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OPINION FOR REVIEW ON CERTIORARI

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ORDER OF THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT (MARCH 31, 2022)

2022 IL App (1st) 210316-U

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE ESTATE OF
BASAVAPUNNAMMA K. RAO,

Deceased,

PADMA RAO,

Petitioner-Appellant and Cross-Appellee,

v.

MIDLAND TRUST COMPANY,

Respondent-Appellee,

ANITA RAO,

Appellee and Cross-Appellant.

Consolidated Appeals
No. 1-21-0316 and No. 1-21-0465
Appeal from the Circuit Court of Cook County.
Before: Hon. James P. MURPHY, Presiding Judge.

PRESIDING JUSTICE DELORT delivered the judgment of the court. Justices Hoffman and Cunningham concurred in the judgment.

ORDER

¶ 1 Held: In this decedent's estate case, the circuit court did not err in assessing various fees and costs. The court correctly awarded fees to the supervised estate administrator and attorney fees to the administrator's legal counsel. The court did not abuse its discretion in reducing the administrator's fee. The court did not err in granting certain administrator fees and costs in favor of the cross-appellee. Affirmed.

¶ 2 Petitioner Padma Rao was appointed as the independent administrator of the estate of her deceased mother, Basavapunnamma K. Rao. The circuit court later removed Padma as administrator and appointed respondent Midland Trust Company (Midland) as the successor independent administrator. Following a hearing, the court awarded $532,807.88 in fees and costs, consisting of an award in favor of Midland ($172,417.22) and an award in favor of Midland's law firm, FMS Law Group, LLC (FMS) ($306,580.66). The court further granted appellee and cross-appellant Anita Rao's petition to allocate the entirety of the fee and costs award against Padma's share of the estate. On appeal, Padma contends that the court erred in (1) violating the "American Rule" and assessing estate attorney fees against her; (2) awarding fees and costs in favor of Midland and FMS; and (3) awarding her a reduced administrator's fee of $37,500. Anita cross-appeals the administrator's $37,500 fee award in favor of Padma. We affirm on all issues.

¶ 3 BACKGROUND

¶ 4 Basavapunnamma K. Rao died on October 13, 2013, and was survived by her two daughters: Padma and Anita. The circuit court admitted decedent's will to probate and appointed Padma as the administrator of the decedent's estate.

¶ 5 A few months later, Padma filed a wrongful death and survival complaint in the Law Division of the circuit court of Cook County against NorthShore University Health System and four of her mother's treating physicians.

¶ 6 After extensive settlement discussions, the Law Division court issued an order, noting that certain defendants in the NorthShore lawsuit had offered a settlement in the amount of $2.1 million, consisting of $500,000 for the wrongful death claim and $1.6 million for the survival act claim. The court further found that Padma "has agreed to accept" the offer and that the settlement offer was fair and reasonable. A few days later, Padma signed a settlement statement indicating a gross settlement amount of $2.1 million, attorney fees and other deductions of $771,142.81 for a net settlement amount of $1,328, 857.19. The statement further noted that the "[c]lient acknowledges that she has reviewed the information shown on this Settlement Statement and approves the distribution of the monies as shown above."

¶ 7 The parties later appeared before the circuit court on the malpractice case. The court noted that the NorthShore lawsuit had been settled the prior week but that it had received an "inappropriate *ex parte*" letter from Padma. The court informed the parties that the communication stated, "I did not and

do not assent to settlement. I wish to go to trial. Sincerely, Padma Rao." Padma confirmed that she had sent the letter.

¶ 8 Padma's counsel agreed that the parties had met "several times" before the circuit court memorialized the settlement order. The court added that an initial settlement offer of $1 million had been refused before the parties reached the agreed settlement amount of $2.1 million. Padma agreed that she had been represented by counsel during the settlement negotiations, the court made the jury room available, and that "we were here all day." The court noted that it was "intimately involved" in lengthy settlement discussions, and after it was informed that a settlement had been reached, the court discussed the terms and conditions with Padma. Padma agreed that the court discussed the settlement terms at that time, but now she said she no longer agreed to them.

¶ 9 Padma stated that she told the court in chambers that she was not being given a choice, that she was being pressured, and that the settlement was "against mom's beliefs and wishes and my own beliefs as she taught me." The court, however, disagreed, noting that there were "several other witnesses * * * in open court today who were present * * * ." The court recounted that Padma asked whether the court was telling her that she did not "have a choice" but that the court responded, "[N]o, I'm not telling you anything of the sort." The court then stated that it allowed her to confer with her attorneys "for hours" until she decided to agree to the settlement. The court noted that her sister and the "myriad" of attorneys representing her all recommended agreeing to the settlement. When the court asked Padma why she

was now changing her position, Padma stated that it was "the same reasons as before[:] religious objection * * * to entering into an agreement." When asked what the beliefs were, Padma stated, "[A]ccording to Hinduism, I am not supposed to enter into an agreement."

¶ 10 The court then reiterated that this was "the first time today" that Padma brought up her specific religious beliefs against settling litigation. The court further noted that it had "talked about different numbers," including the fact that Padma had "mentioned a figure of $6 million at one point."

¶ 11 Following additional discussions between Padma and her counsel, counsel informed the court that Padma no longer wished to agree to the settlement. When the court asked Padma why she had changed her mind after "lengthy discussions," Padma reiterated that her mother's religious beliefs prohibited Padma from "enter[ing] into an agreement with those who are responsible for my mother's death, with wrong-doers." Padma claimed that she was unaware that "the settlement would be an agreement." The court, after again noting that this was the first time that Padma had raised a religious objection to any type of settlement, stated that its order memorializing the settlement would stand, and that the case was continued for consideration of a distribution order. The court again admonished Padma that any subsequent communication with the court should be done through her attorneys.

¶ 12 The circuit court later entered an order dismissing the NorthShore lawsuit with prejudice and finding again that the $2.1 million settlement was fair and reasonable. After deducting attorney

fees and costs of $771,447.81, the court noted that "by agreement" the net proceeds attributable to the wrongful death claim ($316,328.75) would be divided into a 70% share to Padma ($221,430.13) and a 30% share to Anita ($94,898.62), a division which the court found was fair and reasonable. The remaining net proceeds from the survival act claim of $1,012, 223.44 were awarded to the estate, subject to approval and disbursement by the court hearing the estate case. The court further ordered that the order would be effective "only after the entry in the probate division of an order approving the bond or other security required to administer the settlement and distribution provided in this Order." The court also ordered, "given [Padma's] refusal to sign the Release document and agreement to withdraw as Independent Administrator, that a Bank be substituted in by the probate Court to further effectuate the terms of this agreement including the execution of a Release."

¶ 13 Padma then filed a motion before the Law Division court to vacate the orders approving the settlement, reaffirming the settlement, and approving the distribution of proceeds. Padma attached a lengthy affidavit to her motion repeating her earlier claims of a religious objection, her demand to take the claims to a full trial, and denigrating her attorneys.

¶ 14 About the same time, Anita moved to remove Padma as independent administrator of the estate and convert it to supervised administration. The circuit court granted Anita's motion over Padma's objection and appointed Midland as the supervised administrator of the estate. The court found that Padma committed waste and mismanagement of the

estate, and that she was incapable and unsuitable to discharge her duties.

¶ 15 On January 15, 2019, the circuit court directed Padma to file an inventory and an estate accounting by specified dates. Padma did not do so, and the petition was continued from time to time.

¶ 16 On February 15, 2019, Padma filed a complaint against Midland with the Illinois Department of Financial and Professional Regulation (IDFPR). Padma's complaint alleged that Midland was merely "a pawn that will kowtow to [the estate attorney's] and [Anita's attorney's] violations of Mom's and my rights for its [and] their profit." Among other things, Padma wanted Midland to be removed from all matters involving her or her mother, for Midland not to receive any payment for its supervision of her mother's estate, as well as other relief. FMS, counsel for Midland, gave IDFPR a voluminous and thorough response. FMS sent a copy of its response to Padma. The IDFPR took no further action on Padma's complaint.

¶ 17 On April 2, 2019, Midland filed a "Report to the Court and Request for Direction" (1) concluding that the $2.1 million settlement was fair, reasonable, and in the best interests of the estate, warranting the court's approval; and (2) seeking "direction and authority" from the court to withdraw Padma's earlier motion in the Law Division case to vacate the settlement order. The circuit court authorized Midland to withdraw Padma's motion to vacate in the Law Division case. The Law Division court granted Midland leave to withdraw the motion to vacate on July 3,

2019.[1] The settlement order, distribution order, and "payout of the settlement proceeds" were also approved on that same day.

