

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 1, Honorable Le Jacqueline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

**To contest the ruling, call (408) 808-6856 Or Email at
Department1@scscourt.org before 4:00 P.M.**

**PROBATE LAW AND MOTION TENTATIVE RULINGS
DATE: October 11, 2024 TIME: 10:00 A.M.**

*****NOTICE*****

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status-reports](https://santaclara.courts.ca.gov/divisions/probate-division/probate-advance-case-status-reports)**

LINE #	CASE #	CASE TITLE	RULING
LINE 1	21PR189557	Delia M. Sambo Living Trust	Click on LINE 1 or scroll down for attached Tentative Ruling.

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PROBATE LAW AND MOTION TENTATIVE RULINGS

LINE 2			Click on LINE 2 or scroll down for attached Tentative Ruling.
LINE 3			Click on LINE 3 or scroll down for attached Tentative Ruling.
LINE 4			
LINE 5			
LINE 6			

Line 1

Case Name: *The Delia M. Sambo Living Trust dated March 7, 2006*

Case No.: 21PR189557

Hearing date, time, and department: October 11, 2024 at 10:00 a.m. in Department 1

INTRODUCTION

This case was initiated by Petitioner Jose Regino Sambo, Jr. (“Petitioner”), who filed a Petition to Prove Existence of Trust and to Confirm an Asset of the Trust (“the petition”). Petitioner contends that his sister, Decedent Delia Sambo (“Decedent”) created a trust and deeded her real property at 514 Lanfair Circle, San Jose to the trust. Petitioner points to an unsigned copy of the trust and the fact that the deed to the real property is titled to Decedent as trustee of the trust. Respondent Bilal Ibnmuhammad (“Respondent”) currently lives in the property and denies the existence of the trust. Respondent filed an opposition to the petition in which he states that he was Decedent’s husband and that Decedent died intestate. He asserts an interest in the real property under various legal theories.

On May 20, 2024, the court held an evidentiary hearing on the petition and granted it, as memorialized in a written order filed that same day. The order found that Respondent acted in bad faith within the meaning of Probate Code section 859 (“section 859”). The order also provided that the court would consider Petitioner’s motion for reasonable attorney fees pursuant to section 859.

Currently before the court is Petitioner’s motion for attorney fees under section 859. The motion is unopposed.¹

The motion previously came on for hearing on September 11, 2024. The court continued the hearing on that date because Respondent had filed for bankruptcy and the court believed the automatic bankruptcy stay would prohibit its ruling on the motion. However, the court was unaware that Petitioner had filed a notice of dismissal of the bankruptcy case. Because the bankruptcy case has been dismissed, the court finds that the automatic stay is no longer an impediment to a ruling on the motion for attorney fees and the court will reach the merits of the motion.

DISCUSSION

¹ The proof of service attached to the motion indicates that Respondent was served with the motion and supporting documents at the Lanfair Circle address. On October 3, 2022, Respondent filed a substitution of counsel indicating that he would be representing himself in pro per and that he would be seeking a new attorney. The address listed for Respondent on the proof of service is the Lanfair Circle address. No updated address has been provided to the court.

I. Legal Background

Section 859 provides that a person who has “in bad faith wrongfully taken, concealed, or disposed of property” belonging to a trust or the estate of a decedent, “may, in the court’s discretion, be liable for reasonable attorney’s fees and costs.” Section 859 is punitive in nature. [Citations.] The section 859 penalty is imposed when an interested party establishes both that the property in question is recoverable under section 850 and that there was a bad faith taking of the property. [Citations.]” (*Estate of Kraus* (2010) 184 Cal.App.4th 103, 112.)

“[T]he fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. ‘California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.’ [Citation.] The reasonable hourly rate is that prevailing in the community for similar work. [Citations.] The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court’s analysis to an objective determination of the value of the attorney’s services, ensuring that the amount awarded is not arbitrary.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) “[T]he trial court has broad authority to determine the amount of a reasonable fee.” (*Ibid.*)

II. Merits of the Motion

As noted above, the court has already made a determination that Respondent acted in bad faith in wrongfully taking and being in possession of the real property at 514 Lanfair Circle, San Jose. Petitioner’s petition requested an order that the real property be subject to his control as trustee of the trust. In his opposition to the petition, Respondent asserted that the trust was invalid and that he had an interest in the real property under various legal theories. Accordingly, the issue of the right to possession and control of the real property was one of the main issues for the court’s consideration at trial. In his trial brief, Petitioner contended that Respondent acted in bad faith within the meaning of section 859 in concealing and destroying the executed trust document so that he could continue to reside in the real property. On the basis of the evidence presented at trial,² the court made a finding that Respondent acted in bad faith with respect to the taking and possession of the real property.

