

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

DOUGLAS J. NEUMAN,	:	O P I N I O N
ADMINISTRATOR, WWA OF THE	:	
ESTATE OF MARTHA W. TRICE,	:	
DECEASED,	:	
	:	
Plaintiff-Appellee,	:	CASE NO. 2011-T-0084
	:	
- vs -	:	
	:	
ADA TRICE, et al.,	:	
	:	
Defendants-Appellants.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Probate Division, Case No. 2011 CVA 0027.

Judgment: Affirmed.

Daniel B. Letson and David S. Swader, Letson & Swader Co., L.P.A., 160 East Market Street, Suite 250, Warren, OH 44481 (For Plaintiff-Appellee).

Stephen A. Turner, William M. Flevares, and James E. Sanders, Turner, May & Shepherd, 185 High Street, NE, Warren, OH 44481-1219 (For Defendants-Appellants)

MARY JANE TRAPP, J.

{¶1} Ada and Harold Trice (“Trices”) appeal from the judgment of the Trumbull County Court of Common Pleas, Probate Division, finding they concealed probate assets of Martha Trice, deceased. At issue were both the improper use of the proceeds from three annuities titled to the decedent, which were liquidated during her lifetime by Ada Trice acting as Martha Trice’s attorney-in-fact, and the characterization of the

proceeds as probate assets. The Trices challenge the trial court's subject matter jurisdiction, claiming the annuities were non-probate assets, which they claim did not lose their non-probate character when liquidated. They further challenge the trial court's award of attorney fees to Mr. Neuman, as administrator of Martha Trice's estate.

{¶2} We find that the trial court had subject matter jurisdiction to determine the matter before it, and we find no error in the trial court's evidentiary rulings, nor in its refusal to grant a directed verdict in the Trices' favor. As to the issue of damages, we find no error in the trial court's inclusion of the amount of the Erie Life annuity in its calculation of damages. Lastly, we find that the trial court properly awarded attorney fees to Mr. Neuman, in the face of conduct that amounted to bad faith. We affirm the decision of the trial court in its entirety.

Substantive Facts and Procedural History

{¶3} Martha W. Trice passed away on April 30, 2011. Her estate plan consisted of the Trice Living Trust ("Trust"), created during her lifetime, as well as a pour-over Last Will and Testament ("Will"). The Trust, executed in 2001, specified that all the assets were to be distributed to her daughter, Janet, and her many grandchildren. Martha's son, Harold, was specifically excluded as a beneficiary of the Trust. The Will, executed in 2005, designated the Trust as sole beneficiary of her probate estate, and also included a provision specifically excluding Harold as a beneficiary. At the time the Trust and Will instruments were executed, Martha owned three life annuities from Pacific Life, Nationwide, and Erie Life insurance companies. The Trust was the named or intended beneficiary for each annuity.

{¶4} Some time in mid-2009, Martha became ill and was hospitalized. Upon release from the hospital, Martha sought in-patient rehabilitation services. It was at this

time that she executed a durable power of attorney, whereby Ada Trice, the wife of Martha's son Harold, was designated as Martha's attorney-in-fact. The power of attorney, executed in July 2009, did not include a provision whereby Ada was empowered to make gifts on Martha's behalf. It did, however, include an express provision allowing Ada to conduct monetary transactions with any custodian of Martha's assets on Martha's behalf, and to open and close accounts. Ada did just that three days after the power of attorney was signed, when she liquidated and closed a checking account and a savings account, both titled to the Trust, and opened a checking account ("POA Account") in Martha's name, with Ada listed as Martha's attorney-in-fact.