¶ 18 On June 26, 2019, Midland filed a second petition for a rule to show cause against Padma for her continued failure to provide an inventory and accounting of the estate. On the next day, Padma filed an estate accounting as of December 19, 2018. On July 2, 2019, the court set a briefing schedule on objections to the accounting and noted in an order that Midland's second petition for a rule to show cause was withdrawn.

¶ 19 On July 11, 2019, Padma, individually and not as the estate administrator, filed a notice of appeal of the circuit court's orders of May 22, 2019 (granting Midland's motion to withdraw Padma's motion to vacate the settlement order), July 2, 2019 (denying Padma's motion to reconsider the court's May 22, 2019, order), and July 3, 2019 (approving the settlement order and distribution order in the law division). *See In re Estate of Rao*, No. 1-19-1427. This court granted Midland's motion to dismiss this appeal for lack of standing. Padma's petition for rehearing in this court, petition for leave to appeal in the Illinois Supreme Court, her petition for writ of certiorari in the United States Supreme Court, and petition for rehearing regarding the denial of the petition for writ of certiorari were all unsuccessful. *See Rao v. Midland Trust Co.*, 141 S. Ct. 2626 (Mem.).

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[1] This court may take judicial notice of the public documents that are included in the records of other courts. *In re Linda B.*, 2017 IL 119392, ¶ 31; Ill. Rs. Evid. 201 (eff. Jan. 1, 2011)), 803(8) (eff. Sept. 28, 2018)).

¶ 20 On August 1, 2019, Midland objected to Padma's estate accounting. Midland noted that, although the estate was the main beneficiary of the estate of Musunuru S. Rao (Basavapunnamma Rao's husband and Padma's father) and Padma was also the independent administrator of the father's estate, there was no information explaining the decrease in value of the father's estate from $9 million to $5.6 million within one year. In addition, Padma never filed a final accounting for the father's estate, and Padma's listing of disbursements were deficient because "none of the amounts are visible, making it impossible to ascertain the reasonableness of the amounts." Midland further observed that the father's estate showed $155,000 in administrator fees that Padma paid to herself and $262,068.80 in attorney fees for what Midland described as an "uncontested probate estate." Midland sought leave to file a petition to reopen the father's estate to determine whether the father's estate was properly administered. Midland further noted that Padma's accounting did not reflect (1) the correct balances for her mother's PNC and Chase accounts or numerous stock and bond investments; (2) a $156,000 administrator's fee that Padma paid herself from the estate, with no detail as to its calculation or reasonableness; and (3) reimbursement to herself totaling $5,854.51, also without any information as to its justification. Midland further objected to $159,059.44 in fees paid to various estate attorneys, which Midland stated were unreasonable because both the estate and the father's estate were uncontested probate estates up to the point when the NorthShore lawsuit was settled.

¶ 21 On August 28, 2019, Midland filed a third petition for a rule to show cause against Padma based upon her failure to respond to Midland's objections to her accounting. Padma then filed a lengthy response to Midland's objections. After Midland replied, the circuit court directed Padma to provide various documents (including those related to the PNC and Chase accounts as well as various stock and bond investments) within seven days. On January 23, 2020, Midland filed another report stating that Padma produced "voluminous amounts of incomplete documentation" which were unorganized, contained little to no explanation, and were generally unresponsive to Midland's objections. On the next day, the court ordered Padma to produce "all outstanding requested information and documentation" by a set date.

¶ 22 On July 17, 2020, the court entered a written order indicating that, due to Padma's compliance with the court's prior orders regarding Midland's objections to Padma's estate accounting, Midland's three pending petitions for a rule to show cause were dismissed as moot.

¶ 23 Midland's Administrator Fees

¶ 24 On October 8, 2019, Midland filed a petition for supervised administrator fees. Midland noted that the initial collection of estate assets ($5,590,309.04) and the net settlement proceeds ($1,330,552.19) resulted in a total estate account balance of $6,920,861.23. Based upon the value of the estate assets and its "published Wealth Management Schedule of Charges," Midland sought a one-time estate administration fee of $172,417.22. The Schedule of Charges generally assesses estate administration fees on a tiered schedule

based upon the market value of the estate assets. Midland further sought an additional $2,400 in administrator fees "due to the extensive litigation being pursued by Padma in both the Law Division Proceedings and Probate Proceedings," which Midland stated required its representative to expend "countless hours" preparing for and attending 16 separate court hearings. Midland elaborated that it had to work with its counsel reviewing "voluminous litigation pleadings, addressing all litigation issues" in both the Law Division and probate proceedings, as well as preparing for the court hearings. Midland, however, asked that it be compensated only for the 16 court appearances that a Midland representative attended at a reduced hourly rate of $150 per hour. Midland characterized these additional services as "extraordinary."

¶ 25 Following briefing by the parties, the circuit court found that Midland's petition was premature because it was not only based upon work Midland had performed but also for "services not yet rendered." The court, however, granted Midland leave to refile the petition at a later date.

¶ 26 Midland later filed its amended petition for supervised administrator fees. The amended petition sought the same amount as in its initial petition ($172,417.22). The petition was substantially the same as the initial petition, but it provided additional detail regarding the work it performed administering the estate since the filing of the initial petition. Midland included a list of legal tasks performed in this case, the malpractice case, and in this court and the Illinois Supreme Court. Midland stated that it spent an extraordinary amount of time, over a 22-month period, all of which it stated was the "direct

result of the removal of Padma, for cause, due to waste and mismanagement of the estate," as well as the "numerous pleadings filed" in the various courts noted above. Midland further noted that it had to coordinate the response to Padma's "meritless" complaint filed against it with the IDFPR, which Midland characterized as Padma's attempt to "circumvent" the probate court's order appointing Midland to be the supervised administrator of the estate.

¶ 27 After a hearing on Midland's petition, the court initially stated that it would use the fee schedule as a "starting point" to determine a reasonable fee After finding that Midland's work benefitted the estate, the court further stated that "the sheer amount of work, its complexity and density supports a finding of reasonableness."

¶ 28 The circuit court recounted that Midland replaced Padma after she was "removed for waste and mismanagement." The court observed that Padma was objecting to Midland's fees that "were generated due to her waste and mismanagement," whereas Anita, who "did not waste or mismanage this estate, does not object." The court then asked, "Do I find more compelling objection of a beneficiary who mismanaged the estate or the judgment of one who did not?" The court added that Midland, as a professional administrator, "brought stability and focus to this Estate at a chaotic time in its administration," "righted the ship," which, according to the court, was "rudderless when they came on." The court finally noted that Midland also brought with it "a standing, a weight, a gravitas that an amateur simply can't bring to estate administration." The court then awarded Midland $172,417.22, the full amount it sought.

¶ 29 FMS's First Petition for Attorney Fees

¶ 30 On November 12, 2019, FMS filed a petition for authority for the estate to pay its attorney fees of $144,980.04 for legal work from December 20, 2018,[2] through September 30, 2019. FMS stated that it spent a total of 341.6 hours providing legal services to the estate during that time period, and attached an exhibit detailing the dates, activities, and time spent.

¶ 31 Following arguments on the fee petition, the circuit court observed that, although the amount requested was "significant," the court recounted that it had been informed that, out of the approximately 10,000 cases on its docket, it had spent "more time on this case than probably any other case on the call except one." The court added that this case was "constant litigation," "intense," "complicated," and "clearly a lot of [attorney] hours spent." Although the court approved of the requested hourly rates over Padma's objection, it found that there were three areas that "neither gained advantage for the Estate nor sought attainable advantages," so the court deducted those amounts. The court explained that the three areas all involved work on Padma's father's estate: the petition for authority to reopen the father's estate, "the sanctions motion or the joining in of that sanctions motion," and various conferences involving FMS's attorneys discussing the father's estate that were billed to the estate in this case (Padma's mother's estate). The court reduced the amount sought by $12,639.55, leaving a net fee award to FMS of $132,340.49.

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[2] The petition erroneously states the beginning date as December 20, 2019.

