

THIRD DISTRICT COURT OF APPEAL

Sara Cristina Babun, etc., v. Stok Kon + Braverman, etc., et al.

Babun v. Stok Kon + Braverman, 328 So. 3d 996 (Fla. 3d DCA 2021) · No. 3D21-234

SUMMARY

The Third District Court of Appeal reversed an interim attorney's fee award in a probate and trust matter, holding that the trial court's failure to make specific findings on the reasonable number of hours, hourly rate, and any reduction or enhancement factors as required by **Florida Patient's Compensation Fund v. Rowe**, 472 So. 2d 1145 (Fla. 1985), is reversible error. The court emphasized that an award of attorney's fees without adequate findings justifying the amount cannot stand, and the record lacked competent substantial evidence to support the fee award; the case was remanded for a new hearing with proper **Rowe** findings.

CASE DETAILS

COURT	Third District Court of Appeal
WRITING FOR THE COURT	HENDON, J.; SCALES; HENDON; MILLER
JURISDICTION	Florida
DOCKET	3D21-234
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final order awarding attorney's fees.
STANDARD OF REVIEW	Entitlement to attorney's fees: de novo. Amount of fees: abuse of discretion. Evidentiary findings: substantial, competent evidence.
PRECEDENTIAL VALUE	precedential
PARTIES	Sara Cristina Babun, as Personal Representative of the Estate of Jose Babun Selman, and as Co-Trustee of the Jose Babun Selman Third Amended and Restated Trust v. Stok Kon + Braverman, Franco & Associates, P.A.

TOPICS

attorney fees probate trusts appellate procedure civil procedure

PRACTICE AREAS

Probate Trusts and Estates Attorney's Fees

QUESTIONS PRESENTED

1. Whether the trial court made sufficient findings under Florida Patient's Compensation Fund v. Rowe to support an award of interim attorney's fees and costs.

HOLDINGS

1. An award of attorney's fees without adequate findings justifying the amount is reversible error because the trial court must make specific findings as to the reasonable number of hours expended, the normal hourly rate, and any reduction or enhancement factors.

KEY QUOTATIONS

“An award of attorney’s fees without making adequate findings justifying the amount of the award is reversible error.”

“The trial court must set forth ‘specific findings’ as to its determination of the number of hours, the hourly rate, and any reduction or enhancement factors.”

FACTUAL BACKGROUND

Sara Cristina Babun, daughter of Jose Babun Selman (deceased) and Cristina Larach Babun, was appointed personal representative of the decedent's estate and co-trustee of his trust over Cristina's objections. Cristina, through counsel (the appellees), filed an adversary proceeding against the trust, and a neutral co-trustee was appointed. Appellees sought interim attorney's fees and costs totaling \$624,751.41 for representing Cristina in the trust and estate matters. The trial court awarded \$530,266.75 plus costs after an amended fee application. The trial court made no findings regarding the reasonable number of hours or hourly rates.

PROCEDURAL HISTORY

Sara petitioned to be appointed personal representative of the decedent's estate and co-trustee of the trust. Over Cristina's objections, she was appointed. Cristina hired the Appellees and filed an adversary proceeding against the Trust. The court appointed a neutral co-trustee. Appellees petitioned for interim attorney's fees. The trial court conducted an evidentiary hearing and granted the amended fee petition. Sara appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reversed and remanded for a new hearing on attorney's fees, in which the trial judge must set forth the findings as required by Rowe.

CASES CITED

- Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985)
- Burton Family Partnership v. Luani Plaza, Inc., 276 So. 3d 920 (Fla. 3d DCA 2019)

- State Farm Florida Insurance Co. v. Silber, 72 So. 3d 286 (Fla. 4th DCA 2011)
- Universal Beverages Holdings, Inc. v. Merkin, 902 So. 2d 288 (Fla. 3d DCA 2005)
- Universal Property & Casualty Insurance Co. v. Deshpande, 314 So. 3d 416 (Fla. 3d DCA 2020)
- Pazmino v. Gonzalez, 273 So. 3d 1056 (Fla. 3d DCA 2019)
- Messer v. Sander, 182 So. 3d 795 (Fla. 1st DCA 2016)
- Cornfeld v. Plaza of the Americas Club, Inc., 306 So. 3d 1136 (Fla. 3d DCA 2020)
- Joyce v. Federated National Insurance Co., 228 So. 3d 1122 (Fla. 2017)
- Ivanovich v. Valladarez, 190 So. 3d 1144 (Fla. 2d DCA 2016)
- R.M.F. v. D.C., 55 So. 3d 684 (Fla. 2d DCA 2011)
- Macarty v. Macarty, 29 So. 3d 434 (Fla. 2d DCA 2010)
- Diwakar v. Montecito Palm Beach Condominium Association, 143 So. 3d 958 (Fla. 4th DCA 2014)
- Brake v. Murphy, 736 So. 2d 745 (Fla. 3d DCA 1999)
- Clark v. Squire, Sanders & Dempsey, 495 So. 2d 264 (Fla. 3d DCA 1986)