The Annuities Were Liquidated During Martha's Lifetime

{¶5} Upon completion of her rehabilitation, Martha resided with Ada and Harold in their home. Ada continued to manage Martha's finances, and in March 2010, under Martha's direction, she liquidated the annuity from Erie Life insurance ("Erie Annuity"). A check in the amount of \$155,306.11 was issued, made payable to Martha and Ada as attorney-in-fact. Ada deposited the check in a personal checking account titled to her and Harold exclusively, and not into Martha's POA Account. In August 2010, Ada liquidated the Nationwide Annuity, and the funds, totaling \$42,457.12, were directly deposited into the POA Account. Ada liquidated the Pacific Life Annuity in October 2010, and the funds, totaling \$244,655.99, were directly deposited into the POA Account.

{¶6} Throughout the time Martha resided with the Trices, Ada made disbursements from Martha's POA account to pay for the Trices' bills, personal pursuits, and their children's personal pursuits. These payments covered, among other things, refinishing of the Trices' driveway, paying off the Trices' credit card balance, and

payment of the Trices' utilities. Ada also withdrew approximately \$28,560 in cash from Martha's POA account over that time period.

Court-Ordered Investigation Led to Concealment Action

{¶7} In November 2010, upon an application for appointment of a guardian filed by Daniel B. Letson, Esq., and after a hearing at which Ada testified, Martha was declared incompetent by the trial court. At that time, Ada's power of attorney was revoked, and Attorney Letson was named guardian. The trial court ordered Ada to file an accounting within 30 days of the judgment. No accounting was ever filed. Attorney Letson then filed a concealment action against the Trices. During the pendency of the action, the \$155,306.11 Ada had deposited into her and Harold's private checking account was placed in a restricted account, to be held in trust until resolution of the action.

{¶8} Martha died on April 30, 2011, prior to the commencement of the concealment action. Douglas J. Neuman was appointed as Administrator of her estate. Attorney Letson's concealment action was withdrawn, and Mr. Neuman re-filed the concealment action. A special court investigator was appointed to prepare a report documenting Ada's financial transactions during the time she served as Martha's attorney-in-fact and the status of Martha's estate.

Trial Testimony

{¶9} The action was tried to a jury in July 2011, and covered the liquidation of the annuities and subsequent concealment of the proceeds by the Trices, as well as curious and unaccounted-for withdrawals from and payments made out of Martha's personal accounts by Ada for the Trices' and their children's personal benefit. The Trices continuously asserted the trial court's lack of subject matter jurisdiction over the

issue of the annuities, claiming they were non-probate assets because, at the time of her death, the annuities and any proceeds from the annuities “would have become the sole property of the Trice Family Trust.” Essentially, the Trices argued that the pre-death liquidation of the annuities did not change the character of the assets from non-probate into probate assets.

{¶10} At trial, Ada stated that she had deposited the Erie Annuity into her own personal account because Martha had told her to do so. She explained that Martha was like a mother to her and that it had been Martha’s intention to gift Ada this money in gratitude for the ongoing care and support Ada had been providing her. She further stated that, should Martha need the money at a later date for medical and personal care, Ada had every intention of giving it back to her. She was adamant the money was a gift, despite knowledge that her own husband, Martha’s son, had been purposefully disinherited via Martha’s will and the Trust, and despite the fact that she never filed a gift tax return on Martha’s behalf. Ada was unable to provide written evidence of Martha’s intention to gift her with the proceeds of the Erie Annuity. The only corroboration she provided was the testimony of her husband, Harold.

{¶11} Upon completion of Mr. Neuman’s case in chief, the Trices moved the court for a directed verdict, which was overruled. At the conclusion of trial, the jury returned a verdict finding the Trices “guilty of having concealed, embezzled, conveyed away, or being in the possession of money or other assets of Martha’s estate.” The trial court issued a judgment entry in favor of Martha’s estate in the amount of \$190,565.52, plus ten percent penalty and costs. The trial court’s judgment entry enumerated the specific damages: “(1) the amount of \$27,760.00 representing the cash withdrawn from Martha W. Trice’s accounts; (2) the amount of \$7,498.11 representing checks expended

from Martha W. Trice's accounts for Defendants' benefit; and (3) the amount of \$155,306.11 representing annuity proceeds issued in the name of Martha W. Trice and deposited into the Defendants' account * * *." The trial court also granted Mr. Neuman attorney fees in the amount of \$18,082.50, and granted the special court investigator and special commissioner fees in the amount of \$6,7171.81.