¶ 32 Padma's Administrator Fees¶

¶ 33 On July 29, 2020, Padma filed a petition for administrator fees, in which she sought $156,000 in fees for administering the estate for over five years until December 2018. She explained that she had successfully disputed a $274,419 claim against the estate by Evanston Hospital. Padma stated that she had "numerous" telephone conversations with her mother's medical insurance provider as well as individuals at Evanston Hospital, and she conducted further "research" regarding payments from her mother's insurance carrier, which ultimately resulted in Evanston Hospital dismissing a claim against the estate. Padma stated that her initial refusal to settle the NorthShore lawsuit resulted in an increase in the settlement from $1 million to the final amount of $2.1 million. Padma further noted that a prior attorney for the estate wrote to Padma in support of her fee request.

¶ 34 In response to a question from the court at the hearing on her fee petition, Padma's attorney confirmed that she paid herself $155,000 to administer her father's estate, but the attorney explained that her father's estate "was a very complex estate with accounts all over the world," "[t]here was a lot of work to do," and "[i]t was very complicated." Following the arguments of the parties, the court made extensive comments.

¶ 35 The circuit court reiterated that it was considering Padma's request only a starting point and added, "Ultimately the analysis is whether * * * the work she did benefitted the Estate, and if so, what is reasonable compensation for the efforts involved." Regarding the hospital's claim, the court found that

it was clear at some point that her mother's estate would not have been responsible for the hospital's claim, which was a "loser", but, "Instead of realizing maybe it's simply a matter of delayed paperwork or processing, Padma digs in, concludes the claim is fraudulent and goes to work, I think, unnecessarily. * * * In my opinion there was nothing to do."

¶ 36 The circuit court further found that, even if Padma "could be paid for all of her work," her request for $156,000 was excessive. The court stated that it was unknown what work Padma did for her father's estate, and that it was "just a little unsettling" that Padma approved her own fees as a representative of that estate for $155,000 in "a case that was off the court's call for five years and with a single page of incomplete accounting." Finally, the court found that an accurate estimate of Padma's time spent on the estate in this case was 1,500 hours (300 hours per year—"about an hour a day"—for the past five years) at a rate of $25 per hour. Accordingly, the court granted Padma an administrator fee of $37,500.

¶ 37 FMS's Second Petition for Attorney Fees

¶ 38 On November 4, 2020, FMS filed a petition for attorney fees of $184,010.17 for the period from October 2, 2019, through October 26, 2020. FMS stated that it spent a total of 467.2 hours providing legal services to the estate during that time period and attached an exhibit detailing the dates, activities, and time spent. Padma objected, and the fee petition was fully briefed and argued. The court sustained some of Padma's objections and reduced the fee award by $9,770 from the amount requested.

¶ 39 The court, however, rejected Padma's objections regarding work done on (1) her father's estate, (2) the response to Padma's motion for Rule 137 sanctions (concerning a purportedly false allegation against Padma), and (3) the response to Padma's petition for leave to appeal before the Illinois Supreme Court. As to Padma's Rule 137 sanctions motion, the court noted that the issue arose "because of an accounting objection which was Padma's obligation or burden to resolve, and her failure to resolve it in a timely manner, I believe, compelled the Estate, Mr. Singler, to investigate that objection which is not their responsibility." The court continued that, "They received false information in doing so and then became the target of a [Rule] 137 sanctions motion." The court found that FMS's response to Padma's motion benefitted the estate because it kept them working on the estate. The court reiterated that FMS would not have been subject to that motion had Padma resolved the accounting objection in a timely manner.

¶ 40 The court further rejected Padma's "catchall" objection that alleged the attorneys acted recklessly, they breached their fiduciary duty, and that application of the *Halas* factors would show that FMS's work either didn't benefit the estate or was an unreasonable amount. The court found that the *Halas* factors supported the amount (net of the court's prior reduction) as well as the hourly rate. *See In re Estate of Halas*, 159 Ill. App. 3d 818, 832 (1987) (citing *In re Estate of Brown*, 58 Ill. App. 3d 697 (1978)). The court added, "The complexity and density and frequency of litigating in this estate justifies this result."

¶ 41 In addition to the *Halas* factors, the court observed that the estate was now under supervised administration following Padma's removal, so every task Midland had to perform to administer the estate required prior court approval, which necessitated more legal work. The court also noted that the "sheer volume of work" in administering the estate was "unique and justifies a finding of reasonableness." The court explained, that in 80-90 percent of its cases, the "record from petition opened to order of discharge * * * is about eight to ten pages of computer record. In this case, we currently sit on page 123." The court further observed that, from the date the petition to open the estate was filed (October 25, 2013) to the date Padma was removed as the independent administrator (December 19, 2018), there were 28 pages. The court then noted that, in the subsequent two years, there were an additional "95 pages of documented computer record in this case of filings and orders," which is said was about "three times * * * the volume of work in about a third of the time [and] doesn't account for the Appellate Court or the Supreme Court work." The final factor the court pointed out was that Anita was not objecting, from which the court inferred that Anita did not consider the amount requested to be unreasonable. The court concluded, "In consideration of all of these unique factors and circumstances as well as the *Halas* factors, the petition for fees is granted in the amount of $174,240.17."

¶ 42 Anita's Petition to Allocate Fees

¶ 43 On November 6, 2020, Anita filed a petition seeking to allocate the following fees against Padma's share of the estate: (1) FMS 's award of attorney fees

($132,340.49), (2) "all future fees payable to FMS," (3) "all fees payable to Midland," and (4) fees paid to experts by Midland to approve the settlement ($16,957.50). Anita argued that, pursuant to *In re Estate of Elias*, 408 Ill. App. 3d 301 (2011), the circuit court had the authority to allocate fees to Padma either under the doctrine of equitable contribution, or as punitive damages. Anita further noted *Elias's* holding that the Probate Act of 1975 (Act) mandates the payment of reasonable attorney fees, but does not require that they be paid from the Estate. Anita contended that, since Padma's interest was focused solely on her own rights, it would be fundamentally unfair to require the estate or Anita to pay for Padma's personal decisions and actions.

¶ 44 The circuit court entered a detailed order granting Anita's petition. The court agreed that it had the power to allocate fees to Padma pursuant to *Elias*, the Act, and the doctrine of equitable contribution. The court rejected Padma's argument that the "American rule" (*i. e.,* the general rule that each party to a litigation must bear its own costs and fees) prohibited the allocation. The court first pointed out that Midland's fees were not a litigation expense, but rather an administrator's fee. Regarding FMS 's fees, the court noted that Padma failed to identify the specific litigation that would invoke the American rule. The court then stated that, regardless of this failure on Padma's part, it found FMS's work "since December 2018" to be administrative and not litigation expenses. The court explained that the estate did not (1) file or defend a lawsuit against Padma "outside of probate court," (2) defend the will against Padma in

a supplemental proceeding, or (3) "bring a citation to recover cause of action against Padma."

¶ 45 The court then found that assessing fees and costs against Padma was a proper exercise of its authority because "Padma caused the fees and costs by rejecting the settlement * * * to satisfy her own personal interests," which, according to the court, "solely and directly" caused the financial losses on the estate since December 2018. The court initially noted that, in September 2018, the estate, which had only two beneficiaries and had been open for five years, was on the verge of closing with Padma as the independent administrator. The court noted that the only matter remaining was the resolution of the Law Division suit, which the parties had agreed to settle. The court then stated that, had Padma not reneged on the settlement, she could have promptly moved to close the estate after obtaining approval from this court to disburse the funds, but instead, she challenged the settlement, which precipitated "over two years now of financial hemorrhaging," resulting in fees and costs of $537,807.88. The court found that only $5,000 in attorney fees would have been necessary to distribute the proceeds and close the estate if Padma had accepted the settlement. Consequently, the court granted Anita's motion and allocated $532,807.88 of those fees and costs against Padma. This appeal follows.

¶ 46 Analysis

¶ 47 On appeal, Padma raises five contentions of error, which we distill into the following three: the circuit court erred in (1) violating the "American Rule" by allocating various estate attorney fees against her; (2) awarding various fees and costs in favor of

Midland and FMS, and (3) awarding her a reduced administration fee of $37,500. In addition, Anita cross-appeals the court's prior award of $37,500 in fees in favor of Padma. We address that issue in our discussion of Padma's claim regarding her administration fee.

¶ 48 Jurisdiction

¶ 49 We have an independent duty to consider whether we have jurisdiction and to dismiss an appeal for lack of jurisdiction. *Williams Montgomery & John Ltd. v. Broaddus*, 2017 IL App (1st) 161063, 32 (citing *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536 (1984)). Although the general rule is that a party can appeal a case "only after the circuit court has resolved all claims against all parties," there are exceptions to that rule. *See State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 556 (2009).

