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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

Guardianship of the Estate of
L.T., a Minor.

B288733

(Los Angeles County
Super. Ct. No. BP145310)

BAKER, BURTON & LUNDY,

Petitioner and Appellant,

v.

CITY NATIONAL BANK et al.,

Objectors and Respondents.

APPEAL from an order of the Superior Court of Los Angeles County, William Barry, Judge. Affirmed.

Baker, Burton & Lundy, Brad N. Baker, Albro L. Lundy, III and Steven J. Dawson, for Petitioner and Appellant.

Oldman, Cooley, Sallus, Birnberg, Coleman & Gold and
Justin B. Gold for Objector and Respondent City National Bank.

Law Office of Steven F. Carvel and Steven F. Carvel for
Objector and Respondent E.M.

Samuel D. Ingham, III; Orren & Orren and Tyna T. Orren
for Objector and Respondent L.T.

I. INTRODUCTION

Petitioner Baker, Burton & Lundy, A Professional Corporation (BB&L) appeals from an order denying its petition for allowance of attorney fees pursuant to Probate Code section 2642 (attorney fees petition).¹ BB&L sought compensation for legal services it provided to the estate of L.T. (the ward). Finding no error, we affirm.

II. BACKGROUND

A. *Facts*

Viewed in the light most favorable to the trial court's order,² the evidence established the following facts: The ward is

¹ All further statutory references are to the Probate Code unless otherwise noted.

² ““A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.”” (*Powell v. Tagami* (2018))

the child of B.T. and was six years old when B.T. died on August 24, 2013. The ward is the sole beneficiary of B.T.'s probate estate. On November 22, 2013, the trial court appointed the ward's mother, E.M., as guardian of the ward's estate. On August 12, 2014, the court appointed City National Bank as co-guardian. E.M. and City National Bank were also co-administrators of B.T.'s estate. On October 17, 2014, the court appointed Samuel D. Ingham, III as the guardian ad litem for the ward.

From the inception of probate until May 19, 2016, the law firm Venable LLP (Venable) represented E.M. and City National Bank as co-administrators and co-guardians. On April 12, 2017, E.M. retained BB&L for the purpose of filing a malpractice action against Venable. On May 15, 2017, BB&L filed a malpractice action, case No. BC661326, on behalf of E.M. against Venable and certain of its members. BB&L dismissed the first malpractice action without prejudice because a single co-guardian lacks the legal capacity to sue on behalf of an estate.³

On May 12, 2017, prior to the expiration of the statute of limitations for filing a legal malpractice action,⁴ BB&L contacted

26 Cal.App.5th 219, 231; *Estate of O'Connor* (2017) 16 Cal.App.5th 159, 164.)

³ “Where there are two guardians . . . , both must concur to exercise a power.” (§ 2105, subd. (c)(1).)

⁴ The statute of limitations for an action against an attorney for a wrongful professional act or omission is one year after the plaintiff discovers or through reasonable diligence should have discovered it, or four years from the date of the wrongful act or

City National Bank and explained that BB&L had been retained by E.M. and needed City National Bank's approval to file the malpractice action. A City National Bank trust officer agreed to permit the filing of the action, case No. BC661983. City National Bank paid a \$10,000 retainer to BB&L.⁵

During a May 12, 2017, telephone call and in subsequent discussions, Ingham, the guardian ad litem, told Steven Dawson of BB&L that BB&L needed court approval to receive any fees from either the ward's or B.T.'s estate. Ingham also expressed concerns about BB&L's performance, including that the co-guardians needed to act together to execute the retainer agreement and to file the complaint and that the malpractice lawsuit would make the ward potentially liable to Venable for malicious prosecution. BB&L did not address Ingham's concerns.

On or about May 23, 2017, upon learning of the filing of the malpractice action, City National Bank's in-house counsel contacted BB&L and instructed the law firm to stop all work related to the malpractice action pending further analysis. On June 1, 2017, and June 20, 2017, members of City National Bank participated in conference calls with members of BB&L, during which BB&L provided information about the lawsuit.⁶ Beginning

omission, whichever occurs first. (Code Civ. Proc., § 340.6, subd. (a).)

⁵ BB&L contends that City National Bank paid this amount. The record reflects a May 31, 2017, payment of \$10,000 was applied to E.M.'s account at BB&L.

