

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of STELLA D. REDLICH,  
Deceased.

EVA HEILBRUNN,

Plaintiff and Respondent,

v.

JEANETTE REDLICH,

Defendant and Appellant.

D069436

(Super. Ct. No. 37-2011-00150867-PR-  
PW-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Julia Craig Kelety, Judge. Affirmed.

Jeanette Redlich, in pro. per., for Defendant and Appellant.

Representing herself, Jeanette Redlich (Jeanette) appeals from a judgment approving the final account and report for the estate of her mother, Stella Redlich (Mother), who died seven years ago. The judgment includes (1) a \$10,698.61 award to the executor (Jeanette's sister, Eva Heilbrunn (Eva)) to reimburse Eva for payments she

made on behalf of the estate; and (2) attorney fees to Eva's estate attorney, consisting of \$16,750.13 in statutory fees and \$46,800 in extraordinary fees. The court ordered these costs and fees to be paid from Mother's trust based on the court's earlier order that the estate was insolvent and the trust was liable for the estate debts.<sup>1</sup>

On appeal, Jeanette contends the court erred in denying her request for an evidentiary hearing on the extraordinary attorney fees issue and in closing the estate without the executor filing federal and state tax returns. Jeanette also challenges various aspects of the court's attorney fees and cost determinations. We reject these contentions and affirm the judgment.<sup>2</sup>

---

<sup>1</sup> This court previously affirmed the order providing the trust was liable for the estate debts. (*Redlich v. Heilbrunn* (Mar. 6, 2015, D064642) (*Redlich I*.) On our own motion, we take judicial notice of this opinion. (Evid. Code, §§ 451, subd. (a), 459, subd. (a); Cal. Rules of Court, rule 8.1115(b)(1).)

<sup>2</sup> There was no respondent's brief filed in this case. However, an appellant has the burden of showing reversible error even in the absence of a respondent's brief. (See *County of Lake v. Antoni* (1993) 18 Cal.App.4th 1102, 1104.)

## FACTS AND PROCEDURE

### *Background Summary*<sup>3</sup>

Mother died in April 2010, leaving three adult daughters. Mother's estate documents consisted of a pour-over will and a revocable trust (Trust) that left all of her property to her daughters in equal portions. Eva was named estate executor and successor trustee of the Trust.

When she died, Mother owned two parcels of real property: her longtime San Diego home (San Diego property) and a second property in Humboldt County (Humboldt property). The Humboldt property was a Trust asset, but the San Diego property was not in the Trust when Mother died. The San Diego property had a reverse mortgage that continued to accrue interest after Mother's death.

About two years after Mother's death, Jeanette petitioned for an accounting of estate and Trust property, and sought Eva's removal as executor and trustee based on Eva's alleged breaches of fiduciary duty, including alleged unreasonable delays in selling the San Diego property and Eva's alleged failure to properly distribute personal property. In connection with this petition, Jeanette's counsel propounded extensive discovery

---

<sup>3</sup> In her appellate brief, Jeanette discusses facts pertaining to earlier probate proceedings. Although some of those proceedings have relevance to the judgment appealed here, many of the asserted facts concern matters resolved adversely to Jeanette in prior orders. We summarize only the relevant facts, and disregard any of Jeanette's factual assertions that are not supported by a record citation or were resolved adversely to Jeanette in a prior appealable order. Our appellate jurisdiction is limited to reviewing the court's rulings encompassed in the judgment currently being appealed. (See Code Civ. Proc., § 906; *Morton v. Wagner* (2007) 156 Cal.App.4th 963, 967; *In re Marriage of Lloyd* (1997) 55 Cal.App.4th 216, 219.)

requests, and Eva's estate attorney (George Alspaugh, Jr.) spent substantial time responding to these requests.

At about the same time, Eva filed a petition for a first and final accounting for the estate. Soon after, Eva resigned as trustee, but remained as executor. The court appointed a professional trustee to serve as the successor trustee.

In October and November 2012, the court conducted a combined trial on the parties' petitions (2012 trial). Eva was represented by Alspaugh, and Jeanette was represented by attorney Sean O'Bryan. At the conclusion of the trial, the court found Eva had breached certain of her duties with respect to the sale of the San Diego property, but that these breaches were not intentional or in bad faith, and that it would surcharge Eva for this conduct by striking her executor fees. The court made no final decisions on the estate accounting or distribution issues, and ordered Eva to file an amended accounting. The court also made rulings on the sisters' disputes regarding Mother's personal property items.

