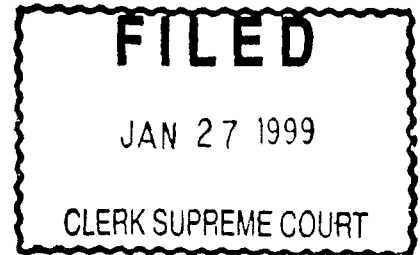


IN THE COURT OF APPEALS OF IOWA

No. 8-434 / 98-103

**IN THE MATTER OF THE CONSERVATORSHIP
OF DEBRA L. MOELLER MANUS, Ward,
BRIAN D. JONES,**



Appellant,

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

Brian Jones appeals a district court ruling awarding him attorney fees.

AFFIRMED.

Brian D. Jones of Siegrist & Jones P.L.C., Britt, for appellant.

Thomas W. Lipps, of Peterson and Lipps Algona, and E.J. Gallagher, III of
Gallagher, Langlas, Gallagher, P.C. Waterloo, for appellant.

Jeffrey S. Bittner Davenport, for appellant.

Edward N. Wehr and John R. Newman of Wehr, Berger, Lane & Stevens,
Davenport, for appellee Firststar Bank N.A.

Considered by Huitink, P.J., Mahan, J., and Habhab, S.J.* Zimmer, J., takes
no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

Brian Jones appeals a district court ruling awarding him attorney fees. Jones contends the district court abused its discretion in reducing his attorney fees and costs incurred from his representation of the ward, Debra Manus.

I. The ward Debra Manus was involved in an automobile accident. A lawsuit followed against her in the Iowa District Court for Kossuth County. At the time of the accident, Firststar Bank was the conservator for the ward Debra Manus (hereinafter referred to as "Manus"). Manus had liability coverage, but because of the severity of the injuries of the claimants and the question of policy limits, attorney Brian Jones, on May 26, 1996, was approved by the probate court to represent Manus in the defense of the excess liability suit. The court approved a retainer of \$1000, compensation at \$85 per hour, and out-of-pocket expenses. It cannot go unnoticed throughout the litigation Manus was also represented by her liability insurance company's law firm.

The accident lawsuit was for all practical purposes settled on July 1, 1997. As part of the settlement agreement, the liability insurance carrier agreed to pay its policy limits to the tort claimants and the conservatorship agreed to contribute an additional \$50,000. The settlement was approved by the district court on July 8, 1997. In addition and as part of the settlement, the ward, for reasons explained later, assigned all claims she had against Firststar, as her conservator, to the tort claimants.

On June 16, 1997, and prior to settlement of the accident lawsuit, Manus, through counsel, filed an application for the removal of the conservator based on

assertions of conflict of interest in that Firststar was alleged to have committed a breach of fiduciary duty and negligent entrustment of a motor vehicle to Manus. There were other allegations in the application, including an assertion of inconvenience, for Manus at that time resided in Kossuth County.

On July 3, 1997, the conservator, Firststar, filed a declaratory judgment action against the tort claimants and Manus. Notice was served on Manus on August 18, 1997. On September 18, 1997, the Scott County District Court also appointed attorney Brian Jones to represent Manus in the declaratory judgment action and authorized compensation at the rate of \$85 per hour together with out-of-pocket expenses. We glean from the trial court's ruling that the substance of the declaratory judgment action was whether the conservator Firststar Bank is liable for failure to adequately insure their ward and for negligent entrustment of the motor vehicle to her.

Hearing on all pending issues was fixed for September 24, 1997, about six days after Jones was appointed to represent Manus in the declaratory judgment action. By that date, Jones had filed his claim for attorney fees in the amount of \$17,889.75. At that hearing,¹ the trial court, in addition to the matters set forth in the footnote, rescinded the previous orders of court that appointed Jones as the attorney for the ward in the automobile accident and the declaratory judgment action. The court, after

¹ In addition to Jones' claim for attorney fees, the issue of approving the conservator's annual report, the discharge of the conservator Firststar Bank, the tort claimant and ward's motion to dismiss the declaratory judgment action, and payment of attorney fees for the conservator were submitted. Following the hearing, the trial court, among other things, approved the annual report and allowed fees for the conservator, denied the motion to dismiss declaratory judgment action, discharged Firststar as conservator, and appointed a temporary conservator.

ruling Jones' services were no longer needed and many of his efforts were duplicative in nature with that of the tort claimant, reduced his attorney fees claim to \$6500. Jones thereafter filed a rule 179(b) motion to enlarge and amend findings. The district court reiterated its previous findings were reasonable and approved the \$6500 award. Jones appeals only the attorney fee award.

II. On appeal, Jones contends the district court abused its discretion in reducing his attorney fees and costs incurred from his representation of Manus. He claims his services resulted in a settlement that protected and preserved the conservatorship from an award in excess of Manus' insurance limits. He argues mere similarities of interest in litigation filed by the tort claimants against Firststar do not suggest his services were duplicative. He contends he did not undertake to advance the claims of the tort claimants in their legal dispute against Firststar under assigned rights.

A hearing on allowance of attorney fees stands in equity and thus is reviewable de novo. See *In re Estate of Bolton*, 403 N.W.2d 40, 42 (Iowa App. 1987). The applicant for fees must show services were reasonably necessary and the charges are reasonable in amount. *In re Estate of Brady*, 308 N.W.2d 68, 74 (Iowa 1981). Unless induced by legal error, the trial court's decision will be reversed only for abuse of discretion. *Id.*

Duplication of effort and proper utilization of time is closely scrutinized in awarding fees to multiple attorneys in a single case. See *Dickerson v. Young*, 332 N.W.2d 93, 101 (Iowa 1983). Particular attention is given to the actual use of two or

three attorneys for investigation, discovery, pretrial hearings, motions and pleadings, and other facets, when one attorney would do. *Id.* The court has discretion to make appropriate adjustments for duplicative services. *Id.*

From our de novo review of the limited record before us, and more particularly to the billing itself, we find the trial court did not abuse its discretion when it adjusted the attorney fees claim for legal services to \$6500.² In reviewing Jones' billing, the trial court had discretion to find that many of the services performed by Jones were not necessary to either the accident lawsuit or the declaratory judgment action. *In re Estate of Brady*, 308 N.W.2d at 74. In addition, the trial court acted within its discretion in determining that certain services and charges did not benefit the conservatorship. *Id.*

We have made a close examination of the proceedings which occurred in this case. We are unable to find the trial court abused its discretion and accordingly affirm.

AFFIRMED.

² We note that some of the services for which a charge is made were services that should have been performed or perhaps were performed and charged by the conservator. Those services had little, if any, bearing on the automobile accident, i.e., see entries relating to income tax liability, credit card debts, payment of medical expenses, etc. We are convinced Jones acted in the best of good faith to assist Manus through some difficult times, but his employment was limited to representing the ward in the automobile accident and the declaratory judgment action. Regardless of how benevolent his intentions were, a number of his charges neither relate to the accident nor the declaratory judgment action.