¶ 50 Pursuant to Rule 304(b)(1), a judgment or order entered "in the administration of an estate * * * which finally determines a right or status of a party" is appealable without a Rule 304(a) 'finding. Ill. S. Ct. R. 304(b)(1) (eff. Mar. 8, 2016). The committee comments to this provision explain that Rule 304(b)(1) "applies to orders that are final in character although entered in comprehensive proceedings that include other matters" and cites as an example "an order * * * allowing or disallowing a claim." Ill. S. Ct. R. 304, Committee Comments (rev. Sept. 1988).

¶ 51 Here, in appeal number 1-21-0316, Padma seeks appellate review of the circuit court's order of December 22, 2020, pursuant to Rule 304(b)(1). This order finally determined the administrator's fees sought

by Padma and Midland, as well as the attorney fees sought by FMS. Since this order was clearly related to the administration of an estate and made a final determination as to those fee requests, we have jurisdiction over this particular appeal. *See also*, *In re Trusts of Strange ex rel. Whitney*, 324 Ill. App. 3d 37, 42 (2001) (holding that an attorney fee award is appealable under Rule 304(b)(1)).

¶ 52 In appeal number 1-21-0465, Padma appeals the circuit court's order of March 26, 2021, which granted Anita's motion to allocate various administrator and attorney fees to Padma. This order also related to the administration of the estate and made a final determination regarding a claim on the estate—in particular, the source of funds to satisfy that claim. We therefore have jurisdiction over this appeal and the related cross-appeal, as well. We now turn to the questions presented.

¶ 53 The American Rule and the Allocation of Fees

¶ 54 We first address Padma's contention that the circuit court lacked the authority to allocate FMS 's attorney fees and Midland's estate administration fees to her. Regarding FMS 's fees, Padma relies upon the American Rule, and she emphatically contends that there has never been a case "in the entire history of Illinois law" in which "a party was forced to pay for the opposing party's fees absent a contract, statutory or Supreme Court Rule authority, or where fraud occurred [and] fees were awarded as punitive damages." Although she does not specifically cite the American Rule regarding Midland's fees, she nonetheless makes a similar argument that the court

could require a "losing litigant" to pay the costs and expenses of her adversary. Padma further argues in the alternative, that the court abused its discretion in allocating the fees to her. Padma's claim is meritless.

¶ 55 In general, Illinois follows the American Rule, which provides that, in the absence of "statutory authority or a contractual agreement between the parties, each party to litigation must bear its own attorney fees and costs and may not recover those fees and costs from an adversary." *Morris B. Chapman & Associates, Ltd v. Kitzman*, 193 Ill. 2d 560, 572 (2000) (citing *Scholtens v. Schneider*, 173 Ill. 2d 375, 384 (1996); *Saltiel v. Olsen*, 85 Ill. 2d 484, 488-89 (1981)). This has been the practice in this state "from the earliest time." *Ritter v. Ritter*, 381 Ill. 549, 552-53 (1943) (citing *Adams v. Payson*, 11 Ill. 26(189)).

¶ 56 There are, however, exceptions to that general rule. Sections 27-1 and 27-2(a) of the Act provide that a representative of a decedent's estate and the attorney for the representative are entitled to reasonable compensation for their services. 755 ILCS 5/27-1 (West 2020) (representative); 755 ILCS 5/27-2(a) (West 2020) (attorney for representative); *see also In re Estate of Martin*, 2020 IL App (2d) 190140, ¶ 58; *In re Estate of Elias*, 408 Ill. App. 3d 301, 323 (2011). In addition, there is a "long-standing precedent" allowing the allocation of attorney fees in probate cases under the doctrine of equitable contribution. *See id* at 324 (citing *Jackman v. North*, 398 Ill. 90 (1947)).

¶ 57 Whether the circuit court has the authority to award attorney fees is a question of law which we review *de novo*. *See Martin*, 2020 IL App (2d) 190140, ¶ 57.

¶ 58 Padma's claim fails for the simple reason that, here, she was not forced to pay the fees of an adversary. Rather, she was allocated fees that the estate had already paid for the additional administrative matters following her refusal to abide by a settlement—that she had agreed to and signed—and the subsequent blizzard of meritless filings that she herself instigated. Midland's fees were neither the fees of an adversary nor the fees related to litigation. They were fees for the supervised administration of the estate that it earned following Padma's removal as the independent administrator of the estate for waste and mismanagement. With respect to FMS's fees, Padma failed to identify to the circuit court which of FMS 's fees related to litigation and were adversarial to her. As the court noted, the estate, which FMS represented, did not file a lawsuit against Padma, did not defend against one brought by her, did not defend the will against her, and did not file a "citation to recover cause of action" against her. For these reasons alone, Padma's claim is meritless.

¶ 59 Moreover, the circuit court was able to allocate the fees and costs to Padma under the doctrine of equitable contribution. In *Jackman*, our supreme court affirmed the allocation of a guardian *ad litem*'s fee equally between the plaintiff and the decedent's estate, noting that the relevant statute provided that the guardian "shall be allowed a reasonable sum for his charges, to be fixed by the court and taxed in the bill of costs." *Jackman*, 398 Ill. at 107-08 (citing Ill. Rev. Stat. 1945, chap. 22, ¶ 6). Contrary to Padma's argument, the statute at issue in *Jackman* did not "directly authoriz[e] such GAL costs to be taxed against parties"; rather, the statute at issue in

Jackman is strikingly similar to the statute at issue here. They both merely codify an entitlement to payment of a reasonable sum for their work. The court's allocation of these fees and costs to Padma was therefore a proper exercise of its equitable power under established precedent. This claim of error is also meritless.

¶ 60 The Fee Awards to Midland and FMS

¶ 61 Padma next contends that the circuit court erred in awarding administrator fees to Midland and in awarding attorney fees to FMS. Padma argues that the court erroneously awarded Midland's fees even though Midland's fee petition allegedly failed to show that "Midland had done any actual work." As to FMS, Padma asserts that the court wrongfully awarded fees to FMS for work that did not benefit the estate.

¶ 62 As noted above, sections 27-1 and 27-2(a) of the Act stated that an estate representative and the attorney for the representative are entitled to reasonable compensation for their services. 755 ILCS 5/27-1 (West 2020) (representative); 755 ILCS 5/27-2(a) (West 2020) (attorney for representative). There is no set formula for determining a reasonable fee; each determination turns upon the particular facts and circumstances of each case. *Estate of Brown,* 58 Ill. App. 3d 697, 706 (1978). The factors a court should consider, however, are the following: the size of the estate, the work done and the skill with which it was performed, the time required, the advantages gained or sought by the services rendered, as well as good faith, diligence, and reasonable prudence. *Id.; see also In re Estate of Halas*, 159 Ill. App. 3d 818, 832 (1987) (reiterating *Brown* factors and adding "the

novelty and complexity of the issues confronted"). The determination of what constitutes an estate administrator's or estate attorney's reasonable compensation is "a matter peculiarly within the discretion of the Probate Court." *Brown*, 58 Ill. App. 3d at 706. We therefore will uphold the circuit court's fee determination unless it abused its discretion, which is "the most deferential standard of review—next to no review at all." *In re D. T*, 212 Ill. 2d 347, 356 (2004). A court abuses its discretion when its ruling is "arbitrary, fanciful, or unreasonable," or where "no reasonable person would take the view adopted by the trial court." *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005).

¶ 63 The circuit court did not abuse its discretion in awarding these fees. Padma argues that the court mechanically applied Midland's 3% fee from its preprinted schedule to the estate assets based solely upon its determination that Midland brought "stability" and "gravitas" to the administration of the estate. The record demonstrates otherwise. The court began its analysis by noting that Midland's request of 3% of assets were merely a starting point. The court then heard lengthy arguments and found that the substantial amount of work, as well as the complexity and "density" supported a finding of reasonableness. The court later noted that, although its docket showed 28 pages of "entries" from the date the petition to open the estate was filed until Padma's removal (just over five years), the subsequent two years generated an additional 95 pages, which excluded appellate and supreme court activity and which the court equated to triple the volume of work in only one-third of the time. Based upon these facts and our review of the

record on appeal, we cannot hold that the court's ruling was arbitrary, fanciful, or unreasonable, or one where no reasonable person would take the court's viewpoint; accordingly, the court did not abuse its discretion in awarding Midland its administration fees. *See id.*

¶ 64 With respect to FMS's fee award, the circuit court also explained that it was using FMS 's initial fee request only as a starting point. In addition to a full briefing, the court also had the benefit of arguments from the parties, and it read the multiple pleadings at least twice. The court's findings reflected a meticulous analysis of FMS 's individual claims as well as the overall factors enumerated in *Brown* and *Halas*. Notably, the court sustained Padma's objections to FMS 's billing regarding (1) its work addressing the failure to comply with the court's January 24th order (directing payment to Padma of $60,000), (2) its work redacting personal information from certain documents it had already filed, and (3) those instances in which a junior attorney observed court proceedings.

