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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

Estate of ELIZABETH REES, Deceased.

CATHERINE POWELL,
Plaintiff and Respondent,
v.
EUGENE SCHNEIDER,
Objector and Appellant.

A132157

**(Alameda County
Super. Ct. No. FP-03132081)**

Attorney Eugene Schneider appeals from an order awarding fees to his successor counsel in a probate matter. Although his opening brief is not a model of clarity, he appears to argue that the probate court should have apportioned statutory fees between himself and successor counsel. We affirm.

I. BACKGROUND

Catherine Powell (Powell) is the personal representative and primary beneficiary of the estate of Elizabeth Rees, who died in November 2003. On March 4, 2005, the probate court granted Powell’s petition for instructions and authorized her to retain counsel to represent her in her capacity as personal representative. The order specifically stated that Powell was not to retain appellant as counsel.

The court’s caveat arose from a 2002 order in a marital dissolution proceeding between Powell and her former husband. Rees had been joined as a party in the divorce case due to debts allegedly owed to her by the couple, and the family court had

disqualified appellant from representing Rees based on a conflict of interest that arose because Powell was paying his legal fees.¹

Appellant did provide some legal services to the estate at Powell's request before a substitution of counsel was filed on September 19, 2005. On October 13, 2009, the probate court ruled that appellant was entitled to recover \$17,277 in extraordinary attorney fees and \$486.92 in costs. (Prob. Code, § 10811.)

On April 13, 2010, Powell filed a "Report of Status of Administration," indicating that the estate had no funds and that no final distribution had been approved. Appellant objected to the report on the ground that it made no provision for his compensation, and filed a petition to surcharge Powell as representative of the estate. Following a hearing, Powell's successor counsel was awarded \$23,429.64 in statutory attorney fees and \$20,740 in extraordinary fees for his work in the probate matter. (Prob. Code, §§ 10810, 10811.) Appellant filed a notice of appeal from this order.

II. DISCUSSION

An attorney who represents the executor of an estate in a probate proceeding is entitled to compensation for ordinary services, calculated as a percentage of the estate. (Prob. Code, § 10810.) The court "may allow additional compensation for extraordinary services by the attorney . . . in an amount the court determines is just and reasonable." (Prob. Code, § 10811.) "If there are two or more attorneys for the personal representative, the attorney's compensation shall be apportioned among the attorneys by the court according to the services actually rendered by each attorney or as agreed to by the attorneys." (Prob. Code, § 10814.)

¹ The dissolution proceeding was contentious, lengthy, and complex, but the particulars are not germane to this appeal. Suffice it to say that Powell's former husband claimed that Powell had tried to circumvent community property laws by acknowledging community debts to Rees that would inure to her own benefit as a beneficiary of Rees's estate.

Appellant argues that the probate court should have apportioned ordinary attorney fees between himself and successor counsel. He has failed to demonstrate any error. Appellant was awarded over \$17,000 in extraordinary fees in a 2009 order from which he has not appealed. The record on appeal contains no evidence from which a court might apportion ordinary attorney fees between appellant and successor counsel based on the work performed. We also note that a schedule of the estate’s disbursements attached to the First Account and Report of Status shows that appellant was paid \$5,000 in probate attorney fees on February 8, 2004, and another \$5,000 for a “trust for Elizabeth Rees” on August 8, 2004. An appellant has the burden of providing a record sufficient to support a claim of error, and in the absence of an indication that error occurred, we must affirm the judgment. (*Bullock v. Phillip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 678.)

III. DISPOSITION

The November 22, 2010 order awarding attorney fees is affirmed. Because no respondent’s brief was filed, the parties shall bear their own costs on appeal. (Cal. Rules of Ct., rule 8.278(a)(5).)

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.