

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO. 2008ES1000409 (Charleston)
CASE NO. 2012ES0700998 (Beaufort)

RECEIVED

IN THE MATTER OF ESTATE OF)
NORMAN ROBERT KNIGHT, JR.)
_____)

ORDER OF JUDGMENT
ALLOWING CLAIM

APR 13 2016

SC Court of Appeals

FILED

JUL 11 2014

PROBATE COURT
BEAUFORT COUNTY, SC

Hearing Dates:
Presiding Judge:
Petitioner Chloe Toney's Attorney:
Respondent Norman Robert
Knight, III's Attorney:
Special Administrator:

March 31, 2014 and April 28, 2014
Kenneth E. Fulp, Jr.
C. Mac Gibson, Jr.

J. Seth Whipper
Beatrice E. Whitten

THIS MATTER came before this Court on March 31, 2014 and April 28, 2014, on Chloe Toney's Petition for Allowance of Claim against the Estate of Norman Robert Knight, Jr. ("Mr. Knight's Estate"), and Norman Robert Knight, III's Amended Complaint for removal of the Special Administrator. This Order renders judgment on the Petition for Allowance of Claim.

Present at the hearings were Chloe Tonney ("Tonney"), Norman Robert Knight, III, their respective attorneys, and the Special Administrator.

Based on the parties' pleadings, the record, the testimony of the witnesses and other admissible evidence, the arguments of counsel, and the applicable law, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. All interested parties were served with proper notice of the hearings.
2. Charleston County Probate Court issued an Order dated August 25, 2005, appointing Walter Kaufmann ("Kaufmann") as Guardian and Family Services, Inc. as the Conservator for Norman Robert Knight, Jr. ("Mr. Knight"), an incapacitated person.

3. The Honorable Tamara Curry, Associate Judge for Charleston County Probate Court, issued an emergency Order dated January 31, 2006, which authorized Kaufmann, as Guardian to take physical and legal custody of Mr. Knight. With the assistance of the City of North Charleston police department, Kaufmann removed Mr. Knight from his primary residence and placed him at Savannah House, an assisted living facility. Several months later, Kaufmann and the management of Savannah House determined that Mr. Knight needed extensive and full time care, so Mr. Knight was transferred to the Bishop Gadsden nursing facility.

4. Mr. Knight died on March 11, 2008 in Charleston County, South Carolina.

5. The first notice to creditors was published in a local newspaper on May 21, 2008.

6. On July 30, 2008, the Honorable Irvin G. Condon, Probate Judge for Charleston County, and the Honorable Tamara C. Curry, Associate Judge for Charleston County Probate Court, submitted a request to South Carolina Court Administration for recusal from all pending and subsequent matters relating to Mr. Knight's Estate.

7. On August 5, 2008, South Carolina Court Administration issued an Order of the Chief Justice of The Supreme Court of South Carolina appointing the Honorable Mary Blunt, Probate Judge for Dorchester County, as special probate court judge for Charleston County in this matter.

8. Judge Blunt appointed Beatrice Whitten as Special Administrator of Mr. Knight's Estate, by Order issued on December 15, 2008.

9. Tonney filed a creditor's claim against Mr. Knight's Estate on January 20, 2009. Tonney sought reimbursement for expenses which she incurred for her father, Mr. Knight. The expenses included food, clothes, personal items, payments to Bishop Gadsden, furniture, legal fees, a payment to Family Services, Inc., and moving expenses in the amount of \$61,249.46. At the conclusion of trial, Tonney reduced her claim to the sum of \$26,733.27 plus interest.

10. After several years of litigation and appeals, South Carolina Court Administration issued an Order of the Chief Justice on November 28, 2012, appointing the Kenneth E. Fulp, Jr., Probate Judge for Beaufort County, as special probate court judge for Charleston County for Mr. Knight's Estate case.

11. This Court issued an Order dated July 29, 2013, ruling that Tonney had timely presented her creditor's claim against Mr. Knight's Estate and, after disallowance by the Special Administrator, had timely and properly commenced this proceeding for allowance of her claim.

12. At the time Kaufmann removed Mr. Knight from his primary residence to the Savannah House assisted living facility, Kaufmann did not take any of Mr. Knight's clothes, bed, or furniture due to the emergency nature of the removal. The rooms at the Savannah House assisted living facility had no furniture. The management at Savannah House permitted Mr. Knight to borrow a bed until a new bed could be procured.

13. Tonney talked with Kaufmann and Iris Albright ("Albright"), a representative of Family Services, Inc., the Conservator, about assisting her father in terms of purchasing clothes, furniture, and food. Kaufmann and Albright testified that they were in agreement for Tonney to purchase food, clothes, and furniture for her father with the expectation that she would be reimbursed. Tonney's expectation was confirmed in her letter to Albright dated March 15, 2006.