¶ 65 The court rejected Padma's challenge to the charges which FMS requested for responding to Padma's IDFPR complaint against Midland and to her Rule 137 motion for sanctions. As the circuit court observed, Padma initiated the IDFPR complaint, which centered on an attempt to have Midland removed as the supervised estate administrator. In addition, the court noted that Padma's Rule 137 motion for sanctions related to Midland's erroneous belief that she had added herself as a payable-on-death beneficiary to her mother's bank account while her mother was incapacitated. The court correctly found that this erroneous finding was precipitated by Padma's refusal—for several months—to provide a

proper estate accounting to Midland. Midland thus had to investigate the matter on its own, even though it was Padma's responsibility to provide this information, and that she was able to obtain this information with a simple phone call but nonetheless failed to make this small effort. Finally, the court recounted the massive amount of docket entries compared to its other cases and reiterated that the "sheer volume of work," the "complexity and density and frequency of litigating in this estate," justified the fee award. As noted above, a court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by it. *Id.* On these facts, the court did not abuse its discretion, so we must reject Padma's claim of error.

¶ 66 Nonetheless, Padma argues that the circuit court committed a "direct violation of equal protection requirements" when it noted that Anita did not object to Midland's fee petition. Padma relies upon *In re K.L.P. v. R.P.*, 198 Ill. 2d 448 (2002), to support this argument. Our supreme court framed the issue in *KL.P.* as "whether an indigent respondent parent may be treated differently depending on whether termination of her rights is sought by the State or by the person who obtained custody or guardianship of the child as a result of state action." *Id.* at 466. State action is a precondition for a valid equal protection claim. *In re Adoption of L.T.M*, 214 Ill. 2d 60, 73-74 (2005) (citing *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1991)). Here, of course, the parties are private entities, so there is utterly no state action that would give rise to an equal protection claim. Therefore, this claim is without merit.

¶ 67 The Fee Award to Padma/Anita's Cross-Appeal

¶ 68 Padma further contends that the circuit court erred in awarding her only $37,500 in administrator fees, instead of the $156,000 she requested. Anita cross-appeals on this point, contending that the court should have denied Padma's request entirely because of her removal for "wasting estate assets and breaching her fiduciary duties to the estate and [Anita]."

¶ 69 As noted above, the determination of an administrator's reasonable fee is not subject to a fixed formula. Rather, it depends upon the unique facts of each case and is "peculiarly within" the court's discretion. *Brown,* 58 Ill. App. 3d at 706. The factors a court should consider include the size of the estate, the work done and the skill with which it was performed, the time required, the advantages gained or sought by the services rendered, as well as good faith, diligence, and reasonable prudence. *Id.; Halas*, 159 Ill. App. 3d at 832. We review a fee award for abuse of discretion, a most deferential standard. There can be no abuse of discretion unless the court's ruling was arbitrary, fanciful, or unreasonable, or if no reasonable person would have taken the view of the court. *Lindman*, 356 Ill. App. 3d at 467.

¶ 70 The circuit court did not abuse its discretion with respect to this fee award. As with the administrator and estate attorney fee petitions, the court had the benefit of substantial pleadings and the exhaustive arguments of the parties. The court emphasized that Padma's request was merely a "starting point." The court stated that Padma divided her work into four categories: creating and maintaining

the estate, analyzing tax issues, disputing a hospital's claim, and overseeing the estate attorneys. The court acknowledged that some of Padma's actions benefitted the estate, but it further found that some of her work was either unnecessary or counterproductive. In particular, the court found that her work to defeat the hospital claim was unnecessary because (1) the estate did not have the burden to disprove the hospital's claim and that it would be the hospital's burden to prove its claim and (2) she admitted in an affidavit that her mother's health insurer had assured her that the hospital's claim was fully covered and had already been paid. The court then considered the remaining work that Padma had performed for the estate. It reiterated that the reasonableness of a fee depends upon the facts and circumstances of each case, and that it was "troubling" that Padma had paid herself a similar fee for administering her father's estate, which the court said comprised a "single page of incomplete accounting" and had been off of the court's "call" for five years. The court thus found that a reasonable estimate of her time for the remaining compensable work would be "about an hour a day" for the previous five years, or 1,500 hours, to be paid at $25 per hour.

¶ 71 Although the court freely admitted that Padma's compensable time was an estimate, we nonetheless cannot hold that it was arbitrary or unreasonable. The court carefully considered each of the four general categories of work in Padma's petition, and it removed the work that it found to be unnecessary. Reasonable decision-makers may have come to a different conclusion regarding the reduction of Padma's requested fees and the allocation of additional

administrative fees from her share of the estate, but we nonetheless cannot say that the court's ruling was arbitrary, fanciful, or unreasonable such that no reasonable person would have made such a ruling. Accordingly, we have no basis for overturning the circuit court's ruling on those issues. *Id.* Therefore, the court's award to Padma does not constitute an abuse of discretion.

¶ 72 Anita's reliance upon *Matter of Minsky's Estate*, 59 Ill. App. 3d 974 (1978), does not alter our conclusion. There, the court held that, based upon the executor's conduct in administering the decedent's estate, allowing compensation to the executor would "'disregard the plain rules of law and shock that sense of natural justice that dwells in the breast of every honest man.'" *Matter of Minsky's Estate*, 59 Ill. App. 3d at 979 (quoting *Whittemore v. Coleman*, 239 Ill. 450,455 (1909)). Although Padma's behavior in administering this estate was substantially flawed, we cannot hold that the court's award of a somewhat modest fee would meet the standard of *Minsky's Estate*. Therefore, we affirm the circuit court's judgment on Anita's cross-appeal.

¶ 73 CONCLUSION

¶ 74 The circuit court did not err in assessing various fees and costs against Padma. The court did not abuse its discretion in its award of fees to Midland and FMS. We reject Padma's contention that the court erroneously reduced her award of administrator fees. We also reject Anita's claim on cross-appeal that the court erred in granting certain administrator fees and costs in favor of Padma. Accordingly, we affirm the judgment of the circuit court.

¶ 75 Affirmed.

ORDER OF THE SUPREME COURT OF ILLINOIS DENYING PETITION FOR APPEAL (SEPTEMBER 28, 2022)

SUPREME COURT OF ILLINOIS

IN RE: IN RE ESTATE OF BASAVAPUNNAMMA K. RAO,

Deceased,

PADMA RAO,

Petitioner,

v.

MIDLAND TRUST COMPANY ET AL.,

Respondents.

128472

Leave to appeal, Appellate Court, First District

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 11/02/2022.

Very truly yours,

/s/ Cynthia A. Grant
Clerk of the Supreme Court

ORDER OF THE CIRCUIT COURT OF COOK COUNTY PROBATE DIVISION (MARCH 18, 2021)

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
PROBATE DIVISION

IN RE ESTATE OF
BASAVAPUNNAMMA K. RAO,

Deceased.

No. 2013 P 6243

Before: Hon. James P. MURPHY, Presiding Judge.

This matter comes before the court on Anita Rao's Petition to Allocate Fees and Costs to Padma Rao. After considering the pleadings, the affidavit of Padma Rao, and the arguments of counsel, this court grants the petition.

BACKGROUND

On November 25, 2013, this court admitted decedent's will to probate and appointed Padma Rao ("Padma"), decedent's daughter, independent administrator with the will annexed. Decedent's two children-Padma and her sister, Anita Rao ("Anita")-are the only beneficiaries under decedent's will.

On December 8, 2014, the estate filed a medical malpractice complaint in the law division against

various defendants alleging both wrongful death and survival causes of action (14 L 12745). Judge Lyons set the case for trial on September 5, 2018. On August 22 and 23, 2018, Judge Lyons conducted a pre-trial settlement conference. The estate and defendants settled for $2.1 million. Judge Lyons entered an order approving the settlement. In the order, Judge Lyons found that Padma "agreed to accept the . . . offer." In the order, Judge Lyons "finds the settlement offer to be fair and reasonable."