Eva (as executor) then filed a petition seeking an order that (1) Mother's estate is insolvent and therefore the Trust is liable for estate debts (Prob. Code, § 19001, subd. (a))<sup>4</sup>; and (2) the Humboldt property be sold because it is the only Trust asset sufficient to pay for the estate debts. Jeanette opposed this petition and filed several of her own petitions, arguing that Mother had given her the Humboldt property outside the Trust and/or there was no statutory basis for requiring the Trust to pay for estate expenses, particularly because the expenses consisted primarily of Alspaugh's attorney fees.

---

<sup>4</sup> All further unspecified statutory references are to the Probate Code.

In July 2013, the probate court issued a written order on these petitions. In the order, the court found the Humboldt property was a Trust asset and the Trust was responsible for paying "unsatisfied costs and expenses of the probate administration . . . , including, but not limited to costs of administration, creditor's claims and statutory and extraordinary attorneys fees [which may be] ordered by this court . . . ." The court ordered the Humboldt property sold to pay estate expenses. The court also made determinations regarding the successor trustee's unlawful detainer action against Jeanette, who was living at the Humboldt property.

Jeanette appealed from this order and Eva was the sole respondent. Eva was represented in the appeal by Alspaugh. In March 2015, this court affirmed the court's July 2013 order. (*Redlich I, supra*, D064642.)

*Final Accounting and Distribution Petition at Issue in this Appeal*

Shortly after *Redlich I* became final, in May 2015, Eva filed a final estate report and accounting seeking to close the estate and for an award of attorney fees, costs, and reimbursements. Eva sought \$16,750.13 in statutory attorney fees, plus \$83,037.50 in extraordinary attorney fees. (§§ 10810, 10811, subd. (a).)

In support of the extraordinary attorney fees request, Eva submitted Alspaugh's declaration in which he detailed his legal services and the amount of hours and fees incurred for each of his services. These services pertained to: (1) the sale of the San Diego property (9.5 hours); (2) the 2012 trial (121.25 hours); (3) the petitions relating to the Trust's liability for estate debts (15.5 hours); (4) Jeanette's petition seeking to prevent her eviction from the Humboldt property (5.75 hours); and (5) Alspaugh's representation

of Eva in the *Redlich I* appeal (103.5 hours). On each of these categories, Alspaugh explained the nature of his services and why the services were necessary. Alspaugh sought a total of \$83,037.50, reflecting 255.5 hours over a four-year period with a \$325 hourly fee.

Jeanette (represented by counsel) filed numerous objections to Eva's petition. On the extraordinary attorney fees, Jeanette argued these fees should not be awarded because the estate was insolvent, and most of the legal work concerned Trust property and work for which Eva did not prevail and which did not benefit the estate. For example, Jeanette argued Alspaugh should not be compensated for his work on the 2012 trial because the court found Eva negligently handled the San Diego property and the court required Alspaugh to file an amended accounting. Jeanette also argued Alspaugh's hourly rate was unreasonable. Jeanette additionally maintained that Eva's failure to file federal and state income taxes for the estate precluded the court from approving the accounting and closing the estate.

In June 2015, Judge Julia Kelety (who had presided over the case since its inception) held a hearing on the matter. At the outset, the court asked counsel how they wished to proceed on Eva's petition, including whether they intended to conduct discovery. Jeanette's counsel (O'Bryan) responded by requesting an evidentiary hearing. When the court asked O'Bryan to explain the need to present testimony, O'Bryan said he wanted to cross-examine Alspaugh and call two other witnesses (O'Bryan's cocounsel and the successor trustee of the Trust) regarding the reasonableness of the fees and whether Alspaugh's services were of benefit to the estate. The court responded that counsel could

argue these issues, but it did not need witnesses to opine on the need or reasonableness of Alspaugh's services because these issues were matters for the court to decide.

After further discussion, the court said it would continue the hearing for three months to allow Jeanette to conduct and complete any needed discovery. The court said to O'Bryan: "And at that time, Counsel, you can make an offer of proof as to what evidence you would want to put on and if it appears that we do need an evidentiary hearing, then certainly I will continue to give you an ability to do that. But what I've heard so far, that doesn't sound like that's the right thing to do. But I'll certainly keep an open mind on that." The court also admonished counsel to be mindful of the additional attorney fees that would be incurred in connection with an evidentiary hearing, and stated it has substantial experience in ruling on extraordinary fee requests and routinely provides counsel "ample time to argue [the] issues."