{¶12} The Trices timely appealed the jury verdict and court's judgment entry, and now bring the following assignments of error:

{¶13} "[1.] The trial court lacked subject-matter jurisdiction over annuities owing to their character as non-probate assets."

{¶14} "[2.] The trial court erred when it denied appellants [sic] motion *in limine* and permitted testimony and other evidence as to the non-probate assets."

{¶15} "[3.] The trial court erred when it denied appellants' motion for a directed verdict."

{¶16} "[4.] The trial court erred when it included the Erie Life annuity in the assessment of damages."

{¶17} "[5.] The trial court abused its discretion when it granted attorney's fees to plaintiff's counsel that were arbitrary and unreasonable."

{¶18} Because the merits of assignments error one, two, and four all depend on a determination of whether the trial court had jurisdiction to hear matters related to the annuities, we will consider them together.

Subject Matter Jurisdiction

{¶19} In three of their assignments of error, the Trices challenge the trial court's jurisdiction to determine the issue of concealment as related to the annuities. They argue that life annuities are non-probate assets, which pass by contract, and thus the

probate court lacks subject matter jurisdiction under R.C. 2109.50, the concealment statute, inasmuch as non-probate assets are not assets of “the estate” as that term is used in the statute. Because the issue of concealment does not relate to the life annuities, but rather to the cash proceeds of the life annuities, which are probate assets, the trial court had jurisdiction to determine the issue and the Trices’ first, second, and fourth assignments of error are without merit.

Standard of Review

{¶20} “The existence of the court’s own subject-matter jurisdiction in a particular case poses a question of law which the court has the authority and the responsibility to determine.’ *Internatl. Lottery, Inc. v. Kerouac* (1995), 102 Ohio App.3d 660, 670, 657 N.E.2d 820, citing *State ex rel. Connor v. McGough* (1989), 46 Ohio St.3d 188, 189-190, 546 N.E.2d 407. We review that determination *de novo*, without any deference to the conclusion reached below. In so doing, we are to keep in mind that the complainant in a proceeding to discover assets bears the burden of demonstrating that the subject-matter of his complaint lies within the contemplation of R.C. 2109.50. *In re Estate of Fife* (1956), 164 Ohio St. 449, 456, 132 N.E.2d 185. Thus, our task is to independently determine if [plaintiff] ha[s] satisfied that burden by stating in the complaint a cause of action that could have been heard by the probate court as in proceedings for concealment of assets.” *Burns v. Daily*, 114 Ohio App.3d 693, 701-702 (11th Dist.1996).

Are the Proceeds of the Annuities, Liquidated Before Her Death, Assets of the Decedent’s Estate and Thus Subject to a R.C. 2109.50 Concealment Action?

{¶21} Pursuant to R.C. 2109.50, “[u]pon complaint made to the probate court of the county having jurisdiction of the administration of an estate, a testamentary trust, or

a guardianship or of the county where a person resides against whom the complaint is made, by a person interested in the estate, testamentary trust, or guardianship or by the creditor of a person interested in the estate, testamentary trust, or guardianship against any person suspected of having concealed, embezzled, or conveyed away or of being or having been in the possession of any moneys, personal property, or chooses in action of the estate, testamentary trust, or guardianship, the court shall by citation or other judicial order compel the person or persons suspected to appear before it to be examined, on oath, touching the matter of the complaint.” “This section confers upon the probate court jurisdiction to conduct summary proceedings to discover and retrieve specific property or the proceeds or value thereof that belong to a trust estate.” *Burns* at 702, citing *In re Estate of Black*, 145 Ohio St. 405 (1945), paragraph one of the syllabus.

