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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2969-20**

**IN THE MATTER OF THE
ESTATE OF ALBERT
PETRONGOLO, SR.**

**IN THE MATTER OF THE
ESTATE OF CONCETTA
PETRONGOLO.**

Submitted October 24, 2022 – Decided November 10, 2022

Before Judges Mayer and Bishop-Thompson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Camden County, Docket No. CP-
0173-2019.

Archer & Greiner, PC, attorneys for appellant/cross-
respondent Albert Petrongolo, Jr. (Donald P. Craig, on
the briefs).

Thatcher Passarella, PC, attorneys for
respondent/cross-appellant Ronald Petrongolo (David
A. Thatcher, on the briefs).

Cohen Seglias Pallas Greenhall & Furman, PC,
attorneys for respondent/cross-appellant Joseph

Petrongolo (Whitney Patience O'Reilly and Carl L. Engel, on the briefs).

PER CURIAM

In this consolidated action regarding the Estates of Albert Petrongolo, Sr. and Concetta Petrongolo, three of the decedents' children, Albert Petrongolo, Jr., Ronald Petrongolo, and Joseph Petrongolo,¹ appeal and cross-appeal from two May 10, 2021 orders and a June 18, 2021 judgment limited to the award of counsel fees. The May 10, 2021 orders entitled Albert, Jr. and Ronald "to payment from the estates of [twenty percent] of any legal fees incurred while they were not serving in [their] capacity as administrator/executor" and awarded the same "[twenty percent] limitation . . . to fees sought by Joseph."² The June 18, 2021 judgment reaffirmed the award of counsel fees under the May 10, 2021 orders. Because the probate judge failed to articulate findings of fact and conclusions of law in support of the counsel fees awarded under Rule 1:7-4, we reverse and remand.

We recite the facts relevant to our review of the judge's award of attorney's fees. Albert, Sr. died on January 21, 2015 and his wife, Concetta, died on April

¹ Because the parties share the same last name, we refer to them by their first names. No disrespect is intended.

² Joseph never served as the administrator or executor of his parents' estates.

18, 2015. The wills named Ronald as the executor for both estates. Ronald probated both wills without challenge from any of the decedents' children,³ including Albert, Jr. and Joseph.

In 2017, Albert, Jr. accused Ronald of misappropriating assets of the estates. On June 12, 2017, Albert, Jr. filed an action to remove Ronald as executor for his parents' estates and requested his appointment as the administrator of the estates. In an August 25, 2017 order, the probate judge removed Ronald as executor and appointed Albert, Jr. as substitute administrator cum testament annexo (CTA) of the estates. In the same order, the judge directed Ronald to account for the estates as required under N.J.S.A. 3B:14-7. At the time of his removal, Ronald claimed that he oversaw his parents' estates to near conclusion and had prepared an informal account of the estates through August 25, 2017.

From August 25, 2017 through April 2019, Ronald failed to file a formal account for the estates. During that time period, Albert, Jr. filed several enforcement applications, seeking to compel Ronald to file formal estate accounts. In a March 2, 2021 order to show cause, the probate judge scheduled a hearing on the accounts for May 7, 2021. In response to Ronald's accounts

³ Albert, Sr. and Concetta had eight children.

during the time period that Ronald served as executor, Albert, Jr. filed exceptions. In response to Albert, Jr.'s accounts during the time period that Albert, Jr. served as the substitute administrator CTA, Ronald and Joseph filed separate exceptions.

On May 7, 2021, the probate judge heard oral argument regarding the accounts submitted by Albert, Jr. and the exceptions filed by Ronald and Joseph. The arguments focused on the payment of attorney's fees and the award of commissions payable from the estates.⁴ In his exceptions to Albert, Jr.'s accounts, Ronald requested attorney's fees incurred from August 28, 2017 through April 15, 2021, in the amount of \$64,125, be paid from the estates. In his exceptions to Albert, Jr.'s accounts, Joseph requested attorney's fees incurred from August 22, 2019 through March 29, 2021, in the amount of \$100,993.69, be paid from the estates. In his accounts, Albert, Jr. requested attorney's fees incurred from March 16, 2017 through June 16, 2020, in the amount of \$127,799.96, be paid from the estates. At the conclusion of the arguments, the probate judge stated that she would review the certifications of attorney's services filed by all counsel before rendering a decision.

⁴ The commissions awarded in the May 10, 2021 orders are not the subject of the appeal or cross-appeals.

In two May 10, 2021 orders, one for each estate, the probate judge wrote that "[c]ounsel fees are the primary disputed issues" and allowed "[b]oth Albert [Jr.] and Ronald . . . to have their counsel fees paid from the estates for any and all work performed by their attorneys while each of them served as administrators/executors." However, there was no dollar amount specified for the awarded fees in the May 10, 2021 orders.

Additionally, the May 10 orders stated:

The [c]ourt recognizes that a large portion of the legal fees result[ed] from extensive litigation . . . seeking proof of repayment of [a] \$500,000 loan from [a family corporation]; a quest for repayment of a \$50,000 sum given to Albert[, Jr.]; [and] pursuit of funding of a Special Needs Trust for Thomas Accordingly, and with recognition by the [c]ourt of the underlying vitriol between the brothers, each is entitled to payment from the estates of [twenty percent] of any legal fees incurred while they were not serving in the capacity as administrator/executor. This [twenty percent] limitation also applies to fees sought by Joseph. All other fees are to be paid by the individuals. (example: legal fees of Ronald while he was executor of Concetta and Albert's Estates shall be paid from the Estates. Any other legal fees incurred shall only be paid from estate funds in the amount of [twenty percent] of the remaining bill and the balance shall [be] borne by him individually. This example applies to Albert and Joseph as well.)