Eva later filed a supplemental declaration regarding taxes, stating: "I have consulted with a tax professional concerning the tax liabilities of my late mother's estate. I have been informed by the tax professional there are no federal [or] California tax returns due from the estate, and the estate has no federal [or] state tax liability."

At the outset of the continued hearing (held on September 21), Jeanette's counsel (O'Bryan) requested an evidentiary hearing, asserting that Jeanette was entitled to present "expert testimony through the testimony of [O'Bryan's co-counsel] as well as [the] cross-examin[ation] [of Eva's attorney]." The court responded:

"So I asked you to come today to tell me what issues you would need to have an evidentiary hearing on and give me an offer of proof so that I could assess whether, in fact, there would be an evidentiary

hearing. [¶] I must say having been on this bench for upwards of seven years or more . . . I have never had to have an evidentiary hearing on an extraordinary fee matter, and I certainly don't need any expert testimony in that regard. But I'm interested in hearing what you think you need an expert witness for, or any witness."

O'Bryan replied that the expert testimony would pertain to the "reasonability and the amounts claimed as extraordinary fees," and argued that even if he could not identify the particular relevance of the evidence, an objecting party has an absolute "right" to an evidentiary hearing. The court denied the request, noting the reasonableness of the fees is for the court to decide.

The court then allowed counsel to argue at length regarding Eva's petition and Jeanette's objections to the petition. With respect to attorney fees, O'Bryan said Jeanette was not challenging the statutory fees, and objected only to the extraordinary fees. The court said it had reviewed Alspaugh's declaration and asked O'Bryan to identify the fees he was challenging. O'Bryan responded by raising four main objections.

First, O'Bryan challenged Alspaugh's \$1,868.75 claim for fees incurred in opposing Jeanette's petition to preclude her eviction from the Humboldt property. O'Bryan argued the Humboldt property was Trust property and therefore Alspaugh's services did not benefit the estate.

Second, O'Bryan challenged Alspaugh's claim for fees (totaling \$39,406.75) incurred to defend the 2012 accounting report and to represent Eva at the 2012 trial. O'Bryan argued Eva had not prevailed at that trial, noting the court had surcharged Eva and did not approve Alspaugh's accounting. O'Bryan also argued that most of the 2012

trial involved issues pertaining to Trust property (such as disputes over personal property items) and Alspaugh's services did not benefit the estate.

Third, O'Bryan raised a "global objection[ ]" to attorney fees incurred after Jeanette allegedly made an offer to purchase the Humboldt property in February 2013. O'Bryan argued that if the trustee had accepted Jeanette's offer, all subsequent fees and costs would have been unnecessary.

Fourth, O'Bryan challenged the fees (\$33,637.50) incurred in responding to Jeanette's appeal (the *Redlich I* appeal). O'Bryan argued primarily that the appellate issues related to Trust matters, and thus these fees should not be recoverable by the estate attorney.

In response to these points, Alspaugh argued that Jeanette, and not Eva, was responsible for the escalation of the disputes and the need for the attorney services, including at the 2012 trial and in the *Redlich I* appeal. Alspaugh asserted that most of the extraordinary fees were incurred "in response and in reaction to [Jeanette's] actions," including the need to respond to "multiple sets" of written discovery pertaining to personal property items that had little or no monetary value. Alspaugh said Eva prevailed on many issues at the 2012 trial, including that the court upheld Eva's personal-property distribution decisions, and the court declined to surcharge Eva for the rental value of the San Diego property before it was sold. Alspaugh also maintained that the court did not deny the initial accounting and instead merely ordered nonmaterial amendments. Alspaugh additionally pointed out that the Humboldt property sale was not before the court because it was solely within the successor trustee's control.

Both counsel also presented arguments on various other issues arising from Eva's final accounting and report, including the lack of tax returns and various reimbursement expenses sought by Eva and her counsel. The relevant portions of these arguments will be described in the Discussion sections below.

At the conclusion of the arguments, the court found Alspaugh was entitled to his statutory fees and about 55 percent of his requested extraordinary fees. The court explained this ruling as follows:

"I think I found [at the 2012 trial] that [Eva] certainly meant well, but was in over her head with an estate plan that didn't hang together very well. . . . ¶ [O]n the one hand, [Eva] made mistakes. On the other hand, the other beneficiaries just poured fuel on the fire in their actions, in particular [Jeanette] ensured that this matter went on and on and on and fees kept ticking on and on and on. And so there's really nobody who is here without any responsibility for the fact that we end up with a really big bill at the end. And so we have to deal with that.

