STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF JACK EDWARD BUSSELLE.

BRET E. BUSSELLE,

Appellant,

v

THOMAS V. TRAINER, Successor Personal Representative of the ESTATE OF JACK EDWARD BUSSELLE, and HARMON PARTNERS LLC,

Appellees,

and

JACQUELINE G. DODD, NICOLE S. ROLDAN, COLE A. BUSSELLE, and GAYLE BUSSELLE,

Other parties.

UNPUBLISHED
October 25, 2018

No. 338743
Oakland Probate Court
LC No. 2010-327253-DE

Before: MURRAY, C.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this dispute over the administration of the Estate of Jack Edward Busselle, appellant, Bret E. Busselle, appeals by right the probate court's orders denying his request for compensation while serving as the estate's personal representative; granting in part the fees for the successor personal representative, Thomas V. Trainer, and Trainer's law firm; approving the fees for a management firm, Harmon Partners, LLC; and denying appellant's request to remove Trainer as the personal representative. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

After appellant's father died in November 2009, appellant applied for the informal probate of his father's estate. Appellant was appointed to be the estate's personal representative in January 2010. At the time of the decedent's death, including appellant, the decedent had four living children.

In February 2013, the decedent's daughter, Jacqueline G. Dodd, petitioned to have appellant removed as the personal representative. Dodd alleged the estate had been open for three years and that appellant had not been able to close the estate. More specifically, Dodd alleged that appellant had been unable to properly account for, sell, consolidate, or transfer the estate's business and real estate assets. In the petition, Dodd maintained that it was in the estate's best interests to appoint a successor personal representative and that appellant was incapable of discharging the duties of personal representative. Dodd nominated Trainer, who was an attorney and equity partner at the Kemp Klein Law Firm, to be appointed as successor personal representative.

The probate court held a hearing on the petition on March 20, 2013. At the hearing, Trainer informed the court that he had met with appellant and told him about the need for a successor. He said that the estate was not being properly managed and that the real estate assets remained undistributed despite the fact that the estate had been open for three years. Trainer noted that appellant had not even filed tax returns for the estate. The probate court stated that it would grant the petition to remove appellant as the personal representative. That same day, the probate court entered an order removing appellant as personal representative and appointing Trainer as successor personal representative.

Apparently, Trainer subsequently had difficulties obtaining appellant's cooperation in managing the businesses and closing the estate. In March 2014, Trainer petitioned the probate court to order appellant to provide an accounting for the years that he served as the estate's personal representative. In the petition, Trainer alleged that while he had been able to collect some funds that had been held by brokerage houses and banks in the decedent's name at the time of the decedent's death, there were still estate funds that appellant had claimed to have used within businesses owned by the estate but which Trainer could not account for based on the existing records. Trainer maintained that he wished to distribute the estate assets to the heirs to the extent possible and had sought meetings with the heirs and their respective legal representatives. However, the discussions had been difficult because appellant did not want the estate businesses to be sold and was objecting to the administration and proposed distribution of the estate assets. Further, Trainer indicated that appellant had recently asserted that he had advanced personal funds to the estate and declined compensation for his services to the estate during his time as the personal representative, which appellant now maintained constituted claims against the estate.

At the April 30, 2014 hearing, appellant complained that he had not been compensated for his time as the personal representative, and he objected to the sale of certain real estate on the grounds that he believed the property was being sold below fair market value and he felt that Trainer would not remit the proceeds to him. The probate court granted a previously filed petition to sell this real estate. Trainer informed the court that he had been unable to get a full accounting from appellant and that appellant had only sent him "some very poorly supported claims that he is entitled to be reimbursed for his bowling, his dining and his entertainment expenses as personal representative." The probate court entered an order compelling appellant to provide an accounting for the period that he acted as personal representative for the estate. The order also specifically required him to "include documentation of any and all claims, expenses, advances or other reimbursement he asserts he is entitled to against the estate" in his

accountings. The order also indicated that there would be an opportunity to file objections to the accountings.

At the November 19, 2014 hearing to show cause why appellant should not be held in contempt for failing to provide the required accountings, Trainer told the probate court that appellant had refused to cooperate with him and the estate's certified public accountant. Appellant indicated that he had been running three businesses owned by the estate. However, Trainer explained that appellant was not the president of any of the entities because Trainer had removed him as president, although appellant continued to receive a paycheck as an employee of one of the business entities, Friends Who Care, Inc (FWC). Trainer further explained that this particular business was being run by appellant's mother, Gayle Busselle, who was never married to the decedent. The probate court gave appellant another opportunity to provide an accounting to Trainer.

