 30-5-6-4(c) provides that the “attorney in fact shall render a written accounting if an accounting is ordered by a court or requested

by: . . . (3) a child of the principal, unless a court finds that such a rendering is not in the best interests of the principal.” Galicia advised Bedwell of the consequences of not timely complying:

Failure to fully and timely comply with this request will result in a writ of mandamus being requested by a court of competent jurisdiction along with your payment of court costs and attorney fees, in addition to any other judicial relief the court may deem appropriate.

Id. at 24.

[4] On April 27, Bedwell, through an attorney, sent Galicia a letter claiming that she was not Carter’s attorney in fact and therefore would not be providing an accounting. *Id.* at 14. About a week later, on May 5, Galicia filed a verified petition in Hancock Superior Court asking the trial court to grant the following relief:

A. Revoke Mr. Carter’s 2017 General Durable Power of Attorney.

B. Appoint a temporary guardian over Mr. Carter during the pendency of this matter.

C. Issue a temporary restraining order preventing Mrs. Bedwell from having unsupervised contact with Mr. Carter.

D. Issue a temporary restraining order preventing Mrs. Bedwell from accessing, conveying, or encumbering any property or funds belonging to Mr. Carter.

E. Issue a temporary restraining order preventing Mrs. Bedwell from conveying or encumbering any property in her name or in her name with another person, save for reasonable and customary expenses, until a full accounting of Mr. Carter's property has been completed and all assets accounted for.

F. Issue a writ of mandamus compelling Mrs. Bedwell to render to this Court a full accounting of all transactions entered into by her on behalf of Mr. Carter and of all of Mr. Carter's property and funds from November 1, 2017 to present, and to do so within thirty (30) days.

G. Issue an order awarding her attorney fees for having to bring Tina Bedwell into compliance with Ind. Code § 30-5-6-4.

Id. at 18.

[5] On June 1, Bedwell, represented by a **different** attorney, filed a response claiming that, contrary to her April 27 letter, she was actually Carter's attorney in fact and did not have any objections to providing an accounting of her transactions as Carter's power of attorney. *Id.* at 26. Bedwell, however, objected to the revocation of the power of attorney, the appointment of a guardian, and the issuance of a temporary restraining order. *Id.* at 29.

[6] The trial court set a hearing for June 3. That day, the parties reached the following agreement, which was read on the record and approved by the court:

1. Tina Bedwell will file with this court a full and complete accounting pursuant to Ind. Code § 30-5-6-4 no later than July 14, 2021.

2. Tina Bedwell shall remain as attorney in fact for Herbert Carter solely for the purpose of and with the power to make his health care decisions; all other powers of attorney in fact are shall [sic] be dissolved upon the appointment of a guardian as described below.

3. The parties agree that a guardian of the estate of Mr. Carter shall be appointed no later than thirty days (30) days from the date of this agreement, and that said guardian shall be a neutral, third party attorney who specializes in elder guardianship; if the parties cannot agree on a guardian by such time, each shall submit one name to the court no later than forty (40) days from this agreement, and the court shall select the guardian.

4. The parties agree that Mr. Carter shall remain at his current residence.

5. The parties agree that any of Mr. Carter's children may visit him so long as they provide Tina Bedwell a minimum two (2) hour notice via text message.

6. The parties agree that Tina Bedwell shall not enter Mr. Carter's home when being visited by his other children, but Tina Bedwell may remain on any other portion of her property.

7. The parties agree that Sandra Galicia reserves her right to seek reimbursement for her attorney fees in bringing this action.

8. Both parties agree that, should any dispute arise under this agreement, each party shall submit the matter to Mr. Carter's neutral guardian for resolution prior to seeking redress in a court of law.

Id. at 37-38 (emphasis added).

[7] Bedwell filed the accounting on July 14. Four days later, Carter passed away (before a guardian was appointed).

[8] On April 4, 2022, Galicia moved for attorney’s fees under Indiana Code section 30-5-6-4(h)¹, which provides:

If an attorney in fact fails to deliver an accounting as required under this section, the person requesting the accounting may initiate an action in mandamus to compel the attorney in fact to render the accounting. The court may award the attorney’s fees and court costs incurred under this subsection to the person requesting the accounting if the court finds that the attorney in fact failed to render an accounting as required under this section without just cause.