"So what I've done, I've been mindful of the various categories that [Jeanette's counsel] has mentioned. First of all, as to any argument based on the fact that an offer [to purchase the Humboldt property] should have been accepted by the trustee, I'm just simply not in a position to give credence to that argument. I don't know why the trustee proceeded in the way that he did to sell the real property. I wanted the real property sold and it looks like that happened. . . .

¶ . . . ¶

"However, the issues about the [2012] trial . . . it's a mixed bag. And some things about the trial were really [Eva's] responsibility . . . and other things I think were pretty much . . . everybody's fault, or the beneficiaries' fault, for making it harder than it needed to be . . . .

"[Jeanette] spent a lot of time on some pretty valueless personal property . . . . ¶ But I'm mindful of [O'Bryan's] argument with regarding to the trial . . . because it was a mixed bag, I basically divided into half for 22 hours. And then these other miscellaneous

categories relating to the trial, discovery, and the first account, and the eviction proceedings, I do agree that some of those related to matters that really could have been avoided or should have been avoided.

"So I come up with the total hours that I think is the appropriate number of hours. And I confess this is not entirely scientific, but the amount of hours that I'm comfortable with for extraordinary compensation is 144 hours. And at the rate of \$325 — which on the one hand might seem high, but on the other hand for the litigation that was involved in this case, it's not too high — so I think that that is an appropriate number. So I have the 144 hours times \$325 an hour, gets us to \$46,800. [¶] And so that's the amount that the Court will order as extraordinary compensation. And then — which, frankly, is probably going to be more than is left in the trust."

The court also rejected Jeanette's argument that the estate could not close because the executor had not filed federal or state tax returns, reasoning the record did not support that any tax returns were required to be filed by the insolvent estate.

In the court's final judgment, the court approved Eva's final account, and ordered the following payments to be paid from the Trust: (1) \$16,750.13 in statutory fees plus \$46,800 in extraordinary fees to Alspaugh; (2) reimbursement of \$10,698.61 to be paid to Eva; (3) reimbursement of \$4,258.75 to be paid to Alspaugh; and (4) payment of two creditor claims totaling \$5,133.48.

## DISCUSSION

Jeanette contends the court erred by (1) awarding attorney fees without an evidentiary hearing and without supporting record information; (2) approving the final account and closing the estate without requiring the estate to file an income tax return; (3) approving reimbursement to Eva of \$6,585.56 for funeral expenses that she claims Eva

never paid; and (4) approving various other reimbursement requests and other distributions. We discuss these contentions below.

## I. Attorney Fees

### A. General Legal Principles

An executor's attorney is compensated for his or her "ordinary" services according to a statutory schedule based primarily on the estate's value. (§ 10810, subd. (a); *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1446, fn. 1 (*Gilkison*)). The attorney may also be entitled to additional compensation for "extraordinary services." (§ 10811, subd. (a).) The executor (and/or the executor's attorney) has the burden to show the need for the extraordinary services and the extent and value of those services. (*Estate of Fulcher* (1965) 234 Cal.App.2d 710, 718.) The court may award any amount of extraordinary fees that the court "determines is just and reasonable." (§ 10811, subd. (a); *Estate of Trynin* (1989) 49 Cal.3d 868, 874 (*Trynin*)).

The court has broad discretion to consider all relevant factors and determine whether an award of extraordinary fees is appropriate in the particular case. (*Gilkison, supra*, 65 Cal.App.4th at p. 1448.) When the court's determination is challenged on appeal, a reviewing court must affirm unless the probate court "exceed[ed] the bounds of reason." (*Estate of Lanza* (1964) 229 Cal.App.2d 720, 727; accord, *Gilkison*, at pp. 1448-1449; *Estate of Downing* (1982) 134 Cal.App.3d 256, 266-267.) An appellate court may not substitute its judgment for the trial court's discretionary conclusions. (*Estate of Merritt* (1950) 98 Cal.App.2d 70, 76 (*Merritt*)). "The award[ ] must be upheld unless [it]

appear[s] so clearly out of proportion to the services performed as to be an abuse of discretion." (*Estate of Beach* (1975) 15 Cal.3d 623, 645.)