Petitioner seeks a total of \$110,968.15 in attorney fees and costs. This amount consists of fees incurred in three main areas: (1) beginning of representation, preparing for and attending hearings, and settlement discussions; (2) conducting discovery and discovery motion practice; and (3) preparing for and attending trial/evidentiary hearing. Petitioner also requests that Respondent pay his costs.

² Respondent did not appear for trial. A proof of service filed March 12, 2024, indicates that Respondent was served with notice of the trial at the Lanfair Circle address, the same address listed for Respondent in his substitution of counsel form. Additionally, further orders of the court prevented Respondent from presenting evidence at trial due to his repeated failures to respond to discovery.

1. Beginning of Representation, Hearings, and Settlement Discussions

Petitioner contends that one of his two attorneys, Kevin Rodriguez (“Rodriguez”) spent 1.3 hours at a rate of \$550 and two hours at \$600 per hour in this category.³ Another attorney, David Monsour (“Monsour”) spent 8.2 hours at \$420 per hour and 21.3 hours at \$470 per hour in this category. The total time spent in this category was 32.8 hours, resulting in a total of \$15,370 in fees.

Respondent has not opposed the motion and therefore does not contend that the hourly rate of Petitioner’s attorneys is unreasonable. Petitioner has provided Monsour’s declaration indicating that Monsour has nine years of litigation experience while Rodriguez has 18 years of experience. The court notes that counsel’s representation spanned a period of years and it appears that there are two different billing rates listed for each attorney because the expenses were incurred in different years. In the Monsour’s declaration in support of the motion, in this category of fee requests, Monsour provides a summary of the fees incurred by each attorney at their hourly rates:

Kevin Rodriguez \$550 (2022)
Kevin Rodriguez \$600 (2023)
David Monsour \$420 (2022)
David Monsour \$470 (2023)

(Declaration of David Monsour in Support of Motion (“Monsour Decl.”), p. 5:12-16.) The court finds these rates reasonable based on the experience of the attorneys as mentioned above.

As to the reasonableness of the hours worked, again Respondent makes no argument that the number of hours worked was unwarranted. Monsour explains that the time incurred in this category was spent in communicating with Petitioner’s former attorney, who had been working on the case for 21 months at the time current counsel took over the litigation; reviewing files and pleadings; preparing for and attending multiple hearings; coordinating with Respondent and mediators in an attempt to schedule court-ordered mediation; and attempting to settle with Respondent after he failed to attend mediation. The court finds that the time spent by the attorneys in performing work in this category is reasonable.

The court will award \$15,370 in attorney fees in this category.

2. Discovery and Discovery Motions

In this category, Petitioner asserts that Rodriguez spent 1.4 hours at a rate of \$600 per hour and Monsour spent 21.3 hours at a rate of \$470 per hour on propounding discovery and discovery motions. However, Petitioner also contends that the total time spent in this category

was 94.3 hours and he declares that \$44,503 worth of fees were incurred. In Petitioner's counsel's summary of the time spent, counsel alleges that Monsour spent 21.3 hours working in this category at \$470 per hour for a total of \$43,663. By the court's math, 21.3 hours plus 1.4 hours is 22.7 hours, not 94.3 hours. And 21.3 hours at a rate of \$470 per hour results in a total of \$10,058, not \$43,663. Because Petitioner has not provided the underlying billing records or a breakdown of exactly how the time in the discovery category was spent, the court must conclude that Monsour spent 21.3 hours in the discovery category, resulting in a total for his time spent of \$10,058.