At a status conference in January 2015, Trainer asked the court to appoint a receiver. Trainer informed the court about continuing problems with the estate, including having only received minimal financial information from appellant rather than the accountings that appellant had been ordered to provide. He noted that Gayle had continued to run FWC but that it was inexplicably losing money. Appellant's counsel indicated that appellant was actually running FWC. Trainer explained that decedent's two children who were not related to Gayle had received no distributions from the estate during the five years it had been open. Trainer felt that the lack of cooperation and other issues made it necessary for him to take more control over the estate. He believed that he needed to appoint a manager to take over FWC and that all of the business entities needed to be sold. Trainer also noted that there was another business that had been run exclusively by appellant. Trainer suspected that this entity had no value, in part because he could not discern where the money from this business had gone other than being transferred to "two different accounts." Trainer did not know who removed the money from those accounts. The probate court provided the parties time to nominate a receiver and file any objections.

The probate court subsequently authorized Trainer to retain Meagan Hardcastle of Harmon Partners to run the businesses. The court agreed that Hardcastle would not be a receiver for the time being.

Trainer hired Hardcastle and Harmon Partners to take over running FWC to improve its performance and value in preparation for selling the business. Appellant continued to interfere by preventing Trainer and Hardcastle from having access to the computer systems at FWC, where appellant was apparently employed primarily to provide computer and IT related services. Trainer fired appellant in June 2015 from this employment.

On July 7, 2016, Trainer petitioned the probate court for payment of his fees and the fees charged by Harmon Partners. The fees included Trainer's fees from March 2013 through May 2016; the attorney fees from Kemp Klein's work, which included defending a lawsuit by the Department of Labor against FWC; and fees for services that Harmon Partners provided from March 2015 through May 2016.

On August 10, 2016, appellant petitioned to remove Trainer as the estate's personal representative. He argued that Trainer should be removed because he had not made any progress in winding up the estate and had instead cost the estate several hundred thousand dollars in professional fees related to the work of Trainer and Harmon Partners.

The probate court determined at a hearing in August 2016 that Trainer should get one-third of his requested fee immediately pending a full evidentiary hearing, and the court entered an order to that effect.

Trainer subsequently entered a notice on September 30, 2016, that he disallowed a claim made by appellant on September 22, 2016, against the estate for $574,763.54. Appellant filed a response, asking the probate court to order Trainer to pay him the $574,763.54. Appellant alleged that he had yet to be compensated for his time and expenses working for the estate, and he maintained that Trainer wrongfully denied his claim.

Trainer responded to appellant's request by noting that appellant verbally requested payments but failed to provide sufficient documentation in support. Trainer stated that appellant was compensated by the businesses for his work, did not provide any documentation to distinguish between time he spent working for a business entity and time he spent administering the estate, and failed to present any evidence that he expended personal funds on any business-related activities as opposed to using the businesses' accounts. Trainer also argued that the claims were all time-barred under MCL 700.3803(2), which essentially provides in applicable part that a claim against the estate that arose at or after the decedent's death is barred unless it is presented within four months after the claim arises.

In December 2016, the probate court held the first day of what would become a multiday evidentiary hearing on the requested fees that concluded on February 9, 2017. The court took the matter under advisement at the conclusion of the hearing.

A hearing was subsequently held in March 2017 to consider various requests made by appellant. These requests included, as pertinent to the instant appeal, appellant's claim that he was entitled to compensation for services he provided when he was the personal representative. At the hearing, the probate court explained that appellant had failed to provide sufficient evidence to support this claim. The court issued an order providing that appellant would have until April 28, 2017, to file an itemized statement of services rendered or his claims would be denied.

On April 28, 2017, appellant filed a supplemental response with exhibits that purportedly demonstrated the hours he spent working for the estate and itemizing his expenses. In his supplemental response, appellant also argued that his claim for compensation as a personal representative was not time-barred because claims for personal representative compensation were expressly excluded from the usual time limits pursuant to MCL 700.3803(3)(c), which provides in pertinent part that "[t]his section [MCL 700.3803] does not affect or prevent . . . [c]ollection of compensation for services rendered and reimbursement of expenses advanced by the personal representative."

