

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

KAITLIN M. POLLNOW,  
ADMINISTRATRIX OF THE  
ESTATE OF JILL L. POLLNOW,  
DECEASED,

Plaintiff-Appellant,

- vs -

MARY SUE POLIVKA,

Defendant-Appellee.

**CASE NOS. 2022-T-0104  
2022-T-0105**

Civil Appeals from the  
Court of Common Pleas,  
Probate Division

Trial Court Nos. 2021 CVA 0049  
2021 CVA 0050

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**OPINION**

Decided: August 14, 2023  
Judgment: Affirmed

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*Irene K. Makridis*, 183 West Market Street, 2nd Floor, Warren, OH 44481 (For Plaintiff-Appellant).

*Tabitha L. Stewart*, P.O. Box 185, Rock Creek, OH 44084 (For Defendant-Appellee).

MARY JANE TRAPP, J.

{¶1} Appellant, Kaitlin M. Pollnow (“Ms. Pollnow”), is the administrator of the estate of Jill M. Pollnow, who was killed by her fiancé, Vincent T. Coburn (“Mr. Coburn”) in a murder-suicide. Ms. Pollnow filed two concealment actions against Mr. Coburn’s third cousin, appellee Mary Sue Polivka (“Ms. Polivka”), to recover assets on behalf of Mr. Coburn’s estate as an alleged interested party due to a pending wrongful death claim against Mr. Coburn’s estate. One concerned a truck and the other concerned jewelry and other personal property.

{¶2} In the instant case, Ms. Pollnow appeals the judgment of the Trumbull County Court of Common Pleas, Probate Division, that denied her motion for a ten percent penalty, attorney fees, and litigation expenses following the trial on the concealment action relating to the truck.

{¶3} Ms. Pollnow, as the administrator for the estate of Jill Pollnow, raises one assignment of error for our review, contending the trial court abused its discretion in denying an award of attorney fees and costs, specifically expert witness' fees, pursuant to R.C. 2109.52.

{¶4} After a thorough review of the record and pertinent law, we find her assignment of error to be without merit. Pursuant to R.C. 2109.52, the probate court is directed to render judgment "in favor of the fiduciary" for the estate, and the statute allows the court to award a ten percent penalty and costs against the guilty party. The trial court found in favor of Mr. Coburn's estate against Ms. Polivka, ordering her to return a truck to the Coburn estate, finding the title transfer to Ms. Polivka was invalid. The court further found no penalty could be assessed because Ms. Pollnow failed to prove the value of the truck, a necessary element of the action, due to the neglect of her counsel.

{¶5} While Ms. Pollnow argues the trial court abused its discretion by denying her fees for her handwriting expert (as to the signature on the transfer of title to the truck at issue), she failed to cite to any statutory authority that would allow an expert's witness fee to be taxed as costs. Similarly, Ms. Pollnow fails to cite to any statutory authority that would allow the trial court to award her attorney fees because she is not the prevailing party nor is she in privity with Mr. Coburn's estate or its special administrator, Sergey Rummyantsev ("Mr. Rummyantsev"). Thus, we cannot find the trial court abused its discretion by denying her motion to tax costs.

{¶6} The judgment of the Trumbull County Court of Common Pleas, Probate Division, is affirmed.

### **Substantive and Procedural History**

{¶7} Tragically, Mr. Coburn shot and killed his former fiancé, Jill Pollnow, before taking his own life. The couple shared a home, and each had many personal items at the house. Ms. Polivka is Mr. Coburn's third cousin.

{¶8} Ms. Pollnow brought two separate actions against Ms. Polivka, which were tried at the same hearing by agreement of the parties. Ms. Pollnow alleged Jill Pollnow's estate is the creditor of Mr. Coburn's estate by virtue of a pending wrongful death claim.

{¶9} The first (case no. 2021 CVA 0049, the "Silverado case") was an action to recover an asset, specifically Mr. Coburn's 2014 Chevrolet Silverado 4WD double cab pickup truck (the "Silverado"). At the conclusion of the hearing, the trial court found Ms. Polivka guilty of possessing the Silverado. The court further found she unlawfully and fraudulently transferred its title to her name after Mr. Coburn's death. The court ordered her to transfer the Silverado to Mr. Rummyantsev, the administrator of Mr. Coburn's estate. In addition, the court found Ms. Pollnow offered no proof of the value of the truck so no penalty could be assessed and rendered costs against Ms. Polivka.