### B. Evidentiary Hearing

Jeanette contends the probate court erred by refusing to conduct an evidentiary hearing on the claim for extraordinary attorney fees.

Under the Probate Code, a party has the right to an evidentiary hearing for any contested issue, including an attorney fees request, and affidavits are generally not competent to replace oral testimony. (See *Estate of Fraysher* (1956) 47 Cal.2d 131, 135 (*Fraysher*); *Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1308-1310; see also *Estate of Lensch* (2009) 177 Cal.App.4th 667, 675-677.)

But this right is not absolute. As in all civil actions, a party is entitled to present evidence only if the evidence is "competent, relevant and material" to a disputed issue. (*Estate of Horman* (1968) 265 Cal.App.2d 796, 808-809; see § 1000; Evid. Code, §§ 210, 351, 352.) Likewise, expert testimony is admissible only if it is beyond the common experience of the factfinder and will assist the trier of fact. (Evid. Code, § 801.) In ruling on these matters, a probate court has flexibility to manage its proceedings to further the estate's best interests and reduce unnecessary expenses. (See *Estate of Ferber* (1998) 66 Cal.App.4th 244, 253.) We review a court's evidentiary rulings for an abuse of discretion. (*O'Neal v. Stanislaus County Employees' Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1198-1199; § 1000.)

Under these principles, a probate court may require an offer of proof before permitting oral testimony and that the offer be specific in identifying the purpose of the

testimony, the name of the proposed witnesses, and the general content of the answers to be elicited. (See *In re Grace P.* (2017) 8 Cal.App.5th 605, 612; see also *In re Mark C.* (1992) 7 Cal.App.4th 433, 444.) If the offer does not show that the proposed testimony would be relevant and material, the court has the discretion to deny the request. (See *Conservatorship of McElroy* (2002) 104 Cal.App.4th 536, 553-555.)

In this case, at the initial hearing the court asked Jeanette's counsel (O'Bryan) to identify the nature of the testimony he sought to present, and made clear it would permit witness testimony if there was justification for the evidence. After providing counsel three months to conduct discovery and consider why an evidentiary hearing was necessary, the court asked O'Bryan to provide an offer of proof. In response, O'Bryan said he was seeking to present expert testimony by his cocounsel and to cross-examine Alspaugh on the issues of reasonableness and the amount of the claimed extraordinary attorney services.

The court found this testimony was unnecessary on the issues before it. The court had reasonable grounds to reach this conclusion. Alspaugh provided a lengthy declaration detailing the nature of his services, the time spent, and his hourly fees. O'Bryan did not state he was seeking to present evidence or cross-examine Alspaugh on issues regarding the truthfulness of the declaration. Instead, O'Bryan said he wanted to present testimony on the issue whether Alspaugh's claimed fees were reasonable and benefited the estate. Generally, judges are deemed to be experts on the value of legal services, and may rely on their first-hand observations of the legal proceedings and their own experience about reasonable and proper fees, without resort to expert testimony.

(See *Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 276; *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; *Bunn v. Lucas, Pino & Lucas* (1959) 172 Cal.App.2d 450, 468, disapproved on other grounds in *Chambers v. Kay* (2002) 29 Cal.4th 142, 155, fn. 8.)

This was the case here. Judge Keley had presided over the matter for more than four years and said she specifically remembered the 2012 trial and was familiar with the issues in the case. Judge Keley also referred to her substantial experience in ruling on extraordinary fee motions, and said she routinely provides counsel substantial time to make their arguments and she "drill[s] down" on the factual and legal basis for such motions. Although O'Bryan was given the opportunity to make a full record on the need for an expert witness, he did not identify any grounds to show cross-examination or expert witness testimony would add material information on the proffered issues (need and reasonableness of Alspaugh's services and fees). Alspaugh's legal representation involved straightforward litigation issues arising from typical property disputes and other routine probate matters. As these matters were encompassed within the probate court's own knowledge and expertise, the court could fairly determine the reasonableness and necessity of the services without the need for an expert opinion or cross-examination of Alspaugh. On the record before us, the court did not abuse its discretion in excluding the proposed witness testimony.