Trainer replied to appellant's supplement by presenting evidence that appellant paid himself a total of $308,942 by collecting salaries from two of the estate's businesses from 2010 until he was terminated from FWC in June 2015. Trainer also attached a copy of a check register from FWC that showed that checks were issued to appellant totaling $85,045.33. Trainer indicated that appellant had not provided any documentation for the purposes of these checks and that there were no additional records of these payments. He further noted that appellant still had not provided any accountings for his time as personal representative and yet he—unlike the other heirs—had received $393,987.33 from the estate's assets. Trainer indicated that appellant's past work provided no benefit to the estate. To the contrary, he asserted, appellant was "almost solely responsible for the incredible expenses and fees incurred by the Estate since his removal." With respect to the application of MCL 700.3803(3)(c), Trainer argued that this provision was inapplicable under the circumstances to exempt appellant from the normal time limits because appellant was not the personal representative when he brought these claims for compensation and reimbursement of expenses. Trainer asked the probate court to deny appellant's request for additional compensation and sanction him for filing a frivolous claim with the court.

On May 22, 2017, the probate court held an evidentiary hearing to consider appellant's claim that he was entitled to payments as a result of his work as the original personal representative. The court swore in appellant and took his testimony about the claims.

Appellant testified that he verbally submitted a claim for compensation to Trainer. He stated that he summarized his time in writing—at the earliest—in August 2014. According to appellant, he wrote that he worked 40 hours per week at $50 per hour for the estate. Appellant agreed that he was paid more than $50,000 per year by FWC while he was the estate's personal representative and until he was terminated by Trainer in June 2015.

After the probate court heard appellant's testimony, it explained that the first issue was whether a period of limitations applied to a former personal representative's claim for compensation for services rendered and reimbursement of expenses advanced. The court concluded that a former personal representative's claims fell within the definition of administration expenses, making it a claim against the estate. The court explained that, when it removed appellant as the personal representative in March 2013, he became a third-party claimant, or creditor, against the estate. As such, MCL 700.3803(2)(b) governed appellant's claim, and he had four months after his removal as personal representative—which the court concluded was the time when his claim arose for purposes of the statute—to assert his claim. The court rejected the contention that MCL 700.3803(3)(c) applied to appellant's claim. The court noted that the language in that subsection exempted "the personal representative" from the period of limitations and did not apply to appellant as a former, rather than current, personal representative.

The probate court noted that appellant's documentation showed that he first made a written request for payment in 2016, well more than four months after he was removed as personal representative. The court further stated that appellant had testified under oath that the first time he made a written request for his compensation for services rendered was in August 2014. The court ruled that because appellant had failed to make a timely written request for compensation based on his services as personal representative, his claim for compensation was time-barred by MCL 700.3803(2)(b).

The court, however, acknowledged an April 2014 e-mail that seemed to involve claims for expenses that appellant apparently submitted to Trainer, which the court noted did not include any discussion of claims for compensation for services rendered. The court further indicated that there was some evidence that appellant may have made a written claim for reimbursement of expenses within four months of his removal as personal representative and thus before the expiration of the period of limitations. So the court allowed appellant's claim for expenses to proceed.

At the close of the hearing, the probate court signed an order reflecting the court's on-the-record ruling. Appellant's claim for compensation for services rendered during his time as the estate's personal representative was dismissed because it was time-barred, but his claims for expenses were allowed to proceed.

The probate court also subsequently issued a written opinion and order denying appellant's petition to remove Trainer as the personal representative, approving the fees requested by Trainer and Kemp Klein after factoring in appropriate reductions that the probate court found necessary, and approving the fees for Harmon Partners.

This appeal ensued.

I. APPELLATE JURISDICTION

As an initial matter, Trainer argues on appeal that this Court lacks jurisdiction over appellant's appeal from the probate court's May 22, 2017 order in which the probate court ruled that appellant's claim for compensation during his time as the personal representative was time-barred. Trainer contends that this was not a final order subject to appeal as of right because it was only a partial ruling on appellant's claims for compensation and expenses due to the court's ruling that appellant's claims for expenses could proceed. Trainer further notes that the order stated that it was not a final order and that it did not dispose of all the claims.