⁶ In its response to City National Bank's objections to the attorney fees petition, BB&L stated that during these two conference calls, it "brought [City National Bank] up to date

in May 2017, BB&L sent City National Bank monthly bills, itemizing actions taken by the firm. Neither City National Bank nor E.M. expressed any concerns over these bills until BB&L filed its attorney fees petition.

In July 2017, City National Bank retained new counsel Oldman, Cooley, Sallus, Birnberg, Coleman & Gold, LLP (Oldman Cooley). According to Justin B. Gold, an attorney with Oldman Cooley, “I was hired in July. To go over everything, once this matter was underway, I was brought in to represent the estate, to look in—to represent City National Bank, to look into all of this and try to bring this to a head. We had the Venable issue, the malpractice issue, all of these things.” BB&L remained counsel of record on the malpractice lawsuit.

On September 5, 2017, the parties to the malpractice action and the fee dispute participated in a mediation and reached a global settlement. During the mediation, Oldman Cooley represented City National Bank and Steve F. Carvel represented E.M. Two attorneys from BB&L also attended and participated

sufficiently to allow BB&L to proceed,” which falls short of suggesting that City National Bank authorized further legal action. But during the hearing on January 12, 2018, counsel for BB&L stated regarding the June 1, 2017, conference call, “we were told to proceed, not to—we didn’t ever serve the Venable complaint because we wanted to keep costs down, but it was—.” To the extent this statement can be interpreted as a proffer that City National Bank had authorized further legal work, it was directly contradicted by counsel for City National Bank, who stated that during the June 1, 2017, conference call, “There was no instruction that they can move forward and start doing discovery, retaining experts, or anything like that.” The trial court was entitled to resolve this factual dispute in favor of City National Bank.

in the mediation. In a pleading filed with the trial court, BB&L represented that Ingham “requested that BB&L be present at the mediation.”⁷ City National Bank disputed this contention and stated that no one had invited BB&L to participate in the mediation. As part of the global settlement, Venable reduced its request for attorney fees by approximately \$155,000 (down from \$400,000), and its guardianship fees by approximately \$80,000 to \$30,000. The co-guardians dismissed the malpractice lawsuit.

B. BB&L’s Attorney Fees Petition

On October 17, 2017, BB&L filed its attorney fees petition, seeking \$64,398.75 in attorney fees and \$4,145.31 in costs, for a total of \$68,544.06.⁸

On November 17, 2017, City National Bank and E.M. filed their verified objection to the petition. The co-guardians asserted that the vast majority of the services performed by BB&L was

⁷ In its response to the opposition to the attorney fees petition, BB&L stated, “Ingham was placed in the loop regarding the malpractice action on the 13th of May, prior to its filing. On July 13, 2017 Mr. Ingham was also informed of the desire to have an early mediation to reach a global settlement of the malpractice action as well as the dispute over Venable’s fees in the Estate and Guardianship matters. Ingham was already aware of the drive to have an early mediation and was in favor of such a mediation, *and requested that BB&L be present at the mediation.*” (Italics added.) It is unclear from this record whether Ingham made his request on July 13, 2017, or earlier.

⁸ On December 15, 2017, BB&L submitted a declaration from a paralegal, which stated that the current balance owed to BB&L was \$59,261.34.

neither discussed with nor approved by City National Bank. The co-guardians also argued that BB&L was not entitled to compensation for its filing of the first complaint because it was procedurally defective, or for any legal services performed after May 23, 2017, when it was instructed to cease work. The co-guardians also challenged the amounts billed as excessive and argued that BB&L had incurred unnecessary legal fees by assigning more than one attorney to work on a pleading or to appear at a hearing or conference. Finally, the co-guardians argued that the entire petition should be denied because BB&L had failed to identify which attorney performed which service, and how much time was spent on each claimed entry.

In his verified “Report of Guardian Ad Litem,” filed November 16, 2017, Ingham recommended that the trial court deny compensation to BB&L. In Ingham’s opinion, “[T]he filing of the two malpractice actions, especially because they named both [Venable] and two of its partners personally as defendants, made the settlement of the fee dispute far more difficult.” Ingham stated the dispute with Venable was resolved “primarily through the efforts of [City National Bank’s] new attorneys, the [Oldman Cooley] law firm.”

