

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of the Estate of PAUL J. CONWAY,  
Deceased.

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FEENEY KELLETT WIENNER & BUSH,

Petitioner-Appellee,

v

ANN C. CONWAY,

Respondent-Appellant.

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UNPUBLISHED

June 15, 1999

No. 207341

Oakland Probate Court

LC No. 89-201321 IE

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from an order granting petitioner attorneys' fees. We affirm.

Respondent, as cotrustee of the estate's trusts, brought a petition to have cotrustee, Gerald J. Greenan, removed from his position as cotrustee and also sought forfeiture of compensation previously paid to him. Greenan employed petitioner to represent him in connection with the petitions. The court determined that there was no evidence of any wrongdoing on Greenan's part. Petitioner then requested attorneys' fees to be paid from the trusts' account. The court granted the petition.

First, respondent contends that the court abused its discretion in awarding attorneys' fees pursuant to MCL 700.543; MSA 27.5543, where petitioner failed to show that a benefit was conferred upon the trusts.<sup>1</sup> We disagree. The decision whether to award attorney fees is within the trial court's discretion, and will be reviewed on appeal for an abuse of discretion. *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997). An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992).

“Attorney fees incurred by an executor to defend against a petition for his removal are properly chargeable against the estate where no wrongdoing is proved.” *In re Hammond Estate*, 215 Mich App 379, 387; 547 NW2d 36 (1996). See also *In re Humphrey Estate*, 141 Mich App 412, 441; 367 NW2d 873 (1985); *In re Gerber Trust*, 117 Mich App 1, 15-16; 323 NW2d 567 (1982). Only in instances in which the fiduciary is found to be partially guilty of wrongdoing or where the fiduciary’s actions harm the estate will attorneys’ fees be prohibited. *In re Davis Estate*, 312 Mich 258, 265-266; 20 NW2d 181 (1945); *Humphrey, supra*, at 441; *Gerber, supra*, at 15-16. Respondent failed to demonstrate that Greenan was implicated in any wrongdoing such that attorneys’ fees are inappropriate. On the contrary, the trial court found no evidence that Greenan breached his fiduciary duty to the estate.<sup>2</sup> Thus, attorneys’ fees were properly awarded.

Second, respondent contends that the trial court did not determine the reasonableness of the fees. We disagree. A trial court’s determination of the reasonableness of the fee will be upheld on appeal absent an abuse of discretion. *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97; 537 NW2d 471 (1995). Petitioner presented evidence that Greenan incurred fees in the amount of \$28,659.53. The court indicated that it examined petitioner’s accounting of the fees. Based upon the record in this case, we cannot conclude that the trial court abused its discretion when it granted petitioner’s fee request.

Affirmed.

/s/ Hilda R. Gage

/s/ Michael R. Smolenski

/s/ Brian K. Zahra

<sup>1</sup> MCL 700.543; MSA 27.5543 allows a fiduciary of an estate to “employ counsel to perform necessary legal service in behalf of the estate.” While petitioner apparently relied on MCL 700.543; MSA 27.5543 as authority to collect its fees, we also note that MCL 700.826(e); MSA 27.5826(e) authorizes a trustee to employ attorneys to advise them in the performance of their administrative duties, while MCL 700.826(f); MSA 27.5826(f) allows a trustee to defend actions “for the protection of trust assets and of the trustee in the performance of his duties.”

<sup>2</sup> Respondent appealed the trial court’s determination, but the appeal was dismissed by this Court. See *In Re Trust of Paul J Conway, Deceased*, unpublished order of the Court of Appeals, entered June 23, 1997 (Docket No. 200837).