On September 5, 2018, Padma tendered a letter to Judge Lyons that stated, "I did not and do not assent to settlement. I wish to go to trial." Judge Lyons overruled Padma's objection to the settlement and entered an order affirming the terms of the August 23 settlement order.

On September 10, 2018, Judge Lyons entered a distribution order regarding the settlement proceeds. Judge Lyons allocated over $1 million to the estate in survival proceeds; approximately $220,000 to Padma in wrongful death proceeds; and approximately $95,000 to Anita in wrongful death proceeds. In the last paragraph of the order, Judge Lyons noted Padma's "refusal to sign the release document[,] and [her] agreement to withdraw as independent administrator."

Padma did not withdraw. On October 10, 2018, Padma, as estate representative, filed in the law division a motion to vacate the August 23 and September 10 settlement orders. Padma stated in the motion that "settlement would be inconsistent with the wishes of decedent and that a trial by jury was the only way that justice can be served in this case."

On October 29, 2018, Padma filed in the law division a 17-page, 57-paragraph affidavit detailing her reasons for rejecting settlement.

On November 16, 2018, Anita filed in this court a motion to convert the probate estate to supervised administration and a motion to remove Padma as administrator. On December 19, 2018, after hearing, this court converted the estate to supervised administration and removed Padma as administrator due to her waste and mismanagement. This court also appointed Midland Trust Company ("MTC") successor supervised administrator with the will annexed. On December 21, 2018, FMS Law Group filed its appearance as counsel for MTC.

On January 15, 2019, this court directed MTC to investigate whether the settlement approved by Judge Lyons was fair, reasonable, and in the best interests of the estate. MTC complied and prepared a report detailing its findings for this court to review in camera. The report concluded the settlement was fair, reasonable, and in the best interests of the estate.

On May 16, 2019, MTC filed its Petition for Ruling on Report to the Court and Request for Direction. On May 17, 2019, Padma filed her Response and Objection to MTC's Request for Direction. Padma attached as an exhibit her affidavit previously filed in the law division.

On May 22, 2019, after hearing, this court authorized MTC to withdraw the motion to vacate settlement pending in the law division.

On May 30, 2019, Padma filed her motion to reconsider this court's May 22 order granting MTC authority to withdraw the motion to vacate. On July

2, 2019, after hearing, this court denied Padma's motion to reconsider.

On July 3, 2019, this court approved Judge Lyons's August 23, 2018 settlement order and September 10, 2018 distribution order. This court also ordered distribution pursuant to those two orders.

On July 11, 2019, Padma filed her notice of appeal of this court's order denying her motion to reconsider.[1]

On September 5, 2019, this court approved $16,957.50 in expert fees, payable from the estate, related to the report to court.

On December 17, 2019, after hearing, this court awarded FMS $132,340.49 in attorney's fees and costs, payable from the estate, for services rendered December 18, 2018 through September 30, 2019. Also on December 17, 2019, this court awarded John Bielski, counsel for Anita, $7,682.50 in attorney's fees and costs, payable from the estate, for services rendered November 14, 2018 through January 15, 2019.

On October 26, 2020, after hearing, this court awarded Greg Rzepczynski, Padma's former counsel, $34,170 in attorney's fees, payable from the estate, for services rendered December 20, 2018 through July 17, 2020.

On December 22, 2020, after hearing, this court awarded FMS $174,240.17 in attorney's fees and

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[1] This court is aware Padma's appeal was unsuccessful but does not know why. This court also is aware Padma sought rehearing or reconsideration in the First District and was unsuccessful, but does not know why. This court is aware the Illinois Supreme Court denied her petition for leave to appeal. The court is unaware whether Padma appealed to the United States Supreme Court.

costs, payable from the estate, for services rendered October 2, 2019 through October 26, 2020. Also on December 22, 2020, this court awarded MTC a one-time representative fee of $172,417.22.

Padma filed her motion to vacate in the law division in October 2018. Since December 2018 this estate has incurred fees and costs totaling $537,807.88 (collectively "the fees and costs").

On November 6, 2020, Anita filed her Petition to Allocate Fees and Costs to Padma Rao. In her petition, Anita asks this court to assess the fees and costs against Padma. Anita argues, "It is fundamentally unfair for [her] to pay the fees . . . [b]ecause those costs were the result of Padma Rao personally challenging the settlement."

On February 17, 2021, this court held a hearing on Anita's petition. The court invited each side to call witnesses. Neither side chose to do so.

Absent evidence from the hearing concerning Padma's rejection of the settlement in the law division, this court will rely on, and consider as true, Padma's version of events as detailed in her affidavit.

After considering the pleadings, Padma's affidavit, and the arguments of counsel, this court grants Anita's petition.

ANALYSIS

Two issues confront the court. First, whether this court has the authority to assess the fees and costs against Padma. Second, if so, whether assessing the fees and costs against her would be a proper exercise of this court's authority.

The first issue is whether this court has authority to apportion the fees and costs against Padma. It does. *In re Estate of Elias*, 408 III. App. 3d 301 (1st Dist. 2011), the Probate Act, and the doctrine of equitable contribution permit assessing fees and costs against parties other than the estate in probate cases.

The Probate Act does not require that payment of the fees and costs be from the estate. Section 27-1 of the Act provides that "a representative is entitled to reasonable compensation for his services." 755 ILCS 5/27-1 (West 2019). Section 27-2 states that "the attorney for a representative is entitled to reasonable compensation for his services." 755 ILCS 5/27-2 (West 2019).

This court has already awarded the fees and costs pursuant to 27-1 and 27-2 of the Probate Act. The court found that the work performed by the representative, the attorneys for the representative, and the experts benefitted the estate and that the amounts requested were reasonable.

No provision in the Probate Act, however, directs that fees and costs awarded pursuant to 27-1 or 27-2 be paid exclusively from the estate. *Elias* at 323 ("although the Probate Act compels payment for the reasonable services of attorneys for executors, there is no provision in the Probate Act requiring that the executor's attorney's fees and costs be paid exclusively from the estate"). "Executors and attorneys representing executors shall be allowed reasonable compensation for their services, but the court may authorize reasonable attorney's fees to be paid from the assets of the estate." *Id.*, citing *In re Estate of Minsky*, 59 III App. 3d at 974, 979 (1st Dist. 1978) (emphasis in *Elias*). It

follows, of course, "the circuit court in its discretion may assess attorney fees against parties other than the estate." *Id.* at 326.

But when? *Elias* says when doing so is equitable. "A trial court is endowed with broad discretion to fashion remedies and grant such relief as equity may require to remedy a wrong." *Elias* at 323. The doctrine of equitable contribution authorizes the court to apportion fees and costs in probate cases where appropriate. *Id.* at 324. In Elias, the First District held the trial court abused its discretion in not "equitably apportioning" the fees and costs between the estate and the citation respondent. *Id.* at 303.

Elias cites "long-standing precedent in Illinois for applying the doctrine of equitable contribution," including *Jackman v. North*, 398 III. 90 (1947) and *In re Estate of Breault*, 63 III. App. 2d 246 (1965). In *Jackman*, the Supreme Court held the lower court "apportioned equitably" one-half the total of guardian *ad litem* fees, awarded pursuant to a statute comparable to 27-1 and 27-2 of the Probate Act, against an unsuccessful will contestant. *Jackman* at 108; also *see Elias*, 406 III. App. 3d at 324. The Court found "no irregularity in the taxing of the costs nor any abuse of discretion in apportioning the same between plaintiff and the estate." *Jackman* at 108.

In *Breault*, the executor's attorney's services benefitted both probate and non-probate assets. The probate court ordered the non-probate assets to pay their contributive share of the fees. The *Breault* court held the probate court had the "jurisdiction and authority to apply equitable principles and direct contribution in accordance therewith." *Breault*, 63 III. App. 2d at 270-71. *Breault* concludes: "No one ought

to enrich himself unjustly at the expense of another." *Id.* at 273.[2]

Padma argues this court lacks authority to assess the fees and costs against her based on the "American rule." Under the American rule, each party to litigation must bear its own attorney's fees and costs absent statutory authority or a contractual agreement.

The American rule does not apply to MTC's one-time representative fee. This fee is not a litigation expense. It compensates MTC for its administrative services. It is not an attorney fee or cost.