{¶22} Probate assets are those assets titled to the decedent upon her death. *Burns* at 702. “If, on the other hand, title does not reside in the decedent upon her death, but passed to a third party by inter vivos transaction or gift, then such property may not be included as an estate asset, and may not be retrieved by a summary proceeding in the probate court.” *Burns* at 702-703. Assets which pass as a result of contract, such as life annuities and other insurances payable to specific beneficiaries, are not probate assets. See *Fecteau v. Cleveland Trust Co.*, 171 Ohio St. 121 (1960).

{¶23} At the time of Martha’s death in April 2011, the three life annuities no longer existed. They had been cashed-out and the monetary proceeds distributed to Martha. Below, Mr. Neuman did not challenge the validity of Ada’s liquidation of the annuities; he contended that the annuities were properly liquidated pursuant to Ada’s power of attorney and Martha’s direction. Rather, he challenged the propriety of Ada’s

subsequent management of the liquidated assets, which indisputably belonged to Martha, and thus passed to her estate upon her death. Had Martha passed without liquidating the annuities, title would have passed by contract to the named beneficiary, the Trust. But, the fact was established that the annuities were liquidated and cancelled, and thus no longer existed even before Martha's death. Therefore, the trial court had jurisdiction over the concealment action, as the assets alleged to have been concealed were probate assets and properly before the trial court.

The Motion in Limine Was Properly Denied

{¶24} The Trices argue in their second assignment of error that the trial court erred when it overruled their motion in limine and allowed evidence to be presented at trial regarding the three annuities. "The trial court has broad discretion in the admission and exclusion of evidence." *State v. Bentley*, 11th Dist. No. 2004-P-0053, 2005-Ohio-4648, ¶19, citing *State v. Hymore*, 9 Ohio St.2d 122 (1967). "An appellate court shall not disturb evidentiary rulings absent an abuse of discretion." *Id.* As this court recently stated, the term "abuse of discretion" is one of art, "connoting judgment exercised by a court, which does not comport with reason or the record." *State v. Underwood*, 11th Dist. No. 2008-L-113, 2009-Ohio-2089, ¶30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). The Second Appellate District also recently adopted a similar definition of the abuse-of-discretion standard: an abuse of discretion is the trial court's "failure to exercise sound, reasonable, and legal decision-making." *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black's Law Dictionary (8 Ed.Rev.2004) 11. When an appellate court is reviewing a pure issue of law, "the mere fact that the reviewing court would decide the issue differently is enough to find error (of course, not all errors are reversible. Some are harmless; others are not preserved for appellate

review). By contrast, where the issue on review has been confined to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.” *Id.* at ¶67.

{¶25} Because the assets under consideration were not the annuities, but *proceeds* of annuities, liquidated prior to Martha’s death, any and all evidence related to the annuities, their liquidation, and ultimate use to which those proceeds were put is relevant to the determination of whether the Trices concealed probate assets. The trial court did not abuse its discretion in overruling the motion in limine and admitting evidence related to the annuities.

Damages

{¶26} In their fourth assignment of error, the Trices argue that the trial court erred when it considered the annuity proceeds in its damage determination. In its judgment entry, the trial court specifically included the sum of \$155,306.11 for “annuity proceeds issued in the name of Martha W. Trice and deposited into the Defendants’ account.” Because we have determined that the trial court properly considered the annuity proceeds to be probate assets and had jurisdiction to determine whether they had been improperly concealed, the trial court did not err in including the annuity proceeds in the damage calculation.

{¶27} Assignments of error one, two, and four are without merit.

Motion for Directed Verdict

{¶28} In their third assignment of error, the Trices argue that the trial court erred when it overruled their motion for directed verdict. The Trices contend that the trial court should have directed a verdict in their favor because (1) Mr. Neuman was unable to demonstrate that the assets at issue “properly belonged to Martha’s estate, an

essential element of his claim,” and (2) Mr. Neuman had failed to rebut Ada’s testimony during his case in chief, which “evidenced the intentions of Martha in making the gifts.”