Jeanette's reliance on *Fraysher, supra*, 47 Cal.2d 131 is misplaced. In *Fraysher*, the executor petitioned for approval of an accounting, including statutory and extraordinary fees for the executor's counsel. (*Id.* at pp. 133-134.) After one of the beneficiaries filed objections, the parties submitted the matter to the probate court on

written affidavits. (*Id.* at pp. 134-135.) On appeal, the court noted that generally it is error for a probate court to admit affidavits into evidence over objection, but that it could rely on the affidavits because neither party had objected to the use of the documents in the probate court. (*Id.* at p. 135.) This statement does not suggest that parties in probate litigation have the absolute right to an evidentiary hearing merely by requesting a hearing. *Fraysher* did not consider the situation presented here where the party seeking to present evidence was given the opportunity to make an offer of proof, but was unable to establish the necessity for the witness testimony.

Further, Jeanette did not meet her burden to show prejudicial error from the exclusion of the witness testimony. Under the California Constitution, prejudice is not presumed, and must result in a "miscarriage of justice." (Cal. Const. art. VI, § 13.) To satisfy this standard, a party seeking reversal must establish " "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." ' ' " (*Conservatorship of Maria B.* (2013) 218 Cal.App.4th 514, 532-534; see *Wilcox v. Hardisty* (1922) 60 Cal.App. 206, 213.) On our review of the record, it is not reasonably probable the court would have reached a determination more favorable to Jeanette if Jeanette's counsel had been permitted to cross-examine Alspaugh and/or O'Bryan's cocounsel had testified as an expert. The record does not support the proposed testimony would have provided information that would have altered the court's exercise of discretion on the relevant matters.

### C. *Substantive Challenges to Extraordinary Fee Award*

On her substantive challenge to the extraordinary attorney fees award, Jeanette contends primarily the court erred because the requested fees are "not even found in the case before the court" and the claimed services "are not in the ROA [record on appeal] for this case." Jeanette identifies the work relating to the *Redlich I* appeal in support of this argument.

The argument is without merit. Alspaugh's detailed declaration (contained in the supplemental Clerk's Transcript) supported that he performed work for which he sought compensation, and these facts are supported by the *Redlich I* opinion and the appellate record in that case, of which we take judicial notice. (Evid. Code, § 452, subd. (d).) The fact that some of the underlying records may not have been before the probate court when it made its ruling did not preclude the court from relying on counsel's declaration and the court's own familiarity with the case after presiding over the matter for four years.

Jeanette contends the attorney fees award was inequitable and violated the public policy that "the estates of decedents [should] be distributed to persons rightfully entitled thereto," quoting *Estate of Kampen* (2011) 201 Cal.App.4th 971, 984. Jeanette notes that "every dollar given to Mr. Alspaugh [came] out of the pockets of the beneficiaries."

The probate court's comments show it understood that Mother's estate was insolvent and any funds to pay Alspaugh's fees would come from the Trust assets that would have gone to Mother's three daughters. However, the court found this fact did not preclude the attorney fees award. The court's conclusion was appropriate. Although a court is required to " 'secure distribution to the persons entitled to share in the estate' "

and may consider the available estate assets when awarding attorney fees (*Estate of Kampen, supra*, 201 Cal.App.4th at p. 984), the Legislature has provided that estate attorneys be paid for their reasonable and necessary services and that these claims be given priority. (See § 11420, subd. (a)(1); *Trynin, supra*, 49 Cal.3d at p. 873 ["'Every [probate] attorney should be fully and fairly paid for his [or her] services . . . .'"]; *Estate of Merritt, supra*, 98 Cal.App.2d at pp. 77-78.) The court expressly considered the limited assets available to pay attorney fees, but concluded that other relevant factors took precedence, including the demonstrated need for the legal work and that Jeanette substantially contributed to the escalation of the disputes. The court's conclusion did not constitute an abuse of discretion.

In other portions of her appellate brief, Jeanette suggests the court erred in awarding the extraordinary fees because Alspaugh's services did not provide any "benefit" to the estate.

In exercising its discretion on the extraordinary fees issue, a probate court should consider the extent to which the attorney services benefited the estate. (*Trynin, supra*, 49 Cal.3d at p. 874.) However, a showing of benefit is not an essential prerequisite to an attorney fees award. (*Ibid.*; *Estate of Merritt, supra*, 98 Cal.App.2d at p. 76.) As the California Supreme Court has explained: "[A]n attorney may be entitled to compensation even though the extraordinary services rendered 'turn out to be entirely valueless' [citations]. Services that do not directly benefit the estate in the sense of increasing, protecting, or preserving it are nonetheless compensable if the estate's attorneys or

representatives in performing the services were 'acting in consonance with the fiduciary duties imposed upon them' . . . ." (*Trynin*, at p. 874.)