As to FMS's fees and costs, *Elias* says that Illinois "normally" follows the American rule. *Elias* at 323. However, the "circuit court has broad discretionary powers in awarding an executor's attorney fees," and a "trial court is endowed with broad discretion to fashion remedies and grant such relief as equity may require to remedy a wrong." *Id.* 323. In its discretion, the circuit court "can assess attorney fees against parties other than the estate." *Id.* at 326. According to *Elias*, assessing attorney fees and costs against a party other than the estate based on equitable contribution is an exception to the American rule.

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[2] Several Illinois cases also discuss a similar concept: equitable apportionment. Equitable apportionment is the process of distributing the burden of certain estate expenses among those beneficiaries in the same proportion as they respectively cause such expenses to be incurred. *Estate of Malik v. Lashkariya*, 369 III App. 3d 457 (1st Dist. 2006); *Horwitz v. Ritholz*, 125 III App. 3d 193 (1st Dist. 1984); *Landmark Trust Co. v. Aitken*, 224 III App. 3d (5th Dist. 1992). Equitable apportionment is most commonly used to describe the apportionment of taxes among the beneficiaries of an estate. *Horwitz* at 198.

Even if Elias were not controlling here, Padma does not identify what the "litigation" is compelling application of the American rule. It cannot be all work performed by FMS since December 2018—some of it was friendly, or at least not oppositional, to Padma. Does she mean just the adversarial tasks involving her-the appellate work, the numerous objections to her accounting, and the objections to her request for $156,000 in administrator fees, for example?

Whatever Padma's definition of litigation is, FMS's work since December 2018 strikes this court as administration work, not litigation, and their fees administration expenses, outside the purview of the American rule, rather than litigation costs. *See In re Estate of Funk*, 221 Ill. 2d 30, 90-91 (2006) (expenses of administration include attorney fees). The estate neither brought nor defended a lawsuit against Padma outside of probate court. The estate did not defend the will against Padma in a supplemental proceeding in this court. The estate did not bring a citation to recover cause of action against Padma.

Based on *Elias*, the Probate Act, and equitable contribution, this court finds it has the authority to assess the fees and costs against Padma.

The next issue is whether assessing the fees and costs against Padma is a proper exercise of this court's authority. This court finds it is proper because Padma caused the fees and costs by rejecting the settlement, and Padma rejected the settlement to satisfy her own personal interests.

Padma's decision to reject settlement solely and directly caused the financial toll on this estate since

December 2018. In September 2018, this five-year-old, independently administered estate with only two beneficiaries was on the verge of closing. Resolution of the lawsuit was all that remained and the parties had settled. Had Padma accepted the settlement, she could have promptly moved to close the estate after obtaining approval from this court to disburse the funds.[3]

Instead, Padma challenged the settlement before Judge Lyons, setting in motion over two years now of financial hemorrhaging.

An administrator has "a duty to perform the tasks associated with administering the estate, *i.e.* to carry out the wishes of the decedent, and, more importantly, to act in the best interests of the estate which he represents." *Will v. Northwestern*, 378 Ill. App. 3d 280, 290 (first Dist. 2007) (emphasis added). This requires the administrator "to uphold [her] fiduciary relationship to the estate's beneficiaries and to act in the utmost good faith to protect their interests." *Id.* at 292. An administrator's function as representative is to administer the assets of the estate, *i.e.* to pay any debts or obligations of the decedent, and to ensure all beneficiaries receive their just and

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[3] Padma was familiar with estate administration. By September 2018, she had served as administrator of this, her mother's, estate for five years. From 2009 to 2016, she served as administrator with the will annexed of her father's estate. (Estate of Musunuru Rao, 09 P 1034). Her mother's estate was the sole beneficiary of her father's estate. From 2013 until her father's estate closed on June 23, 2016, Padma served simultaneously as representative of both estates. Her father's estate paid her $155,000 in administrator fees.

proper benefits "in an orderly and expeditious manner." *Id.*

Padma failed the *Will* test. Her affidavit shows she rejected the settlement to satisfy her personal interests over those of the estate. She never intended to negotiate or settle. Instead, she was loyal to her mother and her mother's beliefs rather than to her mother's estate. She also disparaged her sister, Anita, and ignored Anita's best interests. She also continued to challenge the settlement even after Judge Lyons told her the settlement was fair, and after her attorney warned her she was breaching her duty to the estate by rejecting it.

In her affidavit, Padma admits she refused to negotiate or settle. The one time she does negotiate, in March 2018, she does so in bad faith (page: paragraph):

> I never want to settle. 5:16
>
> What is the point of mediation? I am not interested in settlement. 5:18
>
> I [] think [mediation] [] will be a waste of time because I was not interested in settlement. 5:18
>
> I told my lawyers that I did not want to settle the case. 5:19
>
> I did not provide my assent to any settlement amount. 6:20
>
> I was not interested in negotiating. 6:20
>
> I was clear that I did not want to settle the case. 6:20
>
> [At the March 7, 2018 mediation with Judge Panter,] I agreed to lower the settlement

demand, knowing that defendants would not ever agree to those amounts. 6:20

After the mediation I told my lawyers there would be no further mediation or settlement negotiations. 6:21

I asked my lawyers to stop pressuring me to lower any settlement demand and demanded that we go to trial to let a jury decide what is fair. 6:23

[The] second part [of the mediation] was scheduled over my objection as I did not want to continue negotiations. 6:24

The mediation was later rescheduled . . . but I told my lawyers to cancel the mediation because I wanted a jury trial and did not want to negotiate further. 7:25

On August 22, I appeared in courtroom 2501 of the Daley Center for the pretrial conference with Judge Lyons. At the time, I still did not know that this was going to be a "settlement conference". I never authorized my lawyers to enter into settlement negotiations. Also, if someone had asked me if I consented to a settlement conference with the trial judge, I would have said no. 8:33

I think I knew at this time that defendants' offer was $2.1 million, but I had not authorized my lawyer to engage in any settlement discussions since the March 2018 mediation. 9:33

I did not understand why a jury should not be deciding this question. I told my lawyer

> that. I also said that I did not want to engage in debates about settlement amounts, nor did I want to discuss settlement. 9:35
>
> A jury was better equipped to determine damages and my strong preference was that the question be submitted to a jury. 9:35
>
> The only power that I really held was the power to withhold my signature from any documents in furtherance of any purported settlement. 13:46
>
> I responded [to my lawyer] that I was not going to sign any settlement document. 14:50
>
> I told [my lawyer] that settlement is not going to happen. 14:50

In her affidavit, Padma admits she is dedicated and loyal to her mother and her mother's beliefs rather than her mother's estate:

> Throughout my life, Mom stated and acted upon her strongly held religious belief that we have a duty to speak for those who cannot speak for themselves. Throughout my life, Mom stated and acted upon her strongly held religious belief that we must do our duty or else face consequences for failing to do so, even if the failure is partly due to circumstances beyond our control. 3:10
>
> Mom believed strongly in open, public proceedings, as opposed to backroom, closed-door meetings which she felt are more prone to unfairness and improprieties. 3:12
>
> Mom believed in jury trials as a means to

best arrive at justice at a proceeding open to the public. 3:12

I witnessed Mom's litigation philosophy and her tenacity when we litigated a case against the City of Evanston from 2007 to 2010. I expended a great many hours understanding the law and procedure in large part to honor Mom's wishes. I share that attitude in this case and am determined to fight for Mom's wishes and for justice. 4:13

I believe it is my duty now is [sic] to do everything in my power to get justice against the defendants for Mom and to prevent the purported settlement from happening. 4:14

Mom would never be interested in settlement and [1 we wanted to have our day in court. 5:16

My lawyers may have told me then that we had to participate in good faith, but I was getting the sense that my lawyers were not listening to my stated goal of having a jury trial for Mom. 5:19

[Mom and me] wanted to have our day in court (trial) 6:21

I feared then that any third party was unlikely to take into consideration Mom's or my strongly-held beliefs against entering into an agreement with the accused wrongdoers. 9:36

I [also] told the judge that settlement is contrary to Mom's wishes and beliefs, which

she taught to me and to which I subscribe. 10:37

I told Judge Lyons that settlement was not justice for Mom. I told the judge, "You may think it is fair but it is not justice for Mom." I also said . . . that because it was not justice for Mom, I could never put this behind me and justice would never be made complete concerning the wrongs done to Mom. I felt that the judge was ignoring my concerns. 12:42

I said to my lawyer . . . that the court thinks that $2.1 million is fair and reasonable, but I do not think it was fair to deprive Mom of a jury trial against her wishes and beliefs. 12:44