14. Tonney presented receipts from various stores for clothes, food, personal items, and furniture as follows:

Walgreens	\$ 220.10
Dillards	\$ 477.66
Harris Teeter	\$ 132.75
Sears	\$ 209.35
Citadel	\$ 260.93
Bombay	\$ 179.00
Wal-Mart	\$ 208.42
Tuesdays	\$ 59.60

Best Buy	\$ 320.99
Parisian	\$ 26.74
Stuckey Brothers	\$ 5,060.48

15. Kaufmann and Albright testified such purchases were for the benefit of Mr. Knight at the times he resided at Savannah House and Bishop Gadsden. The testimony of Kaufmann and Albright is found to be highly credible.

16. The Citadel print in the amount of \$260.93 was not reasonably necessary for Mr. Knight's maintenance and is not allowed.

17. Tonney purchased a television from Wal-Mart in the amount of \$248.00 for Mr. Knight. Prior to trial, Tonney withdrew the claim for the television. Sales tax attributable to the purchase was not deducted from the amount of the Wal-Mart expenditures claimed above (\$208.42), and the amount of such sales tax, viz., \$16.12, is disallowed.

18. Tonney bought a recliner chair for \$1,777.49 and a desk for \$658.00 from Stuckey Brothers for Mr. Knight. Such recliner chair and desk exceeded that which was reasonably necessary for Mr. Knight's support and comfort, particularly in view of the other table, desk, and chair purchases which are allowable. Consequently, the \$2,435.49 sum Tonney spent for the purchase of the recliner chair and desk from Stuckey Brothers (which was included in total claimed above for Stuckey Brothers expenditures) is disallowed.

19. Mildred Knight commenced an action for maintenance and support in the Charleston County Family Court in November, 2006. In the action, Mrs. Knight sought additional financial support from Mr. Knight.

20. Tonney discussed with Kaufmann and Albright the need for Mr. Knight to have legal representation to protect his assets. In a letter to Albright, dated October 24, 2007, Tonney

confirmed her payment of Attorney Thad Vincent's fees to represent Mr. Knight in the family court action with the proviso she considered the payment a loan to Mr. Knight.

21. Thad Vincent issued a letter to Tonney dated November 6, 2006, confirming his agreement to represent Mr. Knight and that Tonney would be responsible for all charges not paid by Family Services, the Conservator for Mr. Knight.

22. Tonney presented invoices from Vincent Law Firm totaling \$6,091.09, for services rendered and costs incurred in representing Mr. Knight. Tonney paid all invoices out of her own funds, and presented proper documentation for such expenditures, which was admitted in evidence. There is no evidence Tonney used any of Mr. Knight's funds to pay Vincent's invoices. Further, Albright testified that Tonney did not have access to her father's funds or her father's other assets.

23. This Court issued an Order dated December 23, 2013, that required Tonney to provide unredacted copies of Vincent's invoices to Respondent's attorney. Two of the Vincent invoices presented by Tonney at trial -- the invoices dated March 17, 2007 and October 15, 2007 -- showed redaction of the description of services in two line items. Because the redacted content had not been provided, as ordered, the charges for those line items, \$21.20 and \$106.00, respectively, are disallowed.

24. During the pendency of the family court action, Thad Vincent retired from the practice of law. Tonney, Kaufmann, and Albright determined Mr. Knight needed another attorney in the family court action. Attorney Mary Ann Hall was retained for that purpose, and Tonney paid a retainer in the amount of \$5,000 to Hall. Mr. Knight died before the conclusion of the family court action; therefore, Mary Ann Hall returned to Tonney the unearned balance of the retainer in the amount of \$1,808.03.

25. Tonney and Albright testified that, when Mr. Knight was transferred to the Bishop Gadsden nursing facility in 2007, they had agreed that if Mr. Knight's available funds were not sufficient to currently pay the monthly charges at Bishop Gadsden, then Tonney would pay the difference.

26. Tonney presented a monthly statement dated October 31, 2007, from Bishop Gadsden in the amount of \$13,306.71. Tonney paid a sum of \$2,000 towards the balance by check drawn on her and her husband's personal checking account.

27. Tonney presented an invoice with a statement date December 31, 2007 from Bishop Gadsden. The total invoice was \$6,708.50, of which Family Services, Inc., as Conservator for Mr. Knight, paid \$3,100.00, and Tonney paid the balance of \$3,608.50, by check drawn on her and her husband's checking account.

28. Family Services, as Conservator, paid \$3,300.00 to Bishop Gadsden for the invoice dated January 31, 2008. Tonney paid the \$3,277.89 balance of the invoice by check drawn on her and her husband's personal checking account.

29. Tonney wrote on each of the checks to Bishop Gadsden that each payment was a loan to "NRK Jr." Tonney paid a total sum of \$8,886.39 to Bishop Gadsden on behalf of Mr. Knight.