In this case, the court found Alspaugh generally acted consistent with his fiduciary duties in his work on behalf of the estate. To the extent the court also found that some of Alspaugh's work was unnecessary (primarily the work related to the 2012 trial), the court reduced Alspaugh's total requested fees by about 45 percent. In awarding Alspaugh his remaining requested fees, the court properly considered that although the work may not have brought additional assets into the estate, much of this work centered on defending against Jeanette's meritless legal challenges. The court had a reasonable basis to find these legal services were necessary. The probate court was in a better position than this court to evaluate the reasonableness and necessity of the work.

On the record before us, the court did not abuse its discretion on its extraordinary attorney fees award.

## II. *Tax Returns*

Jeanette contends the court erred in closing the estate because the executor had not filed federal or state tax returns for the estate.

In the proceedings below, Eva submitted her declaration stating an (unidentified) tax professional had informed her that "no federal [or] California tax returns [were] due from the estate, and the estate has no federal [or] state tax liability." Jeanette objected to this declaration on grounds of timeliness, hearsay and lack of foundation. The court overruled Jeanette's evidentiary objections. The court stated: "With regard to your objections, it seems quite clear to me that the IRS would not be interested in a vehicle

[the only property left in the estate], and that taxes, if any, would be paid out of the trust. So I'm overruling your objection [to Eva's declaration]. [Eva's declaration] just simply makes the point that the taxes aren't being paid out of the estate and I'm willing to accept the analysis there."

Even assuming the court's evidentiary ruling was erroneous,<sup>5</sup> the court's determination was legally correct on the admissible evidence before it. An executor has the responsibility to determine the applicable tax law and to file any necessary state and federal tax returns. (See *Estate of Gerber* (1977) 73 Cal.App.3d 96, 114; Ross & Cohen, Cal. Practice Guide: Probate (The Rutter Group 2016) ¶ 12:204, p. 12-40.) Under applicable tax law, a federal income tax return must be filed for an estate only if: (1) the estate has gross income of \$600 or more; or (2) any beneficiary of the estate is a nonresident alien. (Ross & Cohen, *supra*, ¶ 12:205, p. 12-40; see 26 U.S.C. § 6012(a); 26 Code Fed. Reg., § 1.6012-3 (a)(1), (b)(2); Treas. Reg. 1.6012-3(a)(1).) Likewise, an executor must file a California tax return only if the estate has: (1) net income more than \$1,000; or (2) gross income more than \$10,000. (See Ross & Cohen, *supra*, ¶ 12:205, p. 12-40; Rev. & Tax Code, § 18505, subs. (d), (e).)

At the September 2015 hearing, it was undisputed Mother's estate was essentially insolvent. Although the estate once contained the San Diego property, the evidence showed there was a reverse mortgage on the property and by the time the property was sold, there was no remaining equity in the property. Accordingly, the court had

---

<sup>5</sup> A challenged declaration generally cannot be considered as evidence at a contested probate hearing. (See *Evangelho v. Presoto* (1998) 67 Cal.App.4th 615, 620.)

reasonable grounds for finding that no federal or state income tax returns needed to be filed on behalf of the estate. And to the extent there were any assets remaining in the estate, the assets would be poured over to the Trust, which would then be responsible for paying taxes.<sup>6</sup>

Jeanette's reliance on *Estate of Germond* (1971) 4 Cal.3d 573 (*Germond*) is misplaced. *Germond* involved a complicated estate plan that required the estate assets to be transferred to decedent's sister *if* the sister was still alive before the estate was distributed. (*Id.* at p. 576.) When the sister died before distribution, the executor sought instructions on the alternate beneficiaries' entitlement to their fractional shares. (*Ibid.*) The probate court found the estate should have been distributed to the sister before her death, and ordered the executor to award all assets to the sister's heirs. (*Id.* at pp. 576-577.) The California Supreme Court reversed, finding that under reasonable probate practice standards, the executor could not have distributed the assets before the sister's death and thus the alternate beneficiaries were potentially entitled to their shares. (*Id.* at pp. 579-581.)