Galicia alleged that she was entitled to attorney’s fees “as a result of Tina Bedwell’s violation of Ind. Code § 30-5-6-4(c)” for failing to timely provide an accounting. *Id.* at 63.

[9] The trial court set a hearing for June 17. Galicia’s counsel prepared to present evidence about whether Galicia was entitled to attorney’s fees under Section 30-5-6-4(h). Three days before the hearing, however, Bedwell moved “to limit the scope of testimony to be heard at the upcoming June 17th hearing on the

¹ Galicia also requested attorney’s fees under Indiana Code section 30-5-9-11. As explained below, Bedwell conceded that Galicia was entitled to attorney’s fees under Section 30-5-6-4(h). As such, we do not address Section 30-5-9-11.

motion for attorney fees to **just the reasonableness of the fees requested.**” *Id.*
at 65 (emphasis added). Bedwell’s motion alleged:

4. Without admitting any wrongdoing on her part, **Ms. Bedwell will admit that a motion for guardianship and for a writ of mandamus was filed by Ms. Galicia and that under Indiana Code § 30-5-6-4(h) the Court may grant attorney fees and costs.**

5. We contend the only issue that should be before the Court is the reasonableness of the fees requested.

* * * * *

11. **Since Tina Bedwell is not contesting that a motion for guardianship and for a writ of mandamus was filed and understands that the Court may grant reasonable attorney fees, then in the interest of the Court’s time, the testimony should be limited to the reasonableness of fees and all other the [sic] testimony . . . should be precluded.**

Id. at 65, 67 (emphases added).

[10] At the beginning of the hearing on June 17, the parties discussed that Bedwell’s motion to limit the scope of the testimony was still pending. Bedwell’s attorney reiterated Bedwell’s position that the hearing should be limited to the issue of the reasonableness of the attorney’s fees:

We would just like to limit the scope of the testimony to the reasonableness of fees **as my client is prepared to pay whatever the Judge deems reasonable.**

Tr. p. 4 (emphasis added). Galicia's attorney questioned not being allowed to present evidence about whether Galicia was entitled to attorney's fees under Section 30-5-6-4(h). That said, Galicia's attorney stated that if Bedwell would agree that Galicia was entitled to attorney's fees, then Galicia would not push the matter:

If Ms. Bedwell wants to admit on the record that those conditions of precedence ha[ve] been satisfied then I think we're totally fine moving forward with just the reasonableness of the fees.

Id. at 5. The following colloquy then occurred:

[BEDWELL'S ATTORNEY]: Your Honor my client without admitting intentional wrongdoing will **admit that she received their request for the accounting and that the accounting was not delivered to the Petitioner in that timely manner and that the Petitioner did have [to] file the Motion for Guardianship and the Motion for Writ of Mande – Mandamus to compel the accounting. She's ready to accept her consequences** and I think the fact that she's admitting . . .

THE COURT: Cause she was the attorney in fact at the time and she just didn't do it?

[BEDWELL'S ATTORNEY]: She did not yeah at that point she had . . .

THE COURT: That's – that's all I need to know. I – I think basically counsel with that uh statement you – you probably just need to go ahead and – and put – put your at time in play [sic].

The statutes are pretty clear I've read them uh and I agree I we [sic] don't need to put on a[n] hour and half hearing. The old thing when you hit oil you quit drilling kind of thing.

[GALICIA'S ATTORNEY]: I just have real quick testimony from three witnesses Judge

THE COURT: But she acknowledged today that she is in fact attorney in fact that she's willing to accept the consequences.

[GALICIA'S ATTORNEY]: Okay.

THE COURT: What – what more do you need[?] Like I said when you hit oil maybe you need to quit drilling.

[GALICIA'S ATTORNEY]: Just so long as . . .

THE COURT: I like to say things like that it makes me look kind of . . .

[GALICIA'S ATTORNEY]: As long as the Court's satisfied that it can make a decision on reasonableness.

THE COURT: I'm – I'm satisfied. I'm not going – I'm not going to make her.

[GALICIA'S ATTORNEY]: Okay.

THE COURT: When she says hey I did it. I'm – I'm done.

[GALICIA'S ATTORNEY]: Okay.

