

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Glantz and Glantz, P.A. v. Chinchilla

Glantz and Glantz, P.A. v. Chinchilla, 17 So. 3d 711 (Fla. 4th DCA 2009) · No. No. 4D07-3279 · Decided June 3, 2009

SUMMARY

The Florida Fourth District Court of Appeal held that a probate court abused its discretion by applying a prepaid legal-services discount twice when awarding attorney's fees. The court reversed and remanded for an award of \$12,400 in attorney's fees plus costs.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	May, J.; Taylor, J.; Shahood, J.; George A. Shahood, Senior Judge
JURISDICTION	Florida
DECIDED	June 3, 2009
DOCKET	No. 4D07-3279
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	A law firm appealed a probate court order awarding it \$6,885 in attorney's fees, representing 51% of the expert's \$13,500 reasonable-fee estimate, and the denial of rehearing.
STANDARD OF REVIEW	Orders on attorney's fees are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Florida Fourth District Court of Appeal opinion
PARTIES	Glantz and Glantz, P.A. v. Barbara Chinchilla

TOPICS

probate procedure probate will contests remedies standard of review

PRACTICE AREAS

probate attorney's fees appellate procedure

QUESTIONS PRESENTED

1. Whether the probate court abused its discretion by applying a second 51% reduction to an expert's reasonable-fee estimate when the estimate already reflected the prepaid legal services program's

discounted hourly rate.

2. Whether the law firm was entitled to an award of \$12,400 in attorney's fees plus costs.

HOLDINGS

1. The probate court abused its discretion by reducing the reasonable fee by an additional 51% after accepting that the prepaid-program hourly rate and the resulting \$13,500 fee were reasonable.
2. The law firm was entitled to an award of \$12,400 in attorney's fees plus costs.

KEY QUOTATIONS

“Nevertheless, the trial court inexplicably reduced the reasonable fee by another 51%. In doing so, it abused its discretion.” (713)

“We therefore reverse and remand the case to the trial court to award the law firm \$12,400 in attorney's fees plus costs.” (713)

FACTUAL BACKGROUND

The personal representative of an estate belonged to a prepaid legal services program and retained Glantz and Glantz, P.A. to handle estate matters. The firm's attorney documented 123 billable hours representing the personal representative in a will contest, pursuing a motion to disqualify another attorney for a conflict of interest, and working with a curator regarding the sale of estate property. The prepaid program rate was \$115 per hour, a 51% discount from the attorney's normal \$225 hourly rate, and the firm charged \$12,400 plus costs. Although the expert opined that \$13,500 was a reasonable fee based on the already-discounted rate, the trial court reduced that amount by another 51%.

PROCEDURAL HISTORY

The personal representative of an estate retained the law firm through a prepaid legal services program. After the personal representative questioned the firm's billing, the probate court held an evidentiary hearing and awarded \$6,885 in fees. The law firm's motion for rehearing was denied, and the firm appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the fee order and remand for the trial court to award Glantz and Glantz, P.A. \$12,400 in attorney's fees plus costs.

CASES CITED

- Bitterman v. Bitterman, 685 So. 2d 861, 865 (Fla. 4th DCA 1996), rev'd on other grounds, 714 So. 2d 356 (Fla. 1998)
- Sitomer v. First of America Bank-Central, 667 So. 2d 456, 458 (Fla. 4th DCA 1995)

- Estate of Brock, 695 So. 2d 714, 718 (Fla. 1st DCA 1996)
- Sotolongo v. Brake, 616 So. 2d 413, 413-14 (Fla. 1992)
- Bitterman v. Bitterman, 714 So. 2d 356 (Fla. 1998)

CITED IN

- Glantz and Glantz, P.A. v. Chinchilla, Glantz & Glantz, P.A. v. Chinchilla, 17 So. 3d 711 (Fla. 4th DCA 2009)

OPINION

MAY, J.

17 So.3d 711 (2009) GLANTZ AND GLANTZ, P.A., Appellant, v. Barbara CHINCHILLA, Appellee. No. 4D07-3279. District Court of Appeal of Florida, Fourth District. June 3, 2009. *712 Mitchell Haymes of Law Offices of Glantz & Glantz, P.A., Plantation, for appellant. Barbara Chinchilla, Staten Island, pro se. MAY, J. A law firm appeals an award of attorney's fees for representation of its client through a prepaid legal services program.

The firm argues that the trial court erred in reducing the fee to 51% of the amount presented by the expert as a reasonable fee. We agree and reverse. The personal representative of an estate was a member of prepaid legal services program.

The program referred her to the law firm of Glantz & Glantz, P.A., where the personal representative retained Mark Mastrarrigo to handle estate matters. Subsequently, the personal representative wrote a letter to the court expressing her concern about the law firm's billing, prompting the trial court to conduct an evidentiary hearing. Testimony revealed that the attorney documented 123 billable hours defending a will contest, filing and pursuing a motion to disqualify another attorney based on a conflict of interest, and working with a curator in connection with the sale of the estate's property.

Pursuant to the prepaid legal services program, the attorney charged \$115 per hour, a 51% discounted rate from the normal billing rate of \$225 per hour. The total charges amounted to \$12,400 plus costs. The law firm submitted an affidavit from an expert attesting to the reasonableness of the fees and costs, specifically that \$13,500 was a reasonable fee for the services rendered.

Testimony evidenced that *713 this amount was based on the discounted hourly rate and not on the normal billing rate. The court entered an order awarding the law firm fees in the amount of \$6885, 51% of the \$13,500 reasonable fee attested to by the expert.

The court denied the law firm's motion for rehearing, from which the law firm now appeals. We review orders on attorney's fees for an abuse of discretion. Bitterman v. Bitterman, 685 So.2d 861, 865 (Fla. 4th DCA 1996), rev'd on other grounds, 714 So.2d 356 (Fla.1998); Sitomer v. First of America Bank-Central, 667 So.2d 456, 458 (Fla. 4th DCA 1996).

The law firm argues that the trial court abused its discretion in applying the 51% discount to the reasonable fee attested to by the expert without considering that the reasonable hourly rate had already been discounted by 51% pursuant to the prepaid legal services program.

We agree. Attorneys representing probate estates are entitled to receive reasonable compensation. § 733.6171, Fla. Stat. (2007). "[A] probate court should consider the nature of the services rendered and the necessity for their performance, together with the reasonableness of the charges." *Estate of Brock*, 695 So.2d 714, 718 (Fla. 1st DCA 1996). Section (5) enumerates nine specific factors a court must consider in determining a reasonable fee. § 733.6171(5)(a), Fla. Stat. Here, the prepaid legal services contract rate of \$115 per hour is presumed to be reasonable.

See, e.g., *Sotolongo v. Brake*, 616 So.2d 413, 413-14 (Fla.1992). The 123 hours expended is also reasonable given that the attorney testified to the services rendered by the law firm in representing the personal representative in a will contest, a motion to disqualify another lawyer, and work done with the curator.

The trial court accepted the expert's affidavit that \$13,500 was a reasonable, already discounted fee. The trial court did not find the hours or the discounted rate to be unreasonable. Nevertheless, the trial court inexplicably reduced the reasonable fee by another 51%.

In doing so, it abused its discretion. We therefore reverse and remand the case to the trial court to award the law firm \$12,400 in attorney's fees plus costs. Reversed and Remanded. TAYLOR, J., and SHAHOOD, GEORGE, A., Senior Judge, concur.