

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Person and Estate of
RAY DEAN RAWLS.

TERESA L. SCHROEDER,

Petitioner and Appellant,

v.

JASON S. SHEINBERG et al.,

Claimants and Respondents.

B244739

(Los Angeles County
Super. Ct. No. GP015217)

APPEAL from an order of the Superior Court of Los Angeles County,
Mary Thornton House, Judge. Affirmed.

San Diego Law Firm, Steven J. Roberts and Jason S. Sheinberg for Petitioner and
Appellant.

No appearance for Claimants and Respondents.

Teresa L. Schroeder, as conservator of the estate and person of Ray Dean Rawls, filed a petition seeking attorney fees and costs for the legal services of Jason S. Sheinberg of the San Diego Law Firm (the Firm) rendered during probate proceedings.¹ In this appeal from the order authorizing payment of attorney fees and costs to the Firm from the conservatorship estate of Rawls's wife, Schroeder contends the probate court abused its discretion by reducing the amount of attorney fees she requested by approximately 38 percent. The court based the award on a reasonable fee for the three-month conservatorship. Because we conclude the court acted within its broad discretion, we affirm the order.²

FACTUAL AND PROCEDURAL BACKGROUND

1. *Schroeder Appointed Conservator*

Ray Dean Rawls suffered from congestive heart failure and dementia. Rawls's house was condemned in 2006. In 2010, when Rawls could no longer care for himself, he and his wife were removed from extreme conditions in the extended-stay hotel they were living in and taken to Glendale Adventist Hospital pursuant to Welfare and Institutions Code section 5150. Rawls was later transferred to a care facility.

On May 13, 2010, Teresa L. Schroeder, Rawls's niece, filed a petition to establish a temporary conservatorship of the person and estate of Rawls. The court appointed

¹ Probate Code section 2640 states: "(a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following: [¶] (1) . . . (3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both." Probate Code section 2642 authorizes an attorney who has rendered legal services to the conservator of the person or the estate or both, to file a petition at any time permitted by Probate Code section 2640. Here, Schroeder filed the petition seeking attorney fees under Probate Code section 2640, and thus appeals from that order.

All further statutory references are to the Probate Code.

² No other briefs have been filed. In these circumstances, California Rules of Court, rule 8.220(a)(2) provides "the court [will] decide the appeal on the record, the opening brief, and any oral argument by the appellant."

Schroeder. Letters of temporary conservatorship issued on June 4, 2010. Letters of conservatorship issued on July 16, 2010.

Schroeder notified the court that Rawls died on July 28, 2010.

2. Petition Seeking Attorney Fees

In response to a court order, Schroeder filed her first and final account on November 14, 2011, which included a petition seeking attorney fees. Rawls's estate assets at that point, including the estimated value of his home, were approximately \$380,191.42.

Schroeder requested \$21,285 in attorney fees for the Firm to be paid by Rawls's wife's conservatorship estate. The request was based on attorney Sheinberg's declaration, stating he had worked 48.1 hours at \$225 per hour, and the Firm's paralegals had worked 83.7 hours at \$125 per hour.

At the January 20, 2012 hearing, the court determined that attorney Sheinberg's declaration was insufficient and asked for a supplemental report.

Schroeder filed a supplemental report, and he filed a second supplemental report. In the second supplemental report, Schroeder requested \$26,045 in attorney fees, constituting 56.2 hours of attorney services and 107.2 hours of paralegal services.

3. Attorney Fees Award

The probate examiner recommended an attorney fees award not to exceed \$12,000, noting that the request was "extraordinarily high," as the conservatorship was unopposed and in effect for less than three months.

During the hearing before a judge pro tempore, the issue of the excessive amount of fees for a three-month conservatorship was addressed. Attorney Sheinberg stated the Firm had been working on the case for two years, and thereafter detailed the Firm's involvement. Attorney Sheinberg also stated that Schroeder did not object to the attorney fees requested.

The matter was taken under submission, and the court awarded the Firm \$16,000 in attorney fees. Schroeder appeals.