THE COURT: Okay? All right. Having said that we're going to note uh for the record then that we're here on this Motion for Attorney Fees. We're going to note that the uh attorney in fact in this case has in fact acknowledged that status and that she failed to comply with the statutory responsibilities. And that we're here today just to uh determine the reasonable attorney fees as a result of that conduct. Now I've said that kind of concise without putting to[o] much blame on [Bedwell]. For whatever might happen later just to go ahead and get forward today. I think that takes care of you it takes care of you so uh go ahead.

Id. at 5-7 (emphasis added).

[11] Galicia's attorney then introduced into evidence an affidavit and invoices totaling \$12,403. Bedwell challenged the reasonableness of the attorney's fee on four grounds: (1) Galicia's attorney had never done a guardianship case before and had a learning curve, resulting in inflated fees; (2) Galicia's attorney drove from Indianapolis to the Putnam County courthouse to obtain documents concerning the sale of Carter's home rather than trying to obtain them online; (3) Galicia's attorney drove from Indianapolis to Greenfield to obtain a police report rather than trying to get it online; and (4) Galicia was not entitled to attorney's fees for the time her attorney spent preparing and litigating the motion for attorney's fees. Galicia's attorney responded that he tried to obtain the real-estate records online but couldn't and that driving to Greenfield was the only way he knew how to get police reports from that county. Galicia's attorney also responded that there was no language in Section 30-5-6-4(h) stating that attorney's fees could not be collected for time spent preparing and litigating a

motion for attorney's fees. The trial court ordered Bedwell to pay the full amount requested, \$12,403. Appellant's App. Vol. II p. 74.

[12] Bedwell hired **yet another** attorney and filed a motion to correct error. In the motion, Bedwell made some of the same arguments from the June 17 hearing, such as that Galicia's attorney had never done a guardianship before and should have obtained some documents online rather than driving to other counties. Bedwell also made some new arguments. She argued that the trial court erred in awarding **any** attorney's fees because no evidence was presented that Galicia was entitled to attorney's fees under Section 30-5-6-4(h). In the alternative, she argued that Galicia was entitled to just \$2,250 in attorney's fees because Section 30-5-6-4(h) only allows attorney's fees for seeking an accounting (and not for the other things that Galicia had requested, like appointment of a guardian). Galicia filed a response, and a hearing was held. The court did not rule on the motion to correct error, and it was deemed denied.

[13] Bedwell now appeals.

Discussion and Decision

[14] Bedwell contends the trial court erred in ordering her to pay \$12,403 in attorney's fees. Bedwell first argues the trial court erred in ordering her to pay **any** attorney's fees. The gist of Bedwell's argument is that Galicia is not entitled to attorney's fees under Section 30-5-6-4(h) because no evidence was presented

to support such an award. Galicia responds that Bedwell cannot raise this issue on appeal because she agreed in the trial court that Galicia was entitled to attorney's fees under Section 30-5-6-4(h) and that the only issue to be determined was the amount of such fees.

- [15] “In general ‘waiver’ connotes an ‘intentional relinquishment or abandonment of a known right.’” *Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). “[A]ppellate review presupposes that a litigant’s arguments have been raised and considered in the trial court.” *Id.* “To abandon that principle is to encourage the practice of ‘sandbagging’: suggesting or permitting, for strategic reasons, that the trial court pursue a certain course, and later—if the outcome is unfavorable—claiming that the course followed was reversible error.” *Id.* (quotation omitted).
- “Declining to review an issue not properly preserved for review is essentially a cardinal principal of sound judicial administration.” *Id.* (quotation omitted).

- [16] Bedwell has waived this issue for taking a different position below. Three days before the hearing to address Galicia’s request for attorney’s fees, Bedwell moved to limit the scope of the testimony “to just the reasonableness of the fees requested.” Bedwell admitted that “under Indiana Code § 30-5-6-4(h) the Court may grant attorney fees and costs” and asked the court not to allow any witnesses to testify about Galicia’s entitlement to fees under the statute. At the hearing, Galicia’s attorney worried about not being able to present evidence about Galicia’s entitlement to attorney’s fees. Bedwell’s attorney, however, reinforced the position that Bedwell had taken just a few days earlier in the

written motion and emphasized that Bedwell was ready “to accept her consequences.” Tr. p. 5. In other words, Bedwell agreed that Galicia was entitled to attorney’s fees under Section 30-5-6-4(h) in exchange for Galicia not being able to present evidence to support such an award. The trial court granted Bedwell’s request, thereby limiting the testimony at the hearing. Having received the benefit she sought, Bedwell cannot now argue that Galicia is not entitled to attorney’s fees under Section 30-5-6-4(h) because no evidence was presented to support such an award.²

