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IN THE SUPREME COURT OF FLORIDA

IN RE: ESTATE OF
HARVEY S. WARWICK,
Deceased.

Case No. 74,349

JULIA W. CARSWELL,

Petitioner,

vs.

WARWICK, CAMPBELL, BURNS,
SEVERSON & BANISTER, P.A.

Respondent.

FILED
APR 4 1980
CLERK, SUPREME COURT

PETITIONER'S REPLY BRIEF ON THE MERITS

On Review from the District Court
of Appeal, Fourth District
State of Florida

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SUMMARY OF ARGUMENT

The issue of whether Julia Carswell agreed to Mr. Warwick's fees or is estopped to challenge them was implicitly rejected by the Fourth District Court of Appeal. The only issue to be reviewed by the Court here is whether the District Court erred in holding that Rowe did not apply to estate proceedings. Contrary to Mr. Warwick's claim, Rowe should not be limited just to litigation matters but instead should apply whenever attorneys' fees are to be charged to a person or entity that did not specifically contract for them, and this would include estate proceedings.

Also, Mr. Warwick's lengthy discussion of the merits of "percentage-oriented systems" vs. "time-oriented systems" constitutes a re-argument as to the appropriateness of the lodestar formula itself, which is something that has already been implicitly decided by Rowe. Arguments against the lodestar formula are no more convincing in an estate proceeding context, as estate proceedings are not significantly different from other legal proceedings involving a judicial determination of reasonable attorneys' fees. In estate proceedings, there is no greater risk that inefficiency will be rewarded, no greater risk of malpractice, and no greater emphasis on systems, technology, research and non-lawyer services than in any other proceeding.

ARGUMENT

- I. THE FOURTH DISTRICT COURT OF APPEAL ERRED IN HOLDING THAT THE LODESTAR FORMULA SET FORTH IN THE ROWE CASE SHOULD NOT BE USED IN DETERMINING REASONABLE ATTORNEYS' FEES CHARGEABLE AGAINST AN ESTATE PURSUANT TO F.S. §733.617.

Respondent ("Mr. Warwick") has argued in its Answer Brief that Petitioner ("Julia Carswell") agreed to the attorneys' fees charged by Mr. Warwick and was estopped to challenge them. This was an issue at the trial court level, and the trial court's decision, in addition to holding that Rowe did not apply, stated that "it would appear (Julia Carswell) is estopped...". This issue was raised and argued on appeal before the Fourth District Court of Appeal. As Mr. Warwick's Answer Brief correctly notes, the District Court's decision was silent on this issue and instead was based only on the Rowe issue.

It is apparent, then, that the Fourth District Court of Appeal did not find meritorious Mr. Warwick's "agreement and estoppel" arguments, because if it had, there would have been no need to deal with the issue of whether Rowe applied. In other words, the Fourth District Court of Appeal, by basing its decision on the Rowe issue, implicitly held that the other arguments of Mr. Warwick were without merit. Accordingly, Julia Carswell does not reargue here the issues of whether she agreed to Mr. Warwick's fees or is estopped to challenge them, as she feels these issues are no longer relevant. To the extent, however, that this Court may feel that these issues should be

reviewed, Julia Carswell incorporates by reference the arguments she made in her initial brief and reply brief at the Fourth District Court of Appeal level, copies of which are found in the appendix to this brief.

Turning now to the issue of the applicability of Rowe, Mr. Warwick offers several reasons why Rowe should not apply here but all of these reasons are unfounded. First, Mr. Warwick seems to be arguing that Rowe should apply only in litigation matters. However, there is no logical reason why Rowe should be so limited. Instead, Rowe should be applied in any situation where attorneys' fees are to be charged to a person or entity that did not specifically contract for them, and obviously this would include estate proceedings where the estate is obligated to pay only reasonable attorneys' fees (and not necessarily the amount agreed on by the personal representative and the attorney).

Second, Mr. Warwick seems to be questioning the validity of the lodestar concept itself in his lengthy discussion of the merits of "percentage oriented systems" versus "time-oriented systems". It is easy to argue that time-oriented systems reward inefficiency, but the lodestar formula is not so unsophisticated that it cannot prevent that. The concept of a "reasonable number of hours expended" necessarily will involve a determination as to whether a lawyer has acted efficiently, and if a lawyer is inefficient, he will not be compensated for all of his time. Likewise, a lawyer who is more efficient and uses more input

(e.g. supplies, equipment, office space, secretarial services, research and development) will command a higher hourly rate than a less efficient lawyer who uses less input.

The risk of malpractice in a multi-million dollar estate is no greater than the risk of malpractice in handling a multi-million dollar personal injury case. Also, the relationship between value and time spent by a lawyer is no more attenuated in estate proceedings than in other matters. Virtually all legal work can benefit from the use of systems, technology, research and non-lawyer services. These are not items that are reserved exclusively for estate administration.

In short, Mr. Warwick's arguments against the lodestar formula are no more compelling in an estate proceeding context than in any other context. Julia Carswell feels that the goals of objectivity and uniformity articulated in Rowe are just as necessary in probate proceedings as in other legal matters involving a judicial determination of reasonable attorneys' fees and that the lodestar formula is flexible enough to produce fair results in all situations, including estate proceedings.

CONCLUSION

For the foregoing reasons, and those set forth in Petitioner's Initial Brief on the Merits, Julia Carswell respectfully requests that this Court reverse the decision of the Fourth District Court of Appeal and either determine the appropriate amount of attorneys' fees itself (if it can do so based on the record) or remand this case to the probate court for it to determine a reasonable fee in accordance with the lodestar method set forth in Rowe.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this brief has been furnished by mail to James E. Weber, Esq., Suite 502, Flagler Center, 501 So. Flagler Drive, West Palm Beach, FL 33401, this 2nd day of April, 1990.

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