Standard of Review

{¶29} “Pursuant to Civ.R. 50(A)(4), ‘[w]hen a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.’ *Bliss v. Chandler*, 11th Dist. No. 2006-G-2742, 2007-Ohio-6161, ¶46.

{¶30} “Under this rule, a trial court may not grant a directed verdict unless the evidence, when construed in the light most favorable to the nonmoving party, leads reasonable minds to only one conclusion, and that conclusion is adverse to the nonmovant.” *Id.* at ¶47, quoting *Huffman v. Kazak Bros. Inc.*, 11th Dist. No. 2000-L-152, 2002 Ohio App. LEXIS 1660, *9 (Apr. 12, 2002), citing *Fleegle v. Funtime, Inc.*, 11th Dist. No. 98-G-2158, 1999 Ohio App. LEXIS 4640, *7 (Sept. 30, 1999).

{¶31} “In order to satisfy the ‘reasonable minds’ test, the court need only determine whether there exists any evidence of substantial probative value in support of the claim.” *Fultz v. St. Clair*, 11th Dist. No. 2001-L-165, 2002-Ohio-7142, ¶103, citing *Ruta v. Breckenridge-Remy Co.*, 69 Ohio St.2d 66,69 (1982). “A motion for a directed verdict does not present a question of fact or raise factual issues; rather, it presents a question of law, even though in deciding such a motion it is necessary to review and consider the evidence.” *Bliss* at ¶48, quoting *Huffman* at *10, citing *Ruta* at paragraph one of the syllabus.

{¶32} The Supreme Court of Ohio has explained the method that should be employed in deciding a motion for a directed verdict:

{¶33} “When a motion for a directed verdict is entered, what is being tested is a question of law; that is, the legal sufficiency of the evidence to take the case to the jury. This does not involve weighing the evidence or trying the credibility of witnesses; it is in the nature of a demurrer to the evidence and assumes the truth of the evidence supporting the facts essential to the claim of the party against whom the motion is directed, and gives to that party the benefit of all reasonable inferences from that evidence. The evidence is granted its most favorable interpretation and is considered as establishing every material fact it tends to prove.” *Ruta* at 68-69.

{¶34} “Because a motion for a directed verdict presents a question of law, an appellate court must conduct a *de novo* review of the trial court’s judgment.” *Bliss* at ¶48, citing *Huffman* at *10, citing *Nichols v. Hanzel*, 110 Ohio App.3d 591, 599 (4th Dist.1996).

Reasonable Minds Could Come to More than One Conclusion

{¶35} The Trices contend that Ada’s testimony served as sufficient and conclusive evidence of Martha’s alleged intention to make a gift of the Erie Annuity proceeds to them. Further, they argue that Ada’s testimony was also sufficient to support their claims that the disbursements Ada made from Martha’s POA account were valid gifts, and to defeat a presumption of undue influence.

{¶36} “The holder of a power of attorney has a fiduciary relationship with his or her principal. *Gotthardt v. Candle* (1999), 131 Ohio App.3d 831, 835, 723 N.E.2d 1144, * * *. Such a relationship is “one in which special confidence and trust is reposed in the integrity and fidelity of another (* * *) by virtue of this special trust.” *Stone v. Davis*