[17] Next, Bedwell argues that the trial court should have ordered her to pay only some of the \$12,403 in attorney’s fees. Specifically, Bedwell claims that Section 30-5-6-4(h) only allows attorney’s fees “for failing to render an accounting” and not “for any of the issues raised in Galicia’s Petition outside of the request for an accounting.” Appellant’s Br. p. 17. As noted above, Section 30-5-6-4(h) provides that “[t]he court may award the attorney’s fees and court costs incurred under this subsection to the person requesting the accounting if the court finds that the attorney in fact failed to render an accounting as required under this section without just cause.”

² In a related argument, Bedwell argues that Galicia is not entitled to attorney’s fees because she is not a “prevailing party.” Although there is a statute that authorizes attorney’s fees for a “prevailing party,” *see* Ind. Code § 34-52-1-1, that statute was not relied on here. In addition, Bedwell cites cases discussing “prevailing party,” but in those cases there was a contract between the parties awarding attorney’s fees to the prevailing party. There is no such contract here.

[18] Even assuming that Section 30-5-6-4(h) only allows attorney's fees for failing to provide an accounting, Bedwell has waived this issue for taking a different position at the June 17 hearing. That is, Bedwell's attorney conceded that Galicia was entitled to attorney's fees for having to file for the guardianship **and** the accounting: "The statute allows for reasonable fees in regards to the motion for filing a Guardianship and for the Writ of . . . mandamus" Tr. p. 10. Thus, Bedwell agreed that Galicia was entitled to attorney's fees for more than just the accounting. In addition, although Bedwell challenged the amount of attorney's fees on four grounds, **none** of them was that Galicia was only entitled to attorney's fees for the accounting. This is strong indication that Bedwell agreed that Galicia was entitled to attorney's fees for more than just the accounting. Otherwise, she would have challenged Galicia's attorney's time entries that were unrelated to the accounting.³

[19] Bedwell also argues that the trial court erred in ordering her to pay attorney's fees for the eight hours Galicia's attorney spent preparing and litigating the motion for attorney's fees. Bedwell claims the language of Section 30-5-6-4(h) prohibits such fees but does not point to what language she believes says that. In her appellee's brief, Galicia cites cases holding that plaintiffs are generally entitled to attorney's fees for filing and litigating a fee petition. *See, e.g., White v.*

³ After obtaining new counsel, Bedwell raised this issue in the motion to correct error. But as Galicia points out, a party cannot raise new issues in a motion to correct error. *See Troxel v. Troxel*, 737 N.E.2d 745, 752 (Ind. 2000), *reh'g denied*.

Szalasny, 191 N.E.3d 260 (Ind. Ct. App. 2022). Bedwell, however, did not respond to them in her reply brief. Bedwell has waived this argument for failing to develop and support it. *See* Ind. Appellate Rule 46(A)(8)(a).

[20] Finally, Bedwell argues the trial court erred in ordering her to pay the full amount of the attorney's fees because that amount is unreasonable. A trial court's decision about the amount of an attorney's fee award is reviewed under an abuse-of-discretion standard. *White*, 191 N.E.3d at 263. An abuse of discretion occurs when the trial court's award is clearly against the logic and effect of the facts and circumstances before the court. *Id.* When determining the reasonableness of a fee, our Rules of Professional Conduct provide a non-exhaustive list of factors to be considered, including:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

Ind. Professional Conduct Rule 1.5.

[21] Bedwell claims that the full amount is unreasonable because Galicia's attorney drove to different counties to obtain some documents when he could have obtained them online instead. But as Galicia's attorney stated at the hearing, he tried to get the real-estate records online but couldn't and that driving to Greenfield was the only way he knew how to get police reports from that county. Bedwell also argues that her search of mycase.IN.gov didn't show that Galicia's attorney had ever done a guardianship case before, resulting in inflated fees from a learning curve. But even assuming Galicia's attorney had never done a guardianship case before, this case involved other issues and required "significant" time to "unravel" the facts. Ex. p. 4. Moreover, Galicia's attorney has extensive experience in several areas of the law. *Id.* at 3. The trial court did not abuse its discretion in ordering Bedwell to pay \$12,403 in attorney's fees.

[22] Affirmed.

Tavitas, J., and Foley, J., concur.