{¶10} The second (case no. 2021 CVA 0050, the "concealment case") was a concealment action, alleging Ms. Pollnow owned a diamond ring, jewelry, and other personal property that Ms. Polivka concealed, embezzled, conveyed away, or possessed. At the end of Ms. Pollnow's case-in-chief, Ms. Polivka moved for dismissal pursuant to Civ.R. 41(B)(2). The trial court granted the motion, finding Ms. Pollnow failed to specifically plead what personal items were at issue, the values for the personal property and whether Ms. Polivka actually concealed, embezzled, conveyed or had possession of

the property. In addition, Ms. Polivka established there were alternative explanations (three break-ins) during Ms. Pollnow's case.

### **Ms. Pollnow's Motion to Tax Costs**

{¶11} Ms. Pollnow filed a motion for an award to tax costs pursuant to R.C. 2109.52 for the Silverado case, alleging she was entitled, as the prevailing party, to a ten percent penalty of the Silverado's value (10% of \$21,155.00), litigation expenses (\$2,323.00), attorney fees (\$12,521.25), and court costs.

{¶12} Ms. Polivka filed a response and a motion for attorney fees and costs for the dismissed concealment case, contending it was frivolous. In her response to Ms. Pollnow's motion to tax costs, Ms. Polivka argued Ms. Pollnow failed to establish the Silverado's value, the trial court did not find Ms. Pollnow acted in bad faith, and Ms. Pollnow sought excessive attorney fees.

{¶13} The trial court held a hearing during which Ms. Pollnow's attorney, Irene Makridis ("Atty. Makridis"); Ms. Pollnow's expert attorney witness, Andrew Joseph Fritz ("Atty. Fritz"); and Ms. Polivka's attorney, Tabitha Stewart ("Atty. Stewart"), testified.

{¶14} At the start of the hearing, the court reminded Atty. Makridis that she failed to establish a value for the Silverado; thus, a 10% penalty could not be assessed and/or awarded. Atty. Makridis testified as to her professional background, the rate she charged, and her litigation expenses for the handwriting expert's deposition, stenographer, and printing fees.

{¶15} She further testified she was hired by Ms. Pollnow's family, and the family, not Mr. Coburn's estate, paid for the handwriting expert. On cross-examination, Atty. Makridis testified she did not submit any values in the concealment case, she does not have much experience in concealment cases, Ms. Pollnow had yet to pay any of her

attorney fees or a retainer, and while Ms. Pollnow does not have the ability to pay her fees, Ms. Pollnow's grandmother does. At the end of Ms. Pollnow's case-in-chief, the trial court elucidated that the fiduciary of Mr. Coburn's estate would receive the judgment if one was awarded, and Atty. Makridis confirmed she did not have a contract with Mr. Rummyantsev or Mr. Coburn's estate.

{¶16} Atty. Fritz testified Atty. Makridis' hourly rate was well within the average, which he estimated to be \$238/hour for this type of case and experience. He believed her total hours, 55.65, were reasonable, but clarified he has no personal experience litigating concealment actions in probate court.

{¶17} Atty. Makridis sought to admit two exhibits: Exhibit A, which detailed her litigation expenses, and Exhibit B, which detailed her time billed. The trial court granted Ms. Polivka's objection and did not admit Exhibit A, finding no foundation was laid, i.e., there was no testimony and/or invoices reflecting the expenses and nothing to show they were paid.

{¶18} Atty. Stewart testified to her motion for attorney fees in the concealment case. She explained her legal background and her total fees (\$200/hour times 22.9 hours for a total of \$4,580).

### **The Trial Court Denies Both Parties' Motions for Attorney Fees and Costs**

{¶19} In its judgment entry, the trial court reviewed that Ms. Pollnow's counsel failed to prove the value of the property in both cases, i.e., in the concealment action, she failed to prove Ms. Polivka was in possession of the items allegedly withheld from the estate, and in the Silverado case, she failed to establish a value for the truck. Further, the award of 10% and costs of litigation belong to the administrator of Mr. Coburn's estate, not the attorney for the administrator of Jill Pollnow's estate. In addition, according to his

own testimony, Atty. Fritz's experience in concealment cases is limited, and he did not review the entire case file.

{¶20} In conclusion, the court ordered the following: (1) pursuant to R.C. 2109.52, 10% of the Silverado's value cannot be awarded because the value of the truck was not established; (2) no award of attorney fees could be made to Atty. Makridis because she was not hired by the fiduciary of Mr. Coburn's estate; she did not present sufficient evidence; her neglect led to the dismissal of the jewelry concealment case; she failed to establish the Silverado's value; and her handling of the concealment case was below the minimum standards; (3) sufficient evidence was not offered to award expert witness fees; (4) Ms. Polivka's request for attorney fees and costs in the concealment action is denied since it was not frivolous or a violation of Civ.R. 11 (but rather, "neglectful"), and no attorney fees are awarded in the Silverado case.

{¶21} Ms. Pollnow raises one assignment of error for our review:

{¶22} "The trial court abused its discretion in denying in its entirety an award of attorney fees and costs to plaintiff-appellant Kaitlin M. Pollnow as Administratrix for the Estate of Jill M. Pollnow."

#### **Award of Attorney Fees and Costs Pursuant to R.C. 2109.52**

{¶23} In her sole assignment of error, Ms. Pollnow contends the trial court abused its discretion by denying an award of attorney fees and costs pursuant to R.C. 2109.52 because the Silverado was returned to the Coburn estate on behalf of the Estate of Pollnow due to her wrongful death claim and because there was no justification to deny Atty. Makridis' expert witness fees and/or attorney fees.

{¶24} Probate courts are courts of limited jurisdiction, and probate proceedings are thus restricted to those actions permitted by statute and by the Ohio Constitution.

*Corron v. Corron*, 40 Ohio St.3d 75, 531 N.E.2d 708 (1988), paragraph one of the syllabus.

{¶25} An R.C. 2109.50 proceeding for the discovery of concealed or embezzled assets of an estate is a special proceeding of a summary, inquisitorial character whose purpose is to facilitate the administration of estates by summarily retrieving assets that rightfully belong there. *Goldberg v. Maloney*, 111 Ohio St.3d 211, 2006-Ohio-5485, 855 N.E.2d 856, ¶ 23. The purpose of this section is not to furnish a substitute for a civil action to recover a judgment for money owing to an administrator but rather to provide a speedy and effective method for discovering assets belonging to the estate and to secure possession of them for purposes of administration. *Goodrich v. Anderson*, 136 Ohio St. 509, 26 N.E.2d 1016 (1940), paragraph one of the syllabus (construing predecessor statute). The Supreme Court of Ohio has held that this statute may not be used to collect a debt, obtain an accounting, or adjudicate the rights of the estate or guardian under a contract. *Id.*; *In re Leiby's Estate v. Cosgrove*, 157 Ohio St. 374, 105 N.E.2d 583 (1952); Despite the quasi-criminal nature of an action under R.C. 2109.50, the Rules of Civil Procedure, as practiced in the probate court, are applicable to such a proceeding. *In re Estate of Popp*, 94 Ohio App.3d 640, 649, 641 N.E.2d 739 (8th Dist.1994).

{¶26} On the issue of costs, R.C. 2109.50 provides, “[a]ll costs of the proceedings, including the reasonable travel expenses of a person against whom an extra-county citation or judicial order is issued, shall be assessed against and paid by the party making the complaint, except as provided by section 2109.52 of the Revised Code.”

{¶27} R.C. 2109.52 empowers the probate court to conduct a hearing in the concealment proceeding at which the court may determine questions of title concerning the allegedly concealed, embezzled, or conveyed estate assets, to determine whether

the person accused is guilty and, if so, to enter judgment against the person found guilty of the amount of the money or value of assets with a ten percent penalty. *Goldberg* at ¶ 27.

{¶28} Thus, R.C. 2109.52 provides, “In all cases, except when the person found guilty is the fiduciary, the probate court shall render judgment in favor of the fiduciary \* \* \* against the person found guilty, for the amount of the moneys or the value of the personal property or choses in action concealed, embezzled, conveyed away, or held in possession, together with ten per cent penalty and all costs of the proceedings or complaint; except that the judgment shall be reduced to the extent of the value of any thing specifically restored or returned in kind as provided in this section.”

#### **Expert’s Witness Fee**

{¶29} The decision to award or decline to award costs is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Alcoroso v. Correll*, 2020-Ohio-4752, 159 N.E.3d 924, ¶ 27 (8th Dist.).

{¶30} An abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶ 62, quoting *Black’s Law Dictionary* 11 (8th Ed.2004). “When a pure issue of law is involved in appellate review, the mere fact that the reviewing court would decide the issue differently is enough to find error.” *Id.* at ¶ 67. “By contrast, where the issue on review has been confided 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.*

{¶31} ““Costs are generally defined as the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action and which the



statutes authorize to be taxed and included in the judgment.”” *Alcoroso* at ¶ 28, quoting *Stallworth v. Woods*, 8th Dist. Cuyahoga No. 108543, 2020-Ohio-111, ¶ 18, quoting *Benda v. Fana*, 10 Ohio St.2d 259, 227 N.E.2d 197 (1967), paragraph one of the syllabus.

{¶32} The Supreme Court of Ohio has held that, absent statutory directive, a trial court should not tax an expert’s witness fees as costs. *Alcoroso* at ¶ 29; see also *Victor v. Big Sky Energy, Inc.*, 2018-Ohio-4666, 124 N.E.3d 283, ¶ 94-99 (11th Dist.) (in the absence of any authority for an award of expert fees in favor of the plaintiffs, it was plain error to order the payment of expert fees).

{¶33} For example, in *Arneault v. Arneault*, 4th Dist. Washington No. 02CA60, 2003-Ohio-4553, the appellee, as the administrator of her deceased husband’s estate, filed a concealment action pursuant to R.C. 2109.50 against the appellant. *Id.* at ¶ 3. The appellant was found not guilty, and the trial court assessed costs against the appellee. *Id.* at ¶ 5. Subsequently, the appellant filed a petition requesting the trial court to award him the costs he incurred defending the appellee’s action, including travel expenses, expert witness fees, attorney fees, and miscellaneous expenses. *Id.* at ¶ 6. The Fourth District explained that while R.C. 2190.50 mandates the probate court to assess costs against the guilty party, not every expense incurred by the appellant is taxable. *Id.* at ¶ 19. “[C]osts” are not synonymous with litigation expenses unless expressly made so by statute.” *Id.*, quoting *Benda* at paragraph one of the syllabus. The appellant did not cite any pertinent statute that would allow litigation expenses to be taxed as costs against the appellee, much less any statutory authority to tax an expert’s witness fee as costs. *Id.* at ¶ 23. Thus, the probate court did not err in denying the appellant’s petition. *Id.* at ¶ 24.

{¶34} Similarly, Ms. Pollnow argues the trial court abused its discretion by denying witness fees for her handwriting expert; however, she cites no statutory authority that

would allow such a fee to be taxed as costs. Most fundamentally, per Atty. Makridis' testimony, the estate of Mr. Coburn did not hire her to represent it or engage Ms. Pollnow's expert witness. Thus, we cannot find the trial court abused its discretion in denying her "costs" under these circumstances.

### **Attorney Fees**

{¶35} We also review a trial court's award of attorney fees for an abuse of discretion. *Newman v. Trice*, 2012-Ohio-4206, 978 N.E.2d 228, ¶ 42 (11th Dist.). 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." *Id.*, quoting *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 146, 569 N.E.2d 464 (1991), quoting *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc.*, 23 Ohio App.3d 85, 91, 491 N.E.2d 345 (12th Dist.1985).

{¶36} "A trial court has discretion in determining whether an award of attorney fees is appropriate." *Id.* at ¶ 43, quoting *Ward v. Patrizi*, 11th Dist. Geauga No. 2010-G-2994, 2011-Ohio-5100, ¶ 49. An award of attorney fees is improper "in the absence of statutory authorization or a finding of conduct that amounts to bad faith." *Id.*, quoting *Pegan v. Crawmer*, 79 Ohio St.3d 155, 156, 679 N.E.2d 1129 (1997).

{¶37} This court has held "the 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. Trumbull No. 2009-T-0079, 2010-Ohio-2954, ¶ 30, quoting *In re Estate of Toth*, 5th Dist. Stark No. CA-9312, 1993 WL 500347, \*1 (Nov. 29, 1993). Mere possession of estate assets, however,

is an insufficient basis on which to make a finding of guilt under R.C. 2109.52. *Longworth v. Childers*, 180 Ohio App.3d 162, 2008-Ohio-4927, 904 N.E.2d 904, ¶ 21 (2d Dist.); accord *Apergis* at ¶ 32.

{¶38} If attorney fees are deemed proper under the circumstances of the case, “the 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, 184 N.E.2d 384 (1962). 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.

{¶39} Prof.Cond.R. 1.5(a) 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.

{¶40} Pursuant to R.C. 2109.52, the probate court is directed to render judgment “in favor of the fiduciary” for the estate, in this case Mr. Rumyantsev. Ms. Pollnow cites no statutory authority that would allow the trial court to award her attorney fees because she is not the prevailing party nor is she in privity with Mr. Coburn’s estate or its special administrator, Mr. Rumyantsev.

{¶41} For example, in *Arneault, supra*, the Fourth District found there was no specific statutory provision authorizing the payment of attorney fees to the appellant, who sought to recover his attorney fees from defending the action. *Id.* at ¶ 17. The probate court did not find the appellee acted in bad faith by initiating her action pursuant to R.C. 2109.50, and the statute’s use of the term “costs” could not be interpreted to include attorney fees. *Id.* at ¶ 14-15. See also *State ex rel. Michaels v. Morse*, 165 Ohio St. 599, 607, 138 N.E.2d 660 (1956) (“The general rule in Ohio is that, in the absence of statutory provision making attorney fees a part of the costs, such fees can not be so taxed. \* \* \* The subject of costs is one entirely of statutory allowance and control”).

{¶42} To further illustrate, in *In re Simons*, 11th Dist. Trumbull 2004-T-0066, 2005-Ohio-2362, this court held that an attorney who represented the executor of the estate in a concealment action was not entitled to an award of attorney fees because the attorney was not a party in interest to the concealment of assets suit or the fiduciary of the estate. *Id.* at ¶ 18. We determined that pursuant to R.C. 2109.52, the executor or “fiduciary” of the estate was the only party to whom the probate court could award attorney fees. *Id.* at ¶ 27. In short, the attorney had no claim against the estate. If the executor had failed to properly pay her, the correct course of action would be to file a civil complaint against the executor for the payment of the debt. *Id.* at ¶ 29.

{¶43} In this case, Atty. Makridis’ claim for attorney fees is even more attenuated since she is not a party in interest to the Silverado case or in privity with Mr. Rummyantsev or Mr. Coburn’s estate. She represents the estate of Jill Pollnow, which may be a creditor of Mr. Coburn’s estate. There is no evidence of Ms. Pollnow’s wrongful death claim against Mr. Coburn’s estate in the record. Even if there were, a creditor’s claim against

an estate would not entitle Atty. Makridis to an award of attorney fees in the Silverado case.

{¶44} We also note Ms. Pollnow did not raise, and the trial court did not clearly find, that Ms. Polivka acted in “bad faith and/or for oppressive reasons in concealing the assets” so that the probate court would have the authority to award attorney fees for prosecuting the action. See *Apergis* at ¶ 30, quoting *Toth* at \*1. A review of the trial court’s judgment entry in the Silverado case reveals the court found Ms. Polivka “guilty of possessing” the Silverado, and she “unlawfully and fraudulently transferred” the truck’s title. No penalty was assessed because Ms. Pollnow failed to introduce evidence of its value (an element of the action), which the trial court found was “neglectful.” Thus, the court simply ordered the return of the asset to Mr. Coburn’s estate. We do not address this issue since we are constrained by the issues raised by the parties in the trial court and the evidence in the record before.

{¶45} Ms. Pollnow cites to *Rusnak v. Fleming*, 144 Ohio Misc.2d 99, 2007-Ohio-6752, 879 N.E.2d 856 (C.P.), for the proposition that “attorney fees and costs have been properly awarded to plaintiff-beneficiaries of estates when the asset(s) have been concealed/embezzled and returned to the estate of which they are beneficiaries.” In that case, the fiduciary of the estate was found to have concealed, embezzled, or conveyed away money belonging to the estate. *Id.* at ¶ 14. The trial court ordered the return of the assets and, by the agreement of the parties (the fiduciary and the beneficiaries), the motion to remove the fiduciary was continued pending further order of the court. *Id.* at ¶ 15.

{¶46} While Ms. Pollnow is correct in her restatement of the case, she conflates her status as a potential creditor of Mr. Coburn’s estate with the status of a beneficiary.

In that situation, R.C. 2109.52 allows a penalty and costs to be levied against the fiduciary. See R.C. 2109.52 (“If the person found guilty is the fiduciary, the probate court shall render judgment in favor of the state against the fiduciary for the amount of the moneys or the value of the personal property or choses in action concealed, embezzled, conveyed away, or held in possession, together with penalty and costs as provided in this section”). Thus, *Rusnak* has no relevance to the instant case.

{¶47} Since Ms. Pollnow failed to support her claim for attorney fees with any statutory authority, attorney fees are not proper under the circumstances of this case, and we cannot find the trial court abused its discretion in denying Ms. Pollnow’s motion.

{¶48} Finding Ms. Pollnow’s assignment of error to be without merit, the judgment of the Trumbull County Court of Common Pleas, Probate Division, is affirmed.

MATT LYNCH, J.,

EUGENE A. LUCCI, J.,

concur.