(1981), 66 Ohio St.2d 74, 78, 419 N.E.2d 1094 * * *.” *Letson v. McCardle*, 11th Dist. No. 2009-T-0125, 2010-Ohio-3676, quoting *In re Estate of Anderson*, 11th Dist. No. 99-T-0160, 2000 Ohio App. LEXIS 5928, *4 (Dec. 15, 2000). “Where a confidential or fiduciary relationship exists between a donor and donee, such as between a principal and an attorney-in-fact, the transfer is looked upon with some suspicion that undue influence may have been brought to bear on the donor by the donee. In such circumstances, a presumption arises that the transfer is invalid and the burden of going forward with the evidence shifts to the transferee to demonstrate the absence of undue influence. However, the party attacking the transfer retains the ultimate burden of proving undue influence by clear and convincing evidence.” *Estate of Niemi v. Niemi*, 11th Dist. No. 2008-T-0082, 2009-Ohio-2090, ¶38, citing *Ament v. Reassure Am. Life Ins. Co.*, 180 Ohio App.3d 440, 2009-Ohio-36, ¶38 (8th Dist.)

{¶37} “In all civil actions * * * a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift the burden to such party in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.’ Evid.R. 301. In short, a presumption is not evidence and does not switch the burden of proof; it affects only the burden of going forward with evidence.” *Ament* at ¶40.

{¶38} We begin with the presumption that any transfers of monetary assets from Martha to Ada and Harold were invalid as a result of Ada’s fiduciary relationship with Martha. Therefore, the burden shifted to the Trices to demonstrate the absence of undue influence. At trial, Mr. Neuman called Ada to testify during his case in chief. Her testimony at trial differed substantially from her testimony during the guardianship

hearing. When asked at the guardianship hearing about the Erie Annuity, Ada had testified that she had deposited the proceeds in Martha's POA account, and that the funds were to have been used for Martha's care. However, her story changed substantially at the concealment trial, when she stated that she had deposited the proceeds in her and Harold's private account because Martha had meant to gift her the Erie Annuity proceeds. Ada, however, never filed a gift tax return on Martha's behalf. This gross discrepancy between Ada's two stories, coupled with Ada's awareness of the fact that Harold had specifically been excluded as a beneficiary of the Trust, prevented the trial court from determining that reasonable minds could come to but one conclusion. Evidence of motive and means to conceal Martha's assets was apparent from Mr. Neuman's case in chief.

{¶39} Furthermore, Mr. Neuman presented the court with substantial evidence of Ada's personal use of Martha's assets. The presumption, given Ada's position as fiduciary, was that the use of the Martha's assets for personal use was invalid and the money procured through undue influence. Not until the Trices presented their evidence in defense could they possibly have overcome such a presumption. Therefore, the trial court could not have erred in overruling the motion for a directed verdict at the end of Mr. Neuman's case in chief.

{¶40} Given the evidence presented, the trial court specifically found that "there is substantial competent evidence to support Plaintiff's case upon which reasonable minds may reach a different conclusion." We agree, based on the evidence presented at trial, that the evidence, "when construed in the light most favorable to the nonmoving party," could have led reasonable minds to more than one conclusion. Thus the trial

court did not err in overruling the Trices' motion for a directed verdict, and assignment of error three is without merit.

Attorney Fees

{¶41} In their fifth and final assignment of error, the Trices argue that the trial court abused its discretion when it granted attorney fees to Mr. Neuman's counsel.

Standard of Review

{¶42} We review a trial court's award of attorney fees for an abuse of discretion. *In re Testamentary Trust of Hamm*, 11th Dist. No. 2003-G-2532, 2004-Ohio-6348, ¶6, citing *In re Guardianship of Rider*, 68 Ohio App.3d 709, 712 (6th Dist.1990). Where a court is empowered to award attorney fees, "[u]nless the amount of fees determined is so high or so low as to shock the conscience, an appellate court will not interfere." *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 146 (1991), quoting *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc.*, 23 Ohio App.3d 85, 91 (12th Dist.1985).