"Whether this Court has jurisdiction to hear an appeal is always within the scope of this Court's review." *Chen v Wayne State Univ*, 284 Mich App 172, 191; 771 NW2d 820 (2009). We review the existence of this Court's jurisdiction, as well as the proper interpretation of statutes and court rules, de novo as questions of law. *Id*.

This Court has jurisdiction of an appeal of right from a "judgment or order of a court or tribunal from which appeal of right to the Court of Appeals has been established by law or court rule." MCR 7.203(A)(2). With respect to a proceeding in the probate court involving a decedent estate, which is the nature of the proceeding at issue in this case, an order is appealable to this Court as of right if it is "a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate," and such final orders appealable as of right are "defined as and limited to orders resolving" certain enumerated matters. MCR 5.801(A)(2)(a) through (ff); see also MCL 600.308(1) and MCL 700.1305. As specifically applicable to the instant case, MCR 5.801(B)(2)(*i*) provides that a party may appeal as of right an order "allowing, disallowing, or denying a claim." "[T]he determination of which probate court orders are 'final' and which are not, for purposes of determining the appellate jurisdiction of this Court, has to be made on a case-by-case basis." *In re Rottenberg Trust*, 300 Mich App 339, 353; 833 NW2d 384 (2013)

(alteration in original; citation and some quotation marks omitted). "The test of finality of a probate court order is whether it affects with finality the rights of the parties in the subject matter." *Id*. at 354 (quotation marks and citation omitted).

In this case, the probate court denied appellant's claim for compensation but allowed his claim for expenses to proceed. MCR 5.801(A)(2) specifically defines "a final order affecting the rights or interests of an interested person in a proceeding involving a decedent estate" to include an order that disallows or denies "a claim." MCR 5.801(A)(2)(*i*). This provision of the rule does not limit the appeal of right to an order that allows, disallows, or denies the last pending claim of that interested party. The fact that an interested party may have more than one claim and that one or more of those other claims remain unresolved does not alter the fact that the interested party has an appeal of right from any order that resolves a matter by "allowing, disallowing, or denying *a* claim." MCR 5.801(A)(2)(*i*) (emphasis added).

In its order, the probate court wrote that the order was not a final order that disposed of all the claims, but this Court is not bound by the probate court's characterization and may independently determine whether the order was final such that this Court has jurisdiction over an appeal by right from the order. See, e.g., *McCarthy & Assoc, Inc v Washburn*, 194 Mich App 676, 678-681; 488 NW2d 785 (1992). As the probate court itself recognized, appellant asserted two independent claims at two different points in time: he asserted a claim for compensation for his services as personal representative and he asserted a claim for reimbursement of his expenses. The probate court dismissed the former claim as untimely but allowed the latter claim to continue for an evidentiary hearing. The court's decision to dismiss appellant's claim for compensation was an order denying "a claim"; therefore, it was a final order appealable as of right within the meaning of MCR 5.801(A)(2)(*i*). Furthermore, even if the order did not satisfy the test for a final order appealable by right, we would exercise our discretion to treat appellant's claim of appeal as an application for leave to appeal and grant leave. See MCR 7.205(E)(2); *In re Rottenberg Trust*, 300 Mich App at 354. Accordingly, we conclude that this Court has jurisdiction over appellant's appeal.

II. CLAIMS FOR COMPENSATION BY AN ESTATE'S FORMER PERSONAL REPRESENTATIVE

We now turn to the issues appellant raises on appeal. Appellant first argues that the probate court erred when it determined that appellant's claim for compensation for the time that he served as the estate's personal representative was time-barred. He maintains that the provision in MCL 700.3803(3)(c) does not distinguish between current and former personal representatives and that he therefore did not have to comply with the time limitations set forth in MCL 700.3803(2).

This Court reviews the proper interpretation and application of statutory provisions de novo as questions of law. *In re Schwein Estate*, 314 Mich App 51, 59; 885 NW2d 316 (2016). When construing statutes, we "presume that the Legislature intended the meaning expressed by the plain, unambiguous language of a statute." *Id*. We apply unambiguous statutes as written, giving effect to "every phrase, clause, and word included." *Id*.