The court finds that 22.7 hours spent on discovery and discovery motions in the context of this case is reasonable. Respondent repeatedly failed to respond to discovery propounded by Petitioner despite his filing of the opposition to Petitioner's petition, placing the issues of the validity of the trust and the rights to possession of the real property at issue.⁴ Petitioner also failed to appear for his deposition on multiple occasions. As a result of this conduct, Petitioner filed multiple discovery motions. Respondent failed to oppose the motions and failed to appear at the hearings on those motions. Ultimately, Petitioner sought and received orders that Respondent could not testify, call witnesses, or submit documentary evidence at trial and his opposition to the petition was stricken.

The court will award \$10,898 (1.4 hours at \$600 per hour plus 21.3 hours at \$470 per hour) in this category.

3. Preparing for and Attending Trial

⁴ Probate Code section 859 does not expressly limit the attorney fees that may be awarded to those incurred in proving the bad faith conduct allowing for such an award. However, the statute does state, If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to a conservatee, a minor, an elder, a dependent adult, a trust, or the estate of a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered by *an action under this part*. In addition, except as otherwise required by law, including Section 15657.5 of the Welfare and Institutions Code, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs." (§ 859.) To the extent an award of attorney fees pursuant to section 859 is limited only to proving the Probate Code section 850 claim, the court notes that, although the trial involved issues regarding the validity of the trust, in addition to the actual request to recover the real property as an asset of the trust pursuant to Probate Code section 850, establishing the existence of the trust was a prerequisite to a determination that the real property belonged to the trust. Further, Respondent's bad faith conduct related specifically to his concealment and destruction of the trust instrument so that he could continue to reside in the real property. Accordingly, the issues were intertwined such that Petitioner would have been required to prove the validity of the trust in order to prove his Probate Code section 850 claim.

In this category, Petitioner seeks a total of \$47,636 in fees for 97.3 hours of attorney services. This amount consists of 3.5 hours at \$600 per hour and 0.5 hours at \$650 per hour for Rodriguez's time and 59.3 hours at \$470 per hour and 34 hours at \$510 per hour for Monsour's time.

In connection with this category, Monsour lists the hourly rates of the attorneys as follows:

Kevin Rodriguez \$600 (2023)

Kevin Rodriguez \$650 (2024)

David Monsour \$470 (2023)

David Monsour \$510 (2023)

(Monsour Decl., p. 7:8-12.) It is not clear why Monsour would charge two different hourly rates within 2023. No explanation has been provided as to when Monsour's hourly rate changed. Accordingly, the court will use the lower rate of \$470 for all work Monsour performed in this category.

As to the reasonableness of the hours incurred, Monsour states that the hours were spent in researching and preparing Petitioner's 25-page trial brief, drafting witness declarations and preparing witnesses for their testimony at trial, preparing exhibits, and otherwise preparing for trial. The court notes that Petitioner presented six exhibits at trial. Monsour asserts that, due to Respondent's failures to appear, the trial was continued multiple times resulting in counsel having to prepare for trial more than once.

On October 4, 2023, the court entered orders precluding Respondent from testifying and presenting evidence at trial and even struck Respondent's opposition. For this reason, the issues to be addressed at trial were greatly narrowed. Monsour asserts that it did not begin to incur expenses in preparation for trial until October 6, 2023. In light of the narrowed issues, the court finds that the time spent by Monsour in preparation for trial, 93.3 hours, is a bit excessive. The court finds that 80 hours would be reasonable. Accordingly, the court will award \$37,600 (80 hours at \$470 per hour) for Monsour's time in this category.

The court will award a total of \$40,025 (\$37,600 for Monsour's time plus the entirety of the amount requested for Rodriguez's time) in this category.

4. Costs

Petitioner seeks a total of \$3,459.15 in costs for items such as messenger and filing fees and transcripts of Respondent's non-appearance at his deposition. The court exercises its discretion decline to charge the cost of the transcript of the evidentiary hearing to Respondent because it appears that Petitioner has only used the transcript in the context of the instant motion seeking fees. It would be unfair to shift the payment of that cost to Respondent.

Accordingly, the court will award \$2,259.15 in costs (\$3,459.15 minus \$1,200 [the cost of the transcript of the evidentiary hearing].)

CONCLUSION

Respondent is ordered to pay Petitioner's attorney fees and costs under Probate Code section 859 in the total amount of \$68,552.15.

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