

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Rebecca Geary, as Personal Representative of the Estate of Janice White, Appellant, v. Butzel Long, P.C., Jennifer Bova, Richard Geary, David Geary, and Peter Geary, Appellees.

Rebecca Geary, as Personal Representative of the Estate of Janice White, Appellant, v. Butzel Long, P.C., Jennifer Bova, Richard Geary, David Geary, and Peter Geary, Appellees., 13 So. 3d 149 (Fla. 4th DCA 2009) (Fla. 4th DCA 2009) · No. 4D08-1622

SUMMARY

In Geary v. Butzel Long, P.C., the Florida Fourth District Court of Appeal held that under section 733.6175(2), Florida Statutes, a probate court may assess attorney’s fees against a personal representative’s share of the estate not only for bad faith, but also where the litigation pursued is frivolous or unreasonable. The court affirmed the trial court’s apportionment of fees incurred in the “fees on fees” litigation as frivolous, but reversed the assessment of fees for the initial defense, which the trial court found may have been justified. The decision clarifies that before apportioning fees against a beneficiary or personal representative, there must be a finding of bad faith, wrongdoing, or frivolous litigation.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner; Stevenson; Damoorgian
JURISDICTION	Florida
DOCKET	4D08-1622
DISPOSITION	affirmed in part, reversed in part, and remanded
PROCEDURAL POSTURE	Appeal from probate court order holding personal representative personally responsible for estate legal fees and ordering disgorgement of fees paid to herself and her attorney.
STANDARD OF REVIEW	Abuse of discretion (implicit, as court reviews trial court's authority to apportion fees)
PRECEDENTIAL VALUE	published
PARTIES	Rebecca Geary, as Personal Representative of the Estate of Janice White v. Butzel Long, P.C., Jennifer Bova, Richard Geary, David Geary, Peter Geary

TOPICS

probate procedure

attorney fees

fiduciary duty

appellate procedure

probate

PRACTICE AREAS

Estate Planning and Probate

Attorney's Fees

QUESTIONS PRESENTED

1. Whether the trial court must find bad faith before assessing attorney's fees against a personal representative's share of the estate under section 733.6175, Florida Statutes.
2. Whether the trial court erred in holding Geary personally responsible for the initial fee litigation fees (before the 'fees on fees' phase) absent a finding that the initial defense was frivolous or in bad faith.

HOLDINGS

1. A trial court may assess attorneys' fees against a personal representative personally if the litigation pursued is essentially frivolous, even without a finding of bad faith.
2. The trial court's finding that the fees on fees litigation was essentially frivolous and unreasonably incurred justified assessing those fees against Geary personally.
3. Without a finding of wrongful conduct, bad faith, or frivolousness as to the initial fee defense, the trial court could not assess those fees against Geary, and thus it erred.

KEY QUOTATIONS

“The Personal Representative and her attorney may have been justified in litigating the \$4,127 fee in the first instance. But, certainly once they lost on that issue and the attempt to surcharge Butzel Long for alleged overbilling, they reasonably should have realized that the jig was up and that they would have to pay fees on fees. The litigation resulting after Butzel Long's initial plea for fees on fees was neither necessary nor reasonable and resulted in a substantial detriment to the Estate by prolonging the litigation, increasing the fees on fees ultimately awarded from \$19,000 to \$49,000 and by delaying the administration of the Estate.” (152)

“This section does not give the trial court unbridled discretion to award fees from any part of the estate. Before the trial court may assess fees against a beneficiary's share of an estate there must be a finding of bad faith or wrongdoing by the beneficiary or other circumstances which would warrant such an assessment.” (153)

FACTUAL BACKGROUND

Janice White died in 1999; Rebecca Geary, appellant, was appointed personal representative. Appellees Jennifer Bova, Richard Geary, David Geary, and Peter Geary were beneficiaries. The estate employed a succession of attorneys, retaining appellee Butzel Long, P.C., in November 2002 until 2004. Butzel Long submitted a final bill of \$4,127 on May 24, 2004. Geary, through the Crenshaw Law Firm, objected and sought disgorgement of fees previously paid. The fee litigation spanned eighteen months, ending with the trial court awarding Butzel Long the \$4,127 and finding no basis for disgorgement. Additional litigation over 'fees on fees' continued for two more

years, increasing Butzel Long's claim from \$19,000 to \$49,000. During that period, Geary paid herself an \$18,600 commission and paid Crenshaw over \$43,000 from estate assets, leaving the estate insolvent.

PROCEDURAL HISTORY

Janice White died in 1999; Rebecca Geary was appointed personal representative. Butzel Long served as estate counsel from 2002–2004. Geary, through Crenshaw, objected to Butzel Long's final bill and sought disgorgement. The trial court allowed Butzel Long to withdraw and awarded it \$4,127 in fees. Litigation over 'fees on fees' continued for two more years. During that time, Geary paid herself a commission and paid Crenshaw fees from estate assets. Beneficiaries sought disgorgement of those payments and to hold Geary personally liable. In 2007, the court awarded Butzel Long \$49,000 in additional fees and costs, and later entered judgment finding the 'fees on fees' litigation unreasonable, ordering Geary and Crenshaw to repay sums, holding Geary personally responsible for fees, and denying Geary's request for extraordinary fees.

DISPOSITION

affirmed in part, reversed in part, and remanded

REMAND INSTRUCTIONS

On remand, the trial court must reallocate fees consistent with this opinion: it may not impose the initial \$19,000 fee litigation costs or require Geary to be personally responsible for Crenshaw's fees incurred before the November 2005 judgment, absent a finding of bad faith or frivolousness. The reasonableness of those fees may still be addressed.

CASES CITED

- Bitterman v. Bitterman, 685 So. 2d 861 (Fla. 4th DCA 1996)
- Bitterman v. Bitterman, 714 So. 2d 356 (Fla. 1998)
- In re Estate of Lane, 562 So. 2d 352 (Fla. 4th DCA 1990)
- Cohen v. Schwartz, 538 So. 2d 922 (Fla. 3d DCA 1989)