The probate judge included no additional findings in the May 10, 2021 orders, in a separate written statement of reasons, or in a decision placed on the record.

Thereafter, Albert, Jr. filed a motion for reconsideration of the May 10, 2021 orders. Although titled as a motion for reconsideration, Albert, Jr. requested consolidation of the two estate actions and the entry of a single judgment allowing the accounts rather than two separate orders. In a June 18, 2021 judgment, the probate judge incorporated the language from her May 10, 2021 orders verbatim, consolidated the two estate matters under a single docket number, and indicated "[t]he accountings are otherwise allowed as stated."

On appeal, all three brothers challenge the twenty percent fee amount awarded in the May 10, 2021 orders. Additionally, Albert, Jr. contends the probate judge erred in awarding counsel fees payable to Ronald and Joseph from the estates without notice to the decedents' other children or other interested parties. Ronald cross-appeals from the portion of the June 18, 2021 judgment awarding all of Albert, Jr.'s attorney's fees to be paid from the estates. Joseph cross-appeals from the twenty percent limitation on the recovery of his attorney's fees.

After the notices of appeal and cross-appeal were filed, Albert, Jr. filed a motion before this court for a limited remand to settle the record. Because the motion was unopposed, in a January 13, 2022 order, we granted a limited remand

and directed the trial court, after conferring with counsel, to "issue an order settling the record."

In a January 20, 2022 order settling the record, the probate judge stated the filed certifications of attorney services provided by counsel for Albert, Jr., Ronald, and Joseph, which included the time spent for legal services and counsel's hourly rates, "were all considered by the court prior to the May 10, 2021 orders entered in this matter and are part of the record." The probate judge provided no further statements or analyses regarding the attorney services.

We review a trial judge's legal determination permitting an award of attorney's fees de novo. Brunt v. Bd. of Trs., Police & Firemens' Ret. Sys., 455 N.J. Super. 357, 363 (App. Div. 2018). While a trial judge has discretion in awarding attorney's fees, "such determinations are not entitled to any special deference if the judge 'misconceives the applicable law, or misapplies it to the factual complex.'" Porreca v. City of Millville, 419 N.J. Super. 212, 224 (App. Div. 2011) (quoting Kavanaugh v. Quigley, 63 N.J. Super. 153, 158 (App. Div. 1960)). Where an award of attorney's fees is authorized by court rule, statute, or contract, the fee award is reviewed for abuse of discretion. Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

Albert, Jr., Ronald, and Joseph offer nothing more than speculation as to the judge's reasons for awarding attorney's fees. Because the judge failed to state the statute, court rule, or contract provision authorizing an award of fees, we are unable to review the fees awarded.⁵

We are unable to resolve the sole issue on appeal without a statement of reasons in support of the awarded attorney's fees. Under Rule 1:7-4(a), a judge "shall, by an opinion or memorandum decision, either written or oral, find the facts and state [the] conclusions of law thereon . . . on every motion decided by a written order that is appealable as of right[.]" See Shulas v. Estabrook, 385 N.J. Super. 91, 96 (App. Div. 2006) (requiring an adequate explanation of basis for the court's action). "The rule requires specific findings of fact and conclusions of law" Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4 (2023). The "[f]ailure to perform that duty constitutes a disservice to the litigants, the attorneys and the appellate court. Naked conclusions do not satisfy the purpose of [Rule] 1:7-4." Curtis v. Finneran, 83 N.J. 563, 569–70 (1980) (citation and internal quotation marks omitted).

⁵ Although Rule 4:42-9(a)(3) addresses attorney's fees in probate actions, the Rule applies in cases where either the validity of the will or probate of the will is challenged. Here, none of parties involved in the appeal and cross-appeals challenged the validity or probate of the wills.

Where a judge provides legal authority for an award of attorney's fees, the amount to be awarded typically "rests within the discretion of the trial judge, but the reasons for the exercising of that discretion should be clearly stated." Khoudary v. Salem Cnty. Bd. of Soc. Servs., 281 N.J. Super. 571, 578 (App. Div. 1995) (citations omitted). "[T]he judge must specifically review counsel's affidavit of services under [Rule] 4:42-9, and make specific findings regarding the reasonableness of the legal services performed" F.S. v. L.D., 362 N.J. Super. 161, 170 (App. Div. 2003). "Without such findings it is impossible for an appellate court to perform its function of deciding whether the determination below is supported by substantial credible proof on the whole record." Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986).

Here, the judge provided no analysis regarding the reasonableness of the requested fees after reviewing counsel's affidavits of service in accordance with Rule 4:42-9. Absent a clear articulation of the statute, court rule, or contract for the award of attorney's fees and an analysis of the reasonableness of any awarded fees based on a review of the affidavits of service filed by counsel, we are unable to perform our review function related to the awarded attorney's fees in the May 10, 2021 orders and the June 18, 2021 judgment.

Because we remand the matter to the probate judge for findings of fact and conclusions of law authorizing the award of fees and the reasonableness of any fees awarded, the judge should ensure that the estates' beneficiaries and other interested parties receive notice of the requests for attorney's fees. The beneficiaries and other interested parties should have an opportunity to object to any award of fees or the amount of the requested fees. On this record, we were unable to ascertain whether the estates' beneficiaries or interested parties received notice of the requested attorney's fees under Rule 4:87-4.

On remand, we take no position whether there is any legal basis for an award of attorney's fees pursuant to statute, court rule, or contract. Nor do we offer any opinion as to the amount of reasonable attorney's fees to be awarded in the event the probate judge determines such fees are permissible.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION