

THE STATE OF SOUTH CAROLINA
In The Supreme Court of South Carolina

APPEAL FROM RICHLAND COUNTY
Probate Court

Amy W. McCulloch, Richland County Probate Judge

Case No. 2020-GC-40-00072

Jane E. Baskin,.....Respondent

v.

William B. Walkup,.....Appellant

EXHIBIT C

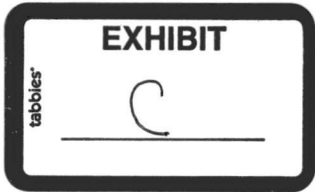
NOTICE OF APPEAL

*Order Granting Petition for Attorneys' Fees and Costs
filed August 31, 2022*

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S.C. SUPREME COURT



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Jane E. Baskin,)
)
 Plaintiff,)
)
 vs.)
)
 William B. Walkup,)
)
 Defendant,)
)

IN THE PROBATE COURT
 Case Number: 2020-GC-40-00072

**ORDER GRANTING PETITION
 FOR ATTORNEYS' FEES AND COSTS**

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 FILED
 A. McCULLOCH
 PROBATE JUDGE
 COUNTY, S.C.

This matter came before the Court on the Second Amended and Supplemental Petition for Attorneys' Fees and Costs, filed by the Plaintiff Jane E. Baskin, seeking an award of her attorneys' fees and costs incurred in the course of this litigation, and asking that such award be levied against the Defendant personally. A hearing was held on Plaintiff's Petition on August 22, 2022. For the reasons set forth herein the Plaintiff's Petition is GRANTED.

PROCEDURAL HISTORY

The long procedural history of this case is necessary to the analysis of the Plaintiff's Attorneys' Fees Petition. The record reflects the following:

1. This action was initiated on July 20, 2020 seeking the removal of the Trustee and an accounting of the testamentary trust established by Plaintiff's father, Eldridge Baskin, referred to herein as the "Eldridge Baskin Trust", or simply the "Trust".
2. The action was preceded by several years of negotiations by Ms. Baskin through her counsel, W. Alex Weatherly, Jr., seeking a resolution of the issues without litigation. Specifically, Ms. Baskin sought to be returned to her home from which she had been forced to leave by the Trustee and the distribution from the Trust of a monthly allowance to cover her care and living expenses. Ms. Baskin also sought an accounting of the Trust. The record reflects that, prior to bringing this action, Ms. Baskin made a substantial and reasonable offer to settle this dispute. These negotiations were to no avail; the Defendant Trustee refused to accommodate

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Ms. Baskin's requests. The Defendant also never provided an appropriate accounting of the Trust showing fees charged, growth of assets, and distributions of principal and income.

3. After suit was filed, substantial discovery was conducted by the Defendant Trustee, William B. Walkup, which included much written discovery and almost fifteen hours of depositions taken of the Plaintiff, Mr. Weatherly (Plaintiff's personal attorney), Michele Moseley (the Plaintiff's attorney-in-fact) and the Plaintiff's personal physician. Much of Defendant's discovery efforts were devoted to issues not raised in the pleadings - undue influence, although added to the pleadings days before the final hearing in the matter, and Ms. Baskin's competency.

4. The trial of the case was commenced in January 2021 for two full days. The evidence showed that Mr. Walkup as Trustee failed for over thirty years to provide any reasonable accounting to the Plaintiff. On two occasions in the thirty years prior to this litigation, some tax returns and other information were shared, but only after a demand was made by Ms. Baskin's attorney. No annual accountings were ever generated by the Trustee, and a thorough accounting in proper form was never filed after it was requested by the court, nor was one ever presented to the Trust beneficiary, Ms. Baskin.

5. On the third day of trial, the parties entered into a "Temporary Settlement Agreement" signed by all parties and their attorneys and filed January 6, 2021.

6. The record reflects that the Temporary Settlement Agreement effected a result for Ms. Baskin more favorable to her than she had offered prior to this litigation.

7. A scheduled status conference (via Zoom), following up on the Temporary Settlement Agreement, was held on October 12, 2021. There, Defendant took the position that the Agreement had "expired" and he had no further obligations to pay the agreed monthly budget for the care of Ms. Baskin, thereunder. As a result of this position, heard by all for the first time at the status conference, the Court called an emergency hearing for that afternoon.

8. At the emergency hearing, defense counsel reiterated Defendant's position. Defense counsel also asserted that Alex Weatherly, acting as Special Trustee under the Temporary Settlement Agreement, had "breached" his agreement as Special Trustee.

9. Following the emergency hearing, the Court issued its Order Regarding Emergency Hearing, dated October 29, 2021, rejecting the allegations made about Mr. Weatherly's performance as Special Trustee and reaffirming the Temporary Settlement Agreement.

10. Also at the emergency hearing, defense counsel urged the Court to set the conclusion of the trial at the earliest possible moment. The Court set the remainder of the trial to be heard on December 21-22, 2021.

11. Just before the trial was to reconvene, the Defendant filed a Motion for Recusal, asking the undersigned to recuse herself from the case. This led the Court to issue its "Order to Stay Proceedings" on December 16, 2021, five days before the trial was to recommence.

12. Two weeks later, following the Order to Stay and while his Motion for Recusal was pending, the Defendant filed an "Emergency Motion for Intervention of GAL for Jane Baskin," on December 30, 2021. The "Emergency Motion" was based upon information from an anonymous source which appeared to be based upon speculation, innuendo, and hearsay. The Plaintiff sought discovery limited to issues raised in the Emergency Motion filed by the Defendant. The Defendant refused to respond, asserting that the case was stayed.

13. The Court denied the Defendant's Motion for Recusal by Order filed on April 28, 2022. Referring to the Temporary Settlement Agreement, the Court said, ***"The hope and intention was that the Temporary Settlement Agreement . . . would resolve all matters of contention between the parties and allow for a resolution without further litigation."*** Order Denying Motion for Recusal, pp. 2-3.

14. On June 13, 2022, Defendant filed a Motion to Amend his Answer and Counterclaim to assert that Michele Moseley had unduly influenced Ms. Baskin to bring this suit and change her will.

15. One week later, on June 20, 2022, Defendant, individually and as Trustee, filed a Complaint in the Lexington County Court of Common Pleas making identical allegations, but asserting these claims directly against this Court's Special Trustee, Alex Weatherly, and Ms. Moseley, and without naming Ms. Baskin as a party.

16. On August 5, 2022, the trial recommenced and the Defendant was provided the opportunity to present additional evidence. He proffered no evidence to contradict the fact that he had failed to provide appropriate accountings through his thirty-year tenure as Trustee. He provided no evidence to contradict the fact that he had used the Trust to control Ms. Baskin's person, moving her into an apartment unit that he owned which, according to this Court's Guardian *ad litem*, Michelle Nunn, was wholly inappropriate for Ms. Baskin's disabilities. He provided no evidence to refute his own prior testimony that, despite his admission that Ms. Baskin's needed additional care, he had refused to provide it for her. He provided no evidence to refute the fact that he refused to provide Ms. Baskin with enough money to buy food, clothes and Depends undergarments. And he proffered no evidence of the undue influence of Ms. Baskin by Ms. Moseley or anyone else, as he alleged in his Amended Answer and his Lexington County lawsuit.

17. On August 23, 2022, this Court filed its Order Removing Trustee, which reflects in further detail the procedural history summarized above and makes specific findings of fact and conclusions of law reflecting the many deficiencies of the Trust's administration by the Defendant.

18. Ms. Baskin's Petition for Attorneys' Fees and Costs was accompanied by her counsel's Amended and Supplemental Affidavit in Support of Petition for Attorneys' Fees, which reflects that she has incurred total fees and costs of \$129,625.80 and that the fees requested do not include any time billed for W. Alex Weatherly, Jr., who was co-counsel. Her Petition asserts that her fees and costs were largely unnecessary and caused by the actions of the Defendant Walkup, his unwillingness to seek a compromise, his turning a simple dispute into complex litigation, and his steadfast refusal to cooperate with his beneficiary. This Court agrees.

STANDARD FOR AWARD OF ATTORNEYS FEES

19. S.C. Code Ann. § 62-7-1004 provides:

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

20. Our Supreme Court set forth the standard for determining an award of attorneys' fees in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). In that case, the court held that in awarding reasonable attorney's fees, there are six factors to be considered. Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling. *Id.* at 385.

21. In the *Baron* decision, the Supreme Court upheld the award of the trial court, articulating and analyzing each of the six factors as follows:

- (1) The Nature, Extent and Difficulty of the Legal Services Rendered.

Upon its evaluation of the nature, extent and difficulty of the legal services, the trial court determined that Baron had to expend considerably more time and effort on the case because the defendants had transformed a simple collection action into complex litigation.

- (2) The Time and Labor Necessarily Devoted to the Case.

The trial court concluded that "a review of the statements and affidavits of Baron's trial attorney indicate clearly that the time and labor spent were reasonable and not duplicative." The respondents did not dispute this conclusion.

- (3) The Professional Standing of Counsel.

The circuit court's determination that Baron's trial attorney is an experienced, skilled attorney, of high professional standing in the community was based upon a careful review of the affidavits of Baron's expert and its trial attorney, which included the attorney's resume. Respondents did not contest the trial court's determination.

- (4) The Contingency of Compensation.

Not applicable since this was not a contingency case.

- (5) The Fee Customarily Charged in the Locality for Similar Legal Services.

Based upon a review of the attorney's resume, affidavits and its familiarity with attorney' fees customarily charged in this legal community, the trial court found that the rate [charged] was

appropriate.

(6) The Beneficial Results Obtained.

The trial court decided that the total benefits obtained by Baron include a sizeable judgment (\$16,151) and the avoidance of nearly half a million dollars in liability on the counterclaims. The Court of Appeals concluded that Baron sought over \$70,000 and recovered only \$16,151, thus the beneficial result was not significant.

A reading of the Court of Appeals' opinion indicates that the amount of the monetary judgment was the critical factor upon which the Court of Appeals relied in making its determination. However, as set forth above, the amount of recovery is but one factor to be considered in determining reasonable attorney's fees.

Baron, 297 SC 382, 385-386.

The Supreme Court in *Baron* reversed the Court of Appeals and reinstated the trial court's award of \$70,000 in legal fees.

APPLICATION OF STANDARD

22. Applying the standard set forth in *Baron* to this case, the Court finds the following:

(a) *Nature, Extent and Difficulty of Legal Services Rendered.* In this case, like *Baron*, this litigation was made unnecessarily complex by the Defendant. Defendant initially called into question Ms. Baskin's attorney-in-fact, suggesting undue influence, and called into question Ms. Baskin's competency. Defendant had not raised those issues in his response. Defendant conducted hours of depositions and volumes of written discovery, which did not help his case. Defendant filed an "Emergency Motion" without supporting evidence. Without authority, the Defendant filed a Complaint against the Special Trustee and the attorney-in-fact, "as Trustee of the Eldridge Baskin Trust," making some of the same allegations as here, in violation of this court's stay. Finally, after four days of trial, the Defendant failed to refute the allegations of the Complaint, failed to provide any meaningful defense, presented no evidence of "undue influence", failed to provide appropriate accountings to the Plaintiff and this Court, and refused to resign as Trustee.

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(b) *Time and Labor Necessarily Devoted to the Case.* The time and labor expended on Ms. Baskin's behalf by her counsel were reasonable and not duplicative. Indeed, while Mr. Weatherly's time is shown on the statement presented to the Court, no charges for that time are included. Had his time been included, the fees would be an additional \$65,310.00. Counsel's efforts were largely spent in response to unfounded (and unpled) allegations made by the Defendant; the unnecessary discovery conducted by Defendant; the unwarranted motions practice; and the unfounded and dilatory positions taken by the Defendant.

(c) *Professional Standing of Counsel.* Plaintiff's lead counsel, Richard C. Detwiler, is an experienced trial lawyer in good standing in the legal community, with thirty-six years as a practicing lawyer handling general litigation, including trust litigation, as reflected in his affidavit made a part of the Plaintiff's Petition. Likewise, Mr. Weatherly is a well-known and respected lawyer who has been practicing for a similar length of time. He had a twenty-two (22) year career as a Certified Public Accountant, as well, and practices in the areas of Trusts and Estates. At the hearing, defense counsel conceded the Plaintiff's counsels' good professional standing.

(d) *The Contingency of Compensation.* Like *Baron*, this is not a contingency case, at least not in the typical sense, but this factor should be considered. The Plaintiff's counsel and his firm undertook this case because, as they put it, it was the right thing to do, knowing that Ms. Baskin could not pay for their services unless she prevailed. Ms. Baskin needed a lawyer. Had Ms. Baskin not prevailed, counsel understood that they likely would never be paid. The amount requested is substantial and it is so because of the Defendant's actions, as explained elsewhere herein, and in the Court's Order Removing Trustee.

(e) *Fees Customarily Charged in the Locality for Similar Services.* The fees charged are those customarily charged in this legal community. It is also recognized that much of the time shown on the itemized statement provided to the court for *in camera* review was "no-charged," including all of Mr. Weatherly's time.

(f) *Beneficial Results Obtained.* Finally, the benefits obtained for Ms. Baskin in the Temporary Settlement Agreement were *more than* she had offered

to settle the dispute for eighteen months prior to bringing suit, as previously noted. After two years of litigation and four days of trial, Ms. Baskin prevailed, as set forth in this Court's Order Removing Trustee.


23. Ms. Baskin has no ability to pay her attorneys' fees and costs. She would have been unable to bring this action to seek redress before the Court but for her counsel agreeing to do so without a retainer or periodic payment of fees and costs. Since 2017, Mr. Weatherly has represented Ms. Baskin without being paid, because she could not afford payment. He does not seek payment of any pre-suit fees now. However, since this litigation began, counsel still has received no payment and has advanced over \$12,600.00 in litigation costs to protect Ms. Baskin's rights.

24. On the other hand, the record reflects that Mr. Walkup has the ability to pay Ms. Baskin's fees and costs, as well as his own. Mr. Walkup testified that he (or his Company) has under management over \$100 million in assets from third parties, including the Plaintiff. According to his testimony, he receives a fee of .9% for managing these assets, which would amount to fees in excess of \$900,000.00 yearly. This is *in addition* to the trustee fees he charges the Eldridge Baskin Trust.

25. Ms. Baskin's counsel has a right to be paid reasonable fees and suit costs for bringing this action on behalf of Ms. Baskin. The fees requested are reasonable under the circumstances they were incurred. Funds are available to pay the undersigned's fees and costs from the Trust, but ultimately the Defendant Walkup, not the Trust, bears responsibility for the cost of this litigation and for Ms. Baskin's fees and costs. Justice and equity require that Mr. Walkup personally be assessed these fees and costs. See, S.C. Code § 62-7-1004.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant, William B. Walkup shall be and is hereby ordered to pay Plaintiff's attorneys' fees and costs in the total amount of \$129,625.80, payable directly to Callison Tighe & Robinson, LLC, within thirty (30) days from the entry of this Order.

AND IT IS SO ORDERED.



Amy W. McCulloch
Richland County Probate Judge

Columbia, South Carolina
August 31, 2022

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S.C. SUPREME COURT