

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH
DISTRICT**

**A. Ruben Lopez, Beneficiary and Former Personal Representative of
the Estate of Angel Lopez Maldonado v. Angel Raul Lopez
Hernandez, Beneficiary and Administrator Ad Litem of the Estate of
Angel Lopez Maldonado, Star Insurance Company, and Julius L.
Williams, Esquire**

Lopez v. Hernandez, No. 5D18-2773, 2020 WL 999999 · No. 5D18-2773

SUMMARY

The Florida Fifth District Court of Appeal held that under Florida Probate Code § 733.106, a probate court cannot impose personal liability on a beneficiary for an estate’s attorney’s fees, but may only direct payment from that beneficiary’s share of the estate. The court further ruled that an attorney who merely administers an estate without securing a positive recovery or judgment is not entitled to a charging lien. The trial court’s findings that the attorney engaged in frivolous litigation at the former personal representative’s direction and the reasonableness of the fee award were affirmed.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	Cohen; Lambert; Traver
JURISDICTION	Florida
DOCKET	5D18-2773
DISPOSITION	affirmed in part and reversed in part
PROCEDURAL POSTURE	Appeal and cross-appeal from Circuit Court for Osceola County probate order awarding attorney's fees and costs and imposing charging lien.
STANDARD OF REVIEW	De novo for statutory interpretation; abuse of discretion for charging lien award
PRECEDENTIAL VALUE	published
PARTIES	A. Ruben Lopez, Beneficiary and Former Personal Representative of the Estate of Angel Lopez Maldonado v. Angel Raul Lopez Hernandez, Beneficiary and Administrator Ad Litem of the Estate of

TOPICS

probate attorney fees appellate procedure civil procedure

PRACTICE AREAS

Probate Estates and Trusts Attorney's Fees Appellate Procedure

QUESTIONS PRESENTED

1. Whether the probate court could impose personal liability on Ruben for the estate's attorney's fees and costs under section 733.106(4), Florida Statutes.
2. Whether attorney Julius Williams was entitled to a charging lien.

HOLDINGS

1. The probate code does not allow for the personal imposition of attorney's fees on a beneficiary or personal representative; fees may only be directed out of the beneficiary's portion of the estate.
2. A charging lien was not appropriate because the personal representative received no fund or positive judgment or settlement out of his efforts; he merely administered the estate and produced no tangible return.

KEY QUOTATIONS

"A charging lien 'is an equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit.'" (at 3)

"Here, Williams was not entitled to a charging lien because '[t]he personal representative . . . received no fund or positive judgment or settlement out of [his] efforts.'" (at 3)

FACTUAL BACKGROUND

The estate held a money market account containing \$106,905.86 and a St. Cloud condominium initially valued at \$80,000, now worth \$43,000. The money market account has been fully depleted. Ruben was found in indirect civil contempt for failing to deed the condominium to himself and Raul and close the estate. A six-figure monetary judgment and an outstanding writ of bodily attachment were entered against him.

PROCEDURAL HISTORY

Brothers Ruben and Raul, co-beneficiaries of their father's estate, have litigated repeatedly. The probate court awarded attorney's fees and costs to Julius Williams, who served as Ruben's attorney when Ruben was personal representative. The court divided responsibility for the fees between the estate and Ruben personally, finding Ruben directed Williams to engage in frivolous litigation. The court also imposed a charging lien on Ruben's portion of the estate. Both sides appealed.

DISPOSITION

affirmed in part and reversed in part

CASES CITED

- Brindise v. U.S. Bank Nat'l Ass'n, 183 So. 3d 1215, 1217 (Fla. 2d DCA 2016)
- W. Fla. Reg'l Med. Ctr., Inc. v. See, 79 So. 3d 1, 8 (Fla. 2012)
- Bennett v. Berges, 50 So. 3d 1154, 1158 (Fla. 4th DCA 2010)
- Snyder v. Bell, 746 So. 2d 1100, 1104 (Fla. 2d DCA 1999)
- Dourado v. Chousa, 604 So. 2d 864, 866 (Fla. 5th DCA 1992)
- Dorothy Helen DAYTON, M.D., Mary Johnson, Anne Cooper, Laurie Cauthen, Marcie Lynn Conger and George Drew Conger, Appellants, v. Thomas A. CONGER, Appellee., Dayton v. Conger, 448 So. 2d 609, 611 (Fla. 3d DCA 1984)
- Parker v. Fla. First Nat'l Bank of Jacksonville, 419 So. 2d 730, 732 (Fla. 1st DCA 1982)
- Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A. v. Baucom, 428 So. 2d 1383, 1384 (Fla. 1983)
- Dyer v. Dyer, 438 So. 2d 954, 955–56 (Fla. 4th DCA 1983)
- Correa v. Christensen, 780 So. 2d 220, 220–21 (Fla. 5th DCA 2001)