DISCUSSION

1. *Standard of Review and Applicable Law Regarding Attorney Fees*

Section 2640 provides a conservator may petition the court for an order fixing and allowing compensation to an attorney who has rendered services to a conservator of a person or estate or both that the court determines is reasonable. (§ 2640, subs. (a), (c), see also § 2642, subd. (b) [upon a petition filed by an attorney who has rendered services to a conservator of a person or estate or both, the court shall allow compensation to the attorney for services rendered to the conservator that “the court determines [is] reasonable.”].) The determination of what constitutes reasonable attorney fees rests in the sound discretion of the court. (*Conservatorship of Levitt* (2001) 93 Cal.App.4th 544, 549.) “The ‘ ‘experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ ’ [Citation.]” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.)

“A fundamental rule of appellate review is that ‘ “[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ’ [Citations.] The record must firmly establish an abuse of discretion. [Citation.] ‘The burden is on the party complaining to establish an abuse of discretion.’ [Citation.]” (*Conservatorship of Rand* (1996) 49 Cal.App.4th 835, 841.)

There is no statutory requirement that the probate court make specific findings of fact supporting an allowance of attorney fees. (See §§ 2640, subs. (a)(3) & (c), 2642, subd. (b).) “In awarding attorney fees in a lesser amount than requested, trial courts are not required to specify each and every claimed item found to be unsupported or unreasonable. [Citation.]” (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 67.)

The record, however, must provide some rationalization for a court’s attorney fees award. (*Gorman v. Tassajara Development Corp.*, *supra*, 178 Cal.App.4th at p. 101.) “When a trial court makes an award that is inscrutable to the parties involved in the case,

and there is no apparent reasonable basis for the award in the record, the award itself is evidence that it resulted from an arbitrary determination. It is not the absence of an explanation . . . but its inability to be explained by anyone, either the parties or [the] appellate court.” (*Ibid.*) We conclude the record provides a rationalization for the probate court’s decision to award less than the requested amount of attorney fees.

2. *The Probate Court Did Not Abuse its Discretion in Reducing Attorney Fees*

The Firm contends the probate court arbitrarily reduced the amount requested by focusing on the three-month conservatorship, and ignoring the two-year duration of these proceedings, along with other factors, including the nature of the services rendered up until the order on the final account and report of conservator, the value of the estate, and the Firm’s successes that actually avoided incurring additional attorney fees. This argument improperly asks this court to substitute its discretion for the probate court’s discretion.

The attorney fees awarded were reasonable. Schroeder, with the help of the Firm, initiated these proceedings in May 2010, and Rawls died in July 2010. The conservatorship was unopposed. The Firm’s declarations submitted in connection with the petition for attorney fees do not specifically indicate the legal services it provided in this case after Rawls’s death until November 14, 2011, when the first and final account was filed.³ The time entries and description of attorney and paralegal services specifically refer to filing petitions, and in more general terms refer to “communications” associated with the administration of this conservatorship. Not one of the entries describes extraordinary services such as the ones listed in California Rules of Court, rule 7.703(c). The probate court’s reduction in the attorney fees requested is justified given its general observation of the nature of this conservatorship.

³ In its opening brief, the Firm represents that Schroeder also filed a petition for conservatorship of Rawls’s wife. The description of services in Sheinberg’s declaration seeking attorney fees does not appear to include these services. We also conclude there is no merit in the argument that the filing of a petition to establish a conservatorship of Rawls’s wife entitled the Firm to extraordinary compensation under California Rules of Court, rules 7.702, 7.703(c), 7.751(b.)

The Firm also contends that the record does not indicate a justification for the probate court's decision to reduce the requested attorney fees to \$16,000. The award is 25 percent higher than the probate examiner's recommendation, but approximately 38 percent less than what the Firm requested using the lodestar method. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 [number of hours reasonably expended multiplied by the reasonable hourly rate].) Although there is no mathematical computations in the record, it is evident from the billing statements that the probate court awarded attorney fees for the amount of hours billed for legal and paralegal services in connection with drafting, filing, and appearing at the hearing on the petition for temporary and permanent conservatorship, and in preparing the first and final account, but discounted the hours billed for internal communications. Thus, there was a rational basis for the award. Accordingly, the probate court did not abuse its discretion.

DISPOSITION

The attorney fees order under review is affirmed. Schroeder bears her own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.