The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*., governs the "affairs and estate of a decedent." MCL 700.1301. Section 3803 provides certain time limits within which claims against an estate must be presented, and the applicable time limits depend on whether the claim against the estate "arose before the decedent's death," MCL 700.3803(1), or arose "at or after the decedent's death," MCL 700.3803(2). Claims not presented within the applicable time limits are barred. MCL 700.3803(1) and (2). In this case, appellant asserted that he was entitled to compensation based on his work as the personal representative, which was obviously a role he held after the decedent's death. This constituted a claim against the estate. See MCL 700.1103(g) (defining a claim to include, in relevant part, "a liability of the estate that arises at or after the decedent's death . . . including . . . costs and expenses of administration").

Because appellant's claim arose after the decedent's death, MCL 700.3803(2) is implicated rather than MCL 700.3803(1). The time limits in MCL 700.3803(2) are as follows:

> (2) A claim against a decedent's estate that arises at or after the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, is barred against the estate, the personal representative, and the decedent's heirs and devisees, unless presented within 1 of the following time limits:
>
> (a) For a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due.
>
> (b) For a claim to which subdivision (a) does not apply, within 4 months after the claim arises or the time specified in subsection (1)(a),[1] whichever is later.

However, MCL 700.3803(3) provides three exceptions to the time limits for presenting claims imposed by MCL 700.3803(1) and (2). The only exception at issue in this case is located in MCL 700.3803(3)(c), which provides in relevant part that "[t]his section does not affect or prevent . . . [c]ollection of compensation for services rendered and reimbursement of expenses advanced by the personal representative . . . ."

In this case, appellant contends that MCL 700.3803(3)(c) applies to him as a former personal representative and that his claim for compensation based on his services as personal representative was therefore not time-barred. However, MCL 700.3803(3)(c) only applies to "the personal representative." Thus, when *the personal representative* seeks to collect compensation for services rendered in that role, the usual time limitations in MCL 700.3803(2) are inapplicable.

---

[1] The parties do not argue that MCL 700.3803(1)(a) would provide a later ending date than MCL 700.3803(2)(b), and there is no indication that such would be the case. MCL 700.3803(1)(a) is inapplicable to the instant case.

Appellant was not the personal representative when he presented his claim for compensation. Appellant was removed as the personal representative on March 20, 2013. At that point, by virtue of a court order, appellant was no longer "the personal representative" hence, MCL 700.3803(3)(c) became inapplicable. Once appellant was removed as the personal representative, appellant was no different from any other creditor with a claim against the estate. Accordingly, following his removal as personal representative, any claim that appellant had against the estate rendered him an ordinary creditor subject to the time limits in MCL 700.3803(2).

The basis for our holding is found in MCL 700.1106(o) which states:

> "Personal representative" includes, but is not limited to, an executor, administrator, successor personal representative, and special personal representative, and any other person, other than a trustee of a trust subject to article VII, who performs substantially the same function under the law governing that person's status.

When defining who is a "personal representative," for purposes of EPIC, our legislature included within the definition a successor personal representative but did not include a *prior* personal representative. In reaching this conclusion, we must reject appellant's argument that MCL 700.3803(3)(c) does not distinguish between current and former personal representatives: the statutory provision clearly refers only to "the" personal representative, and a *former* personal representative is no longer *the* personal representative. Indeed, once appellant was terminated from his role as the personal representative, he lost "the right and power pertaining to the office of personal representative" and no longer had any "authority to represent the estate in a pending or future proceeding." MCL 700.3608. We further note that our conclusion is in accord with the provision in MCL 700.1201(c) that EPIC "shall be liberally construed and applied to promote its underlying purposes and policies, which include . . . promot[ing] a speedy and efficient system for liquidating a decedent's estate and making distribution to the decedent's successors." Hence, because appellant's claim for compensation was not "based on a contract with the personal representative," MCL 700.3803(2)(a) is inapplicable and the pertinent time limit is provided by MCL 700.3803(2)(b). Under that provision, appellant had four months from the time he was removed as personal representative within which to present his claim for compensation. Appellant testified that he asserted his claim for personal-representative compensation at some point in 2014, which clearly could not be within four months of his removal as personal representative on March 20, 2013. Therefore, the probate court did not err by dismissing this claim for compensation as untimely pursuant to MCL 700.3803(2)(b).