OPINION

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT
NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED A. RUBEN LOPEZ, BENEFICIARY AND FORMER
PERSONAL REPRESENTATIVE OF THE ESTATE OF ANGEL LOPEZ MALDONADO,
Appellant/Cross-Appellee, v. Case No. 5D18-2773 ANGEL RAUL LOPEZ HERNANDEZ,
BENEFICIARY AND ADMINISTRATOR AD LITEM OF THE ESTATE OF ANGEL LOPEZ
MALDONADO, STAR INSURANCE COMPANY, AND JULIUS L. WILLIAMS, ESQUIRE,
Appellees/Cross-Appellants. _____/ Opinion filed February 28,
2020 Appeal from the Circuit Court for Osceola County, Mike Murphy, Judge.

A. Ruben Lopez, Dublin, OH, Pro Se, Appellant/Cross-Appellant. Angel Raul Lopez Hernandez, Miramar, Pro Se, Appellee/Cross-Appellant. No Appearance for other Appellees/Cross-Appellants. PER CURIAM. 2 This appeal marks the tenth time brothers, attorneys, and co-beneficiaries Angel Ruben Lopez Hernandez (“Ruben”) and Angel Raul Lopez Hernandez (“Raul”) have come to our Court to fight over their dead father’s now-fifteen-year-old estate.

1 This time, Ruben and Raul both challenge a probate court order addressing attorney’s fees and costs sought by Julius Williams. Williams served as Ruben’s attorney when he was the estate’s personal representative. 2 The order awarded Williams fees and costs, and it imposed a charging lien on Ruben’s portion of the estate. It divided responsibility for the attorney’s fees between the

estate and Ruben, personally, concluding that Ruben directed Williams to engage in frivolous litigation on the estate's behalf.

We affirm without further comment the trial court's finding that Williams acted in this manner, as well as Raul's cross-appeal challenging the reasonableness of Williams's award. We are compelled to reverse in part, however, because the probate code does not allow for the personal imposition of attorney's fees and Williams is not entitled to a charging lien.

Florida's Probate Code delineates how attorneys may recover reasonable compensation for services to an estate. § 733.106, Fla. Stat. (2018). We review the probate court's interpretation of a statute de novo. See *Brindise v. U.S. Bank Nat'l Ass'n*, 183 So. 3d 1215, 1217 (Fla. 2d DCA 2016) (citing *W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 8 (Fla. 2012)).

While section 733.106(4) allows probate courts to direct the 1 The estate initially held a money market account containing \$106,905.86 and a St. Cloud condominium initially valued at \$80,000. The condo is now worth \$43,000. Unsurprisingly, the money market account has been fully depleted. 2 The probate court found Ruben in indirect civil contempt for failing to deed the St. Cloud condominium to himself and Raul, and then close the estate.

It later entered a six-figure monetary judgment against Ruben and a writ of bodily attachment that remains outstanding. He is no longer the estate's personal representative. 3 payment of attorney's fees out of a beneficiary's portion of an estate, it does not permit probate courts to impose personal liability for the estate's attorney's fees and costs. § 733.106(4), Fla. Stat. (2018); *Bennett v. Berges*, 50 So.

3d 1154, 1158 (Fla. 4th DCA 2010) (citing *Snyder v. Bell*, 746 So. 2d 1100, 1104 (Fla. 2d DCA 1999)); *Dourado v. Chousa*, 604 So. 2d 864, 866 (Fla. 5th DCA 1992) (citing *Dayton v. Conger*, 448 So. 2d 609, 611 (Fla. 3d DCA 1984)); *Parker v. Fla. First Nat'l Bank of Jacksonville*, 419 So. 2d 730, 732 (Fla. 1st DCA 1982).

Accordingly, the probate court could not direct Ruben to pay the estate's attorney's fees himself. Additionally, Williams was not entitled to a charging lien under these circumstances. A charging lien "is an equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit." *Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A. v. Baucom*, 428 So.

2d 1383, 1384 (Fla. 1983). We review a trial court's decision to award a charging lien to an attorney for abuse of discretion. See *Dyer v. Dyer*, 438 So. 2d 954, 955–56 (Fla. 4th DCA 1983). Here, Williams was not entitled to a charging lien because "[t]he personal representative... received no fund or positive judgment or settlement out of [his] efforts." See *Correa v. Christensen*, 780 So.

2d 220, 220–21 (Fla. 5th DCA 2001) (citing *Sinclair*, 428 So. 2d at 1383). Indeed, he merely administered the estate and produced no tangible return for the estate or the personal representative. See *id.* AFFIRMED in part and REVERSED in part. COHEN, LAMBERT, and TRAVER, JJ., concur.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/florida-district-court-of-appeal-of-the-state-of-florida-fifth-district/0/a-ruben-lopez-beneficiary-and-former-personal-npgoi72z>