{¶43} "A trial court has discretion in determining whether an award of attorney fees is appropriate." *Ward v. Patrizi*, 11th Dist. No. 2010-G-2994, 2011-Ohio-5100, ¶49, citing *Dilley v. Dilley*, 11th Dist. No. 2010-G-2957, 2011-Ohio-2093, ¶86, citing *Rand v. Rand*, 18 Ohio St.3d 356, 359 (1986). An award of attorney fees is improper "in the absence of statutory authorization or a finding of conduct that amounts to bad faith." *Pegan v. Crawmer*, 79 Ohio St.3d 155, 156 (1997). "[T]he probate court's finding that (a defendant) was 'guilty of concealment of estate assets' is tantamount to a finding that (the defendant) acted in bad faith and/or for oppressive reasons in concealing the assets,' so that such a finding gives 'the probate court the authority to order him to pay the attorney fees associated with the prosecution of the case.'" *Apergis v. Boccia*, 11th

Dist. No. 2009-T-0079, 2010-Ohio-2954, ¶30, quoting *In re Estate of Toth*, 5th Dist. No. CA-9312, 1993 Ohio App. LEXIS 5790, *3 (Nov. 29, 1993).

{¶44} “[T]he burden is upon the attorneys to introduce into the record sufficient evidence of the services performed and of the reasonable value of such services * * *.” *In re Estate of Verbeck*, 173 Ohio St. 557, 559 (1962). Ohio Sup.R. 71(A) provides that attorney fees in all matters shall be governed by Rule 1.5 of the Ohio Rules of Professional Conduct. Prof.Cond.R. 1.5 provides that the factors to be considered in determining the reasonableness of a fee include: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

{¶45} Sup.R. 71(C) states that “[a]ttorney fees may be allowed if there is a written application that sets forth the amount requested and will be awarded only after proper hearing, unless otherwise modified by local rule.” Trumbull County Loc.R. 71.8, however, states that “[u]nless otherwise ordered by the Court, applications for the allowance of fees or commissions and other compensation to an attorney, executor, administrator or other fiduciary shall not be set for hearing.” Therefore, no hearing on the matter of attorney fees was required before the trial court determined the amount of such an award.

{¶46} With the guilty verdict in the concealment action, the trial court ordered the Trices to pay \$18,082.50 in attorney fees to Mr. Neuman. Mr. Neuman had submitted an itemized statement for services rendered by his attorney, requesting a total award of \$20,857.50. The trial court, however, summarily stated the amount of attorney fees awarded, without setting forth any factual or legal findings upon which it rested its decision. The Trices filed objections to the amount of attorney fees the same day as they filed their notice of appeal, and the trial court held the objections in abeyance during the pendency of this appeal. Because this court determined a ruling on the objections would prove useful in our review, we remanded the case for the very limited purpose of having the trial court rule on appellants' objections to attorney fees.

{¶47} On remand, the trial court conducted a hearing on the Trices' objections to attorney fees, and issued a judgment entry ordering the Trices to pay attorney fees in the amount of \$17,997.50. The judgment entry stated that the trial court had specifically considered Prof.Cond.R. 1.5, Sup.R. 71, and Loc.R. 71 in arriving at a determination of attorney fees. The trial court further noted that counsel submitted no evidence, but found that Attorney Letson had withdrawn a "June 7, 2011 request of \$32.50 in fees for review of bank statement/balance account as the service had been rendered in the guardianship proceedings." The trial court further found that "the objection to the June 7, 2011 request of \$52.50 for review of a letter from Attorney Flevares [was] well taken," and that "the death of Martha W. Trice required that the action be refiled." Ultimately, the trial court held that "[a]pplying the factors of Prof. Cond. Rule 1.5 and Sup. R. 71, the Court finds fees in the amount of \$17,997.50 were reasonable, necessary, and beneficial to the estate."

{¶48} Because the trial court considered the factors contained within in Prof.Cond.R. 1.5 and the record contains no evidence contrary to the trial court's finding that the fees charged were "reasonable, necessary, and beneficial to the estate," we find no abuse of discretion in its grant of attorney fees to Mr. Neuman. Assignment of error five is without merit.

{¶49} For the foregoing reasons, the decision of the Trumbull County Court of Common Pleas, Probate Division, is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.