Jeanette relies on the portion of the *Germond* opinion in which the court observed that the executor "*should* have prepared and filed the federal estate tax return more promptly." (*Germond, supra*, 4 Cal.3d at p. 577.) This statement does not suggest an insolvent estate cannot close if tax returns have not been filed. In *Germond*, the issue was not whether a tax return needed to be filed, but whether the filing delay affected the

---

<sup>6</sup> Although Jeanette also asserts that no income tax returns were filed on behalf of Mother for the several years before her death, there is no evidence to support that any tax liability was or is owed, or that this specific issue was raised at the hearing.

rights of the sister (or the sister's heirs) to inherit the assets. (*Id.* at pp. 577-578.) Similar issues are not present in this case.

We also find unhelpful Jeanette's reliance on a portion of the 2012 trial transcript in which the court commented on the tax issue. These comments did not preclude the court from approving the final report three years later when the court had the relevant facts before it.

Additionally, Jeanette does not point to any possible prejudice *to her* from the failure to file a tax return. She does not show she would bear any burden if there were unpaid tax liabilities, as she received no assets from the estate.

### III. *Challenges to Award to Eva for Costs Reimbursement*

Jeanette contends the court erred in awarding \$10,698.61 to Eva for costs she claims she personally incurred on behalf of the estate.

#### A. *Funeral Expenses*

As her primary challenge to the cost award, Jeanette contends the court erred in reimbursing Eva for \$6,585.56 in claimed funeral expenses.

Executors are entitled to be reimbursed for necessary estate administration expenses including expenses incurred for the care, management, preservation and settlement of the estate. (See § 11004.) The court has broad discretion in determining the reasonableness and necessity of the expenditures. (See *Estate of Turino* (1970) 8 Cal.App.3d 642, 648.)

On Schedule B of the 2015 final accounting report, Eva attached a list of administrative costs advanced by her, and one of those costs was listed as "Funeral

Expense" for \$6,585.56. In her written opposition, Jeanette stated this expense should be denied because the court had previously ruled in November 2012 that Eva "had not submitted a timely creditor claim." At the September 2015 hearing, Jeanette's attorney acknowledged that the "funeral expenses, as far as I understand it, have been paid," but said there "was no timely claim by the funeral home for any unpaid expenses." When the court said that Eva was seeking to be *reimbursed* for paying those funeral expenses, Jeanette's counsel responded:

"So listed here as a reimbursement when it's already been determined that . . . the individual who is saying I paid the funeral expenses, I'm submitting my claim as a creditor for funeral expenses, did not do that in a timely manner and did not submit it in accordance with the rules, should no[t] be able to resurrect it — actually three-and-a-half years later — and make it an allowable expense. I don't think the law supports that."

The court found the objection without merit, stating the Probate Code recognizes funeral costs as a reimbursable expense, and rejected the notion that Eva waived her reimbursement claim by delaying paying the bill or delaying seeking reimbursement.

On appeal, Jeanette has abandoned the timing argument and now asserts that the court erred in reimbursing Eva for the funeral expenses because Eva never in fact paid those expenses. Jeanette relies on evidence submitted at the 2012 hearing showing that in April 2011, Am Israel Mortuary obtained a small claims judgment against Eva for \$6,615.58. Jeanette also states (without citing to the record) that on July 20, 2012, she "contacted [the] Mortuary . . . and was told that this debt remains unpaid."

These facts (even if admissible and supported by the record) do not show the court erred in permitting the reimbursement. The fact that the funeral expenses were not paid

in 2012 does not mean they remained unpaid three years later in 2015. Additionally, in the proceedings below, Jeanette's counsel acknowledged the funeral costs were paid, and Jeanette is bound by this admission on appeal. (See *Masters v. San Bernardino County Employees Retirement Assn.* (1995) 32 Cal.App.4th 30, 50-51.)

### B. *Other Challenges*

Jeanette also contends the court erred because (1) Eva did not submit receipts for the reimbursements requested; (2) Eva was reimbursed for a property tax payment when "on information and belief" that payment was never paid by Eva; and (3) a receipt of \$2,406.37 identified on the 2015 final accounting report is "troubling" because of claimed discrepancies on the report. Jeanette forfeited these arguments by failing to raise them at the hearing. When the court asked Jeanette's counsel to identify any challenges to attached reimbursement schedules, Jeanette's counsel said Jeanette was objecting only to the funeral expense claim. Jeanette also forfeited these points by failing to develop these arguments on appeal and provide supporting record citations and legal authority. (See *People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 25.)

DISPOSITION

Affirmed. The parties to bear their own costs on appeal.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

DATO, J.