III. FEES AWARDED TO TRAINER, KEMP KLEIN, AND HARMON PARTNERS

Next, appellant argues that the services provided by Trainer, Kemp Klein, and Harmon Partners did not benefit the estate and were unnecessary, making it an abuse of discretion for the probate court to award these parties $631,100.05 in fees.

We review for an abuse of discretion the probate court's decision regarding reasonable compensation awarded to attorneys for legal services provided to the estate, as well as the probate's decision regarding reasonable compensation awarded to the personal representative. *In*

re Krueger Estate, 176 Mich App 241, 248, 251-252; 438 NW2d 898 (1989). Just as this Court has stated that the principles for evaluating the reasonable compensation awarded to a personal representative are generally "the same as for the attorney," we also apply these same principles to our review of the reasonable compensation awarded to professionals hired by, or other agents of, the personal representative. See *id*. at 251-252. "The court does not abuse its discretion when its decision is within the range of reasonable and principled outcomes." *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). We review questions of law de novo and the factual findings underlying the probate court's decision for clear error. *Id*. "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *In re Duke Estate*, 312 Mich App 574, 580-581; 887 NW2d 1 (2015) (quotation marks and citation omitted).

"A personal representative is entitled to reasonable compensation for services performed." MCL 700.3719(1). The personal representative also has the general authority to hire attorneys and other professionals to provide services to the estate that are reasonably necessary and to pay those persons reasonable compensation. See MCL 700.3715(1)(v); MCL 700.3715(1)(w). An interested party may petition the probate court to review the propriety of the personal representative's decision to employ someone to provide services for the estate, and may request a review of the reasonableness of the compensation for the personal representative and the persons hired by the personal representative. See MCL 700.3721.

The probate court generally "has broad discretion in determining what amount constitutes reasonable compensation." *In re Krueger Estate*, 176 Mich App at 248. As previously stated, the same general principles for discerning what constitutes reasonable compensation apply to attorneys, personal representatives, and professionals hired by personal representatives. See *id*. at 251-252. "[T]he burden of proof is on the claimant to satisfy the court that services rendered were necessary and that charges therefor are reasonable." *Comerica Bank v City of Adrian*, 179 Mich App 712, 724; 446 NW2d 553 (1989). Important factors for the court to consider include "the amount of time spent, the amount of money involved, the character of the services rendered, the skill and experience necessary, and the results obtained." *In re Krueger Estate*, 176 Mich App 248. This Court set forth a longer list of potential factors to consider in *Comerica Bank*, many of which overlap those expressed in *In re Krueger Estate*:

> (1) the size of the [matter entrusted to the claimant], (2) the responsibility involved, (3) the character of the work involved, (4) the results achieved, (5) the knowledge, skill, and judgment required and used, (6) the time and the services required, (7) the manner and promptness in performing its duties and responsibilities, (8) any unusual skill or experience of the trustee, (9) the fidelity or disloyalty of the trustee, (10) the amount of risk, (11) the custom in the community for allowances, and (12) any estimate of the trustee of the value of his services. [*Comerica Bank*, 179 Mich App at 724.]

"[T]he probate court must consider the circumstances of the case in determining which factors are to be given weight." *Id*. Finally, when an attorney requests fees in this context, courts must additionally examine the factors stated under MRPC 1.5(a). See MCR 5.313(A).

In this case, appellant's arguments on appeal do not address the hourly rate charged by Trainer as either a lawyer or as the personal representative, do not address the hourly rate charged by the lawyers from Kemp Klein, and do not address the hourly rate charged by Harmon Partners. He also does not discuss the probate court's findings of fact or its specific adjustments to the fees requested. Therefore, he has abandoned any appellate challenge as to these matters. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.").

Rather than challenging the specific fees for the services rendered, appellant raises some general objections. He primarily complains about the length of time that Trainer and Harmon Partners have taken to administer the estate with—in his opinion—no progress or benefit to the estate. He also complains that the total fees paid to Trainer, the other lawyers from Kemp Klein, and Harmon Partners are obviously excessive when compared to the total value of the estate and any increase in the profitability of FWC. Appellant's complaints are not supported by the record. The probate court found that appellant's constant interference and his mismanagement of FWC directly led to extra difficulty, time, and expense for Trainer and Harmon Partners in administering the estate and its assets. The probate court found Trainer and Hardcastle to be credible witnesses. It further found that the weight of the evidence supported a finding that Trainer and Hardcastle were diligently working for the benefit of the estate. The evidence also supported the probate court's finding that Hardcastle had improved the business operations of FWC and increased its value in anticipation of selling the business. Additionally, the probate court's fee award reflected a reduction of $19,820.25 in attorney fees that it found were not justified. This Court will "defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Duke Estate*, 312 Mich App at 581 (quotation marks and citation omitted).