On December 15, 2017, BB&L filed its verified response, in which it maintained that its petition should be granted. That same date, it also submitted a supplement to its attorney fees petition that included a more detailed description of the specific tasks done, how much time was spent, and an itemization of costs. The supplement clarified that BB&L sought fees for legal services it performed from April 2017 until September 2017. BB&L argued that the pressure caused by the filing of the malpractice action resulted in a benefit conferred upon the ward’s

estate in the amount of approximately \$235,000, that is, the amount of the reduction in Venable's legal fees.

On January 12, 2018, the trial court held a hearing on BB&L's petition. During the hearing, the court asked whether counsel from BB&L had participated in the mediation. Counsel for City National Bank stated that the firm did participate but that "nobody asked them to show up." Counsel for BB&L contradicted this representation and stated, "[w]e were invited to the mediation" but did not repeat BB&L's contention that it was Ingham who had extended the invitation. Ingham was present at the hearing but did not state one way or the other whether he had invited BB&L to the mediation. Ingham, however, did state his opinion that "the civil actions were an economic liability to the estate and to the guardianship. [¶] The settlement produced a reduction in fees, which we would have gotten anyway, based on the objections that were filed in both matters." The court took the matter under submission.

On January 16, 2018, the trial court denied the attorney fees petition.

III. DISCUSSION

BB&L contends that the trial court erred by denying its attorney fees petition.⁹ BB&L's entitlement to compensation is

⁹ BB&L's opening and reply briefs do not comply with rule 8.204(a)(1)(C) of the California Rules of Court which requires an appellate brief to "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." Most of BB&L's referenced matters in their appellate briefs do not include a record citation. We

governed by section 2642 and rule 7.751 of the California Rules of Court.¹⁰ Section 2642, subdivision (a) provides that an attorney who has rendered legal services for a guardian may petition the court for an order fixing and allowing compensation for such services to be charged against the estate. Subdivision (b) of that section provides that “[u]pon the hearing, the court shall make an order allowing such compensation as the court determines reasonable to the attorney for services rendered to the guardian” Rule 7.751(b) provides: “All petitions for orders fixing and allowing compensation must comply with the requirements of rule 7.702 concerning petitions for extraordinary compensation in decedents’ estates, to the extent applicable to guardianships . . . , except that the best interest of the ward . . . is to be considered instead of the interest of beneficiaries of the estate.”¹¹

We review the trial court’s order denying an attorney fees petition for an abuse of discretion. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488 [“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

exercise our discretion to disregard the noncompliance as it does not affect the outcome of the appeal here. (Cal. Rules of Court, rule 8.204(e)(2)(C).)

¹⁰ All further rule references are to the California Rules of Court.

¹¹ Rule 7.702 requires an attorney filing a petition for extraordinary compensation to provide a statement of fact that shows, among other things: the nature and difficulty of the tasks performed, the results achieved, the benefit of the services to the estate, and sufficient detail of the services rendered.

to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong”]; *Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1461 [abuse of discretion standard applied on review of order for attorney’s fees payable from trust].) “An abuse of discretion is shown when the award shocks the conscience or is not supported by the evidence.” (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 549–550; accord, *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1509.)

It was undisputed that BB&L was paid \$10,000 for its legal services. Substantial evidence supports the trial court’s implied finding that BB&L should not be awarded any additional attorney fees or costs for its legal services. City National Bank had instructed BB&L to cease work on or about May 23, 2017, yet BB&L continued to perform legal services until September 2017. It was undisputed that BB&L had conversations with City National Bank about the lawsuit after May 23, 2017, and sent it bills describing BB&L’s work, but City National Bank never expressly advised BB&L that it could recommence legal work after May 23, 2017.

While there was also undisputed evidence that BB&L performed legal services during the period it was authorized to do so by both co-guardians until it was instructed to cease work, that is, from May 12, 2017, to May 23, 2017, the trial court’s implied finding that \$10,000 was reasonable compensation for such work was supported by substantial evidence.¹² Thus, the trial court did not abuse its discretion by denying BB&L’s petition for attorney fees and costs.

¹² BB&L billed E.M. \$19,358.14 for the months of April and May of 2017, and City National Bank \$3,802.50 for May 2017.

IV. DISPOSITION

The order is affirmed. Respondents are entitled to recover their costs on appeal.

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KIM, J.

We concur:

RUBIN, P. J.

BAKER, J.