30. Tonney issued a personal check in the amount of \$1,000.00 to Family Services on May 29, 2007, after Albright informed Tonney that Mr. Knight did not have sufficient funds in the conservatorship account to cover his expenses. Tonney made a notation on the check "care expenses."

31. Tonney paid Larry Collins, owner of Collins Office Supply, Inc., to move Mr. Knight's furniture and bed from Savannah House assisted living to Bishop Gadsden nursing

facility. Tonney presented a check made payable to Larry Collins in the amount of \$150.00, and such check account was in her and her husband's name. Tonney wrote "moving exp.- NRK, Jr." on that check.

32. After Mr. Knight's death, Tonney paid Collins Office Supply, Inc. the sum of \$279.00 to move Mr. Knight's furniture and items out of Bishop Gadsden to a storage unit. The payment was made from her and her husband's checking account with the notation "NRK, Jr. BG moving expenses."

33. Albright testified that, as Conservator, she had marshaled credit cards and other accounts owned by Mr. Knight, and Tonney did not at any time use her father's income or assets to pay his expenses.

34. The allowable expenditures claimed by Tonney, as provided above, total \$23,914.73.

CONCLUSIONS OF LAW

1. This Court has proper jurisdiction over the subject matters and the parties hereto, and proper notice of all proceedings has been given.

2. The South Carolina Probate Code defines "claims" to include, "in respect to estates of decedents and protected persons . . . liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator" *S.C. Code Ann.* § 62-1-201(4) (Supp. 2013). "[C]laims against a decedent's estate include all claims 'whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis.' " *Matter of Margaret Dever Hover Gurnham a/k/a Margaret D. Hover, Beach First National Bank v. The Estate of Margaret Dever Hover Gurnham a/k/a Margaret D. Hover, and/or Brian Hover*, 407 S.C. 194, 203, 754 S.E. 2d 875, 880 (2014).

3. “ ‘Broadly speaking, all claims against the decedent should be presented for allowance, and the word “claims” included such debts or demands as existed against the decedent in his or her lifetime and that might have been enforced against him or her by personal actions for the recovery of money.’ 34 C.J.S. *Executors & Administrators* §548 (Supp. 2013) (footnotes omitted). ‘Stated another way, the term included every species of liability that the personal representative can be called on to pay out of the general funds of the estate.’ *Id.* “ ‘However, claims against an estate are not limited to obligations of the decedent that could have been enforced against him or her while living.’ *Id.*” *Matter of Gurnham*, 407 S.C. at 203-4, 754 S.E. 2d at 880.

4. Tonney proved by a preponderance of the evidence that the expenditures that she incurred for Mr. Knight, totaling \$23,914.73, were reasonable and necessary for the support, care, maintenance, and benefit of Mr. Knight before his death and the moving of Mr. Knight’s property after his death.

5. Tonney proved by a preponderance of the evidence that the expenditures she incurred for Mr. Knight were not gratuitous, but were paid from her own funds or credit, and that she expected to be reimbursed by Mr. Knight or his estate.

6. Tonney showed by the preponderance of the evidence that she made payments for Mr. Knight as loans with the expectation that she would be reimbursed.

7. The expenses that Tonney incurred fall within the definition of “claim” under *S.C. Code Ann.* § 62-1-201(4) and as set forth in *Matter of Gurnham*, cited *supra*. The expenses are the obligation of the estate which could have been enforced against Mr. Knight during his lifetime, but for his or his Conservator’s lack of access to his funds and other assets at the times

the expenses were incurred. Tonney has the right to seek reimbursement of the expenses from Mr. Knight's Estate.

8. Tonney's claim against Mr. Knight's Estate is allowable in the amount of \$23,914.73.

9. "[A]llowed claims bear interest at the legal rate . . . for the period commencing upon the later of fourteen months after the date of the decedent's death or the last date upon which the claim could have been properly presented under § 62-3-803, unless based on a contract"

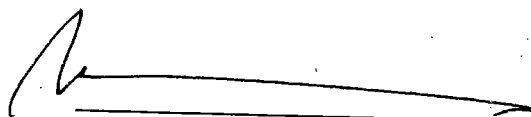
S.C. Code Ann. § 62-3-806 (Supp. 2013).

10. On the facts of this case, there being no provable contractual interest rate, Tonney is entitled to interest at the legal rate of eight and three-fourth percent (8.75%) per annum commencing May 11, 2009, fourteen months after Mr. Knight's death. *Id.*

Therefore, it is

ORDERED, ADJUDGED, AND DECREED that Tonney's claim against Mr. Knight's Estate is **ALLOWED** in the amount of \$23,914.73, with interest thereon at the rate of 8.75% per annum commencing on May 11, 2009.

AND IT IS SO ORDERED.



Kenneth E. Fulp, Jr.
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

July 11, 2014