The probate court's factual findings were not clearly erroneous, and its fee award did not constitute an abuse of discretion. See *In re Temple Marital Trust*, 278 Mich App at 128.

IV. REMOVAL OF TRAINER AS PERSONAL REPRESENTATIVE

Finally, we address appellant's argument that the probate court abused its discretion by denying his petition to remove Trainer as personal representative.

This Court reviews a probate court's decision on a petition to remove a personal representative for an abuse of discretion. *In re Kramek Estate*, 268 Mich App 565, 576; 710 NW2d 753 (2005). We review the probate court's factual findings for clear error, *In re Temple Marital Trust*, 278 Mich App at 128, and we review de novo issues involving the interpretation and application of the rules of professional conduct, *Grievance Admin v Fieger*, 476 Mich 231, 240; 719 NW2d 123 (2006).

"An interested person may petition for removal of a personal representative for cause at any time." MCL 700.3611(1). The probate court may grant the petition under the following circumstances:

> (a) Removal is in the best interests of the estate.
>
> (b) It is shown that the personal representative or the person who sought the personal representative's appointment intentionally misrepresented material facts in a proceeding leading to the appointment.
>
> (c) The personal representative did any of the following:
>
> (*i*) Disregarded a court order.
>
> (*ii*) Became incapable of discharging the duties of office.
>
> (*iii*) Mismanaged the estate.
>
> (*iv*) Failed to perform a duty pertaining to the office. [MCL 700.3611(2).]

On appeal, appellant argues that the probate court should have removed Trainer as the personal representative for many of the same reasons that it should have rejected the fee requests: Trainer had not settled the estate expeditiously, did not make any substantial improvements in FWC, had not marketed FWC for sale, and cost the estate fees that were disproportionate to the value of the estate. As already explained, these claims were not supported by the record evidence.

The evidence showed that Trainer took immediate steps to preserve the estate's assets and prepare them for sale, and that he generally acted diligently and in the manner that he thought was best for the estate. The evidence demonstrated that the long delays in settling the estate were in significant part caused by appellant's constant obstructionist tactics and his mismanagement of the estate and businesses while serving as the estate's personal representative. The evidence strongly suggested that appellant's conduct and mismanagement also necessitated a significant portion of the fees associated with correcting the estate's records and improving the operations of FWC so as to increase its potential sale value. The probate court, therefore, did not clearly err when it found that Trainer had not mismanaged the estate or disregarded a court order, and found that he was otherwise "fully capable of performing his duties as a [personal representative] and that he [was] diligently working for the estate's benefit, and the benefit of all the parties involved."

Next, appellant argues that Trainer had an irreconcilable conflict of interest that precluded him from acting as the estate's personal representative because he formerly represented Dodd, who was an interested person in the estate.

Michigan Rule of Professional Conduct 1.9(a) provides that a "lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation." Notably, this rule

disqualifies a lawyer from representing a new client on the basis of a relationship with a former client only when the new client's interests are adverse to the former client's interests. See *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 604; 792 NW2d 344 (2010). Appellant has identified no evidence tending to show that Trainer's representation of the estate was adverse in any way to Dodd's interests as an interested party. Indeed, there is evidence that Dodd believes that Trainer has been acting in the best interests of the estate and its heirs, which included her. As Trainer has pointed out on appeal, Dodd petitioned for Trainer's appointment as personal representative and opposed appellant's petition to remove him as personal representative. There was also testimony that everyone, including appellant, knew that Trainer had previously spoken to Dodd.

Appellant has not identified any ground for removing Trainer as the estate's personal representative. As such, the probate court did not abuse its discretion when it denied his petition to remove Trainer as the successor personal representative. *In re Temple Marital Trust*, 278 Mich App at 128.

Affirmed. Appellees having prevailed in full are entitled to costs. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Stephen L. Borrello
/s/ Amy Ronayne Krause