

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

In re Guardianship of Leon Bloom, an incapacitated person. Marc J. Soss, individually, Appellant/Cross-Appellee, v. Marshall Bloom, individually, Appellee/Cross-Appellant, and Robert M. Elliott, as Trustee of the Leon Bloom Revocable Living Trust u/a/d 11/18/1998, as Restated on 10/22/2009, Appellee.

In re Guardianship of Bloom, No. 2D18-4441 (Fla. Dist. Ct. App. June 3, 2020) · No. 2D18-4441

SUMMARY

A putative successor trustee who knew or should have known he was not an appropriate trustee and whose appointment was never confirmed by the court is not entitled to compensation for services rendered. The trustee bears the burden of proving that all expenses, including attorney's fees, were reasonably necessary and incurred for the benefit of the trust; failure to meet this burden requires return of the funds. The trial court abused its discretion by declining to order return of trust funds paid to the trustee's personal attorney, as those payments were for the trustee's own benefit, not the trust's.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	ATKINSON; SLEET; SALARIO
JURISDICTION	Florida
DOCKET	2D18-4441
DISPOSITION	affirmed_in_part_reversed_in_part_and_remanded
PROCEDURAL POSTURE	Appeal and cross-appeal from an order directing the former putative successor trustee to return funds to a trust in a guardianship proceeding.
STANDARD OF REVIEW	abuse of discretion
PRECEDENTIAL VALUE	published
PARTIES	Marc J. Soss v. Marshall Bloom, Robert M. Elliott

TOPICS

guardianships trusts attorney fees fiduciary duty appellate procedure

PRACTICE AREAS

Guardianship

Trusts and Estates

Fiduciary Duty

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by not ordering Soss to return all funds taken from the Trust, specifically the \$63,791.25 paid to his attorney Waskom.
2. Whether the circuit court properly directed Soss to return the \$25,360 he paid himself.

HOLDINGS

1. A putative trustee who knew or should have known he was not an appropriate trustee and whose appointment was never confirmed by the court is not entitled to compensation for services rendered.
2. When a trustee fails to prove that payments to his personal attorney were for the benefit of the trust and not for his own benefit, the trial court abuses its discretion by failing to order the return of those funds.

KEY QUOTATIONS

“When a trustee seeks to charge a trust corpus with an expense incurred by him, including attorney fees, the burden of proof is upon the trustee to demonstrate that the expense was reasonably necessary and that such expense was incurred for the benefit of the trust, and not for his own benefit nor the benefit of others.” (at 8)

“Given that Soss failed to demonstrate that his payments to Waskom were ‘for the benefit of the trust, and not for his own benefit,’ the circuit court abused its discretion in failing to order Soss to return those funds to the Trust.” (at 8-9)

FACTUAL BACKGROUND

Leon Bloom executed a trust naming his wife Dorothy as secondary beneficiary and his attorney Robert Johnson as Successor Trustee. After Leon became temporarily incapacitated, Johnson assumed trusteeship. A guardianship proceeding was initiated, and a global settlement added the Trust as a party, appointed Caldwell Trust Company as Successor Trustee, and accepted Johnson's resignation. After Leon's death, Caldwell resigned; Dorothy purported to appoint her lawyer Marc J. Soss as Successor Trustee, but the appointment was never confirmed by the court. Soss acted as putative trustee and withdrew approximately \$127,860 in fees and attorney payments before he was removed for an irreconcilable conflict of interest.

PROCEDURAL HISTORY

Guardianship proceeding was filed for Leon Bloom. A global settlement was reached, and Caldwell Trust Company was appointed Successor Trustee but later resigned. Dorothy Bloom named Marc J. Soss as Successor Trustee, but his appointment was never confirmed and he was later removed by the circuit court due to an irreconcilable conflict of interest. The circuit court ordered Soss to return some, but not all, of the funds he withdrew from the Trust. Soss appealed; Marshall Bloom cross-appealed the denial of return of all funds.

DISPOSITION

affirmed_in_part_reversed_in_part_and_remanded

REMAND INSTRUCTIONS

The circuit court shall enter an order requiring Soss to return all of the funds he paid to his attorney.

CASES CITED

- Miller v. Fla. Ins. Guar. Ass'n, 200 So. 3d 200, 203 (Fla. 2d DCA 2016)
- Grapski v. City of Alachua, 134 So. 3d 987, 989 (Fla. 1st DCA 2012)
- In re Guardianship of Sitter, 779 So. 2d 346, 348 (Fla. 2d DCA 2000)
- Roger Ortmann, as Personal Representative of the Estate of Marlene L. Sloan, deceased, Appellant, v. Heidi Bell and Daniel Hemphill, Appellees., Ortmann v. Bell, 100 So. 3d 38, 46 (Fla. 2d DCA 2011)
- Charles Barnett v. William R. Barnett, Barnett v. Barnett, 340 So. 2d 548, 550 (Fla. 1st DCA 1976)
- McCormick v. Cox, 118 So. 3d 980, 987 (Fla. 3d DCA 2013)