I had no confidence that any third party would consider Mom's or my beliefs about justice . . . 13:46

I will refuse to accept any of the settlement proceeds. To accept any sum of money from an agreement with the wrongdoers is tantamount to my acquiescence to the settlement, which is against the strongly-held principles and beliefs of Mom and me. 13:47

I was very frustrated, upset, and thought that I had failed Mom. I repeated often that I was not going to sign any settlement document, and I want nothing to do with the settlement because it was wrong. 15:55

After the hearing on September 5 [2018], I

> felt very dejected that Mom's wishes were being ignored and that settlement was going to be forced upon us. 15:55
>
> My lawyer did very little to advocate for the interests of Mom or me. 15:55
>
> My lawyer suggested that I be removed as independent administrator. I did not like the idea, but also felt I had no choice. To borrow an expression used often by Mom, I was forced to choose between Scylla and Charybdis. 16:55

In her affidavit, Padma denounces Anita and disregards Anita's best interests:

> [M]y lawyers . . . advise[d] me that defendants had increased the settlement offer and that . . . my sister Anita Rao [1 gave them her consent to settle. 7:26
>
> I told my lawyer that my sister was not really aware of the facts of the defendants' negligence (since she had been estranged from Mom and me for years before Mom's death) and that my sister really was not in a good position to assess the value of the case. My lawyer told me I had a duty to my sister, which I did not dispute. However, I was also aware of Mom's strong beliefs that a case like this should not be compromised and that a jury trial was the best way to get justice for mom, my sister and me. 7:27
>
> My sister Anita has been estranged from my family for many years. In October 2010, she came to the back door of the home

> where Mom and I lived and repeatedly rang the bell, kicked the door, and made loud threats. **I** filed a complaint with the police, and criminal proceedings were initiated against her. A plenary order of protection was issued against my sister on February 24, 2011. The plenary order of protection has been extended to . . . [May 24, 2022]. 7:28
>
> On August 21 . . . my lawyer. .. . told me about recent settlement discussions he had had with defense counsel, and he informed me that my sister Anita approved defendants' settlement offer. I told [my lawyer] that my sister was not knowledgeable about the case, had been estranged from Mom for many years, and was someone who often demanded money from Mom and me. Anita did not just ask for money, she made threats to Mom and me if we did not give her money. 8:32

In her affidavit, Padma admits that Judge Lyons told her the settlement was fair, and that her attorney warned her she was breaching her duty by rejecting it, yet she continued to challenge it:

> The judge told me in very strong terms that the $2.1 million settlement offer was fair and that I should accept it. 9:36
>
> My lawyer told me I was breaching my duty to the estate. 10:39
>
> I told [my lawyer] that settlement is not going to happen. 14:50
>
> I responded [to my lawyer] that I was not going to sign any settlement document.

14:50

In her affidavit, Padma never claims the $2.1 million settlement offer was insufficient. She never claims she was acting in the estate's best interests by rejecting it. She never asserts the settlement was not in the estate's best interests. Instead, she is clear: she rejected settlement because she believes her mother would have done so, and her allegiance is to her mother's beliefs and wishes, not her mother's estate.

Padma's duties as administrator did not include an attempt to satisfy her own personal interests, yet that is exactly what she did. This was not Padma's case alone; were it, her "desire to reject the settlement in favor of what she herself wanted would be her prerogative and her legal right, no matter what the risk." *Will*, 378 Ill. App. 3d at 294. However, the cause belonged to the estate, not to Padma, and the "purpose of wrongful death and survival actions is to provide beneficiaries with the pecuniary benefits they would have received from the deceased had her life continued." *Id.* at 293. Padma's conduct in challenging the settlement was in direct opposition to the estate's best interests.

After Padma was told the settlement was fair, after she was warned she was breaching her duty, she refused to stand down. Rather, she did just the opposite. She dug in. She filed the motion to vacate and her affidavit. She proudly declared she would fight on "for Mom":

> I believe it is my duty now to do everything in my power to get justice against the

> defendants for Mom and to prevent the purported settlement from happening. 4:14

This court removed her. Padma, individually, could have mitigated the damage then. She could have halted her attack on this settlement and this estate. She did not. Instead, she continued to pursue vacation of the settlement, despite overwhelming odds against her, to the estate's financial detriment.

This court believes it would be unfair to compel Anita to pay any of the fees and costs incurred solely due to Padma's personal decision to reject settlement. This court, therefore, assesses $532,807.88 of the fees and costs against Padma ($537,807.88-$5,000 in fees to attorney Rzepczynski for services necessary to distribute the proceeds and close the estate had Padma accepted settlement).

This court appreciates Padma's devotion to her mother. Individually, as a daughter, her loyalty is wonderful and admirable. However, as administrator, it was grossly misplaced. Her loyalty should have been to the estate. She chose wrong, unacceptably wrong, and has cost this estate over half a million dollars in unnecessary expenses. She is responsible for this financial toll.

The assessment imposed here is not punishment it is equitable contribution, it is fair. Padma caused all the fees and costs here. She chose to reject the settlement because doing so benefitted her, personally. She showed loyalty to her mother, rather than loyalty to her mother's estate. It is simply wrong to make Anita shoulder the burden of these expenses. They are Padma's, and Padma's alone. *See Felsenthal v. Kline*, 214 III. 121 (1905) (When litigation is pursued

for the benefit of the executor personally and not for the benefit of the estate, the cost should be paid by the executor personally).

Padma argues this court would be infringing her constitutional right to appeal if it assesses the fees and costs against her. She is incorrect. Padma, of course, may appeal any or all of this court's, or the higher courts', rulings against her, without fear of reprisal, however unlikely her chances of success. This court will vigorously defend her right to appeal until this estate is finally closed. Padma does not have a right, however, to expect the estate to carry the financial burden of defending her appeals. The rulings she appeals never should have been made in the first place. They exist, like the fees and costs incurred here, solely because of her selfish decision to reject the settlement. She should carry not only her own costs in appealing these rulings, but the estate's costs in defending them. This is consistent with today's ruling.

CONCLUSION

A fork in the road is a metaphor, based on a literal expression, for a deciding moment in life or history when choice of presented options is required and once chosen the choice cannot be reversed. In September 2018, this estate and its leader, Padma Rao, came to a fork in the road. One option was "Duty to the Estate." This road was smooth and short. On this road, Padma accepts the settlement and closes the estate. This road costs $5,000.

The other option was "Duty to Mom." This road was a hard slog — grueling, uphill, no end in sight. On this road, Padma rejects the settlement and does

"everything in [her] power" to prevent it from happening. This road costs $500,000.

Padma chose Duty to Mom.

Anita thinks fairness and equity dictate that Padma pay for choosing her mother over the estate. This court agrees.

ORDERED:

/s/ James P. Murphy
Judge

ORDER OF THE CIRCUIT COURT OF COOK COUNTY PROBATE DIVISION (JULY 2, 2019)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, PROBATE DIVISION

IN RE ESTATE OF BASAVAPUNNAMMA K. RAO,

Deceased.

Case No. 2013 P 6243

Before: Hon. James P. MURPHY, Presiding Judge.

This matter coming to be heard before this Court upon the hearing related to: Padma Rao's Motion to Reconsider Ruling on Midland Trust Request for Direction; Motion for Direction to Determine Padma Rao Disclaimed her Interest to any Recovery in Cook County Case No. 14 L 12745; Motion for Rule 137 Sanctions against Michael Steigmann and Padma Rao; Petition to Settle Cause of Action–Wrongful Death; Second Petition for Rule to Show Cause; Accounting of Padma Rao, former Independent and Supervised Administrator with Will Annexed, the Court being fully advised of the matters herein;

IT IS HEREBY ORDERED:

1. Padma Rao's Motion to Reconsider is denied for the reasons on the record;

2. Motion for Direction to Determine Padma Rao Disclaimed her Interest is denied for the reasons on the record;

3. Motion for Rule 137 Sanctions against Michael Steigmann and Padma Rao is denied for the reasons stated on the record;

4. With the filing of Padma Rao's Accounting the Second Rule to Show Cause is withdrawn;

5. Padma Rao's Motion for Stay Pending on Appeal is denied with leave to refile;

6. Padma Rao's Petition for Partial Distribution is denied;

7. All parties are provided 30 days to object to the Accounting of Padma Rao; Padma Rao has 14 days in which to Respond to any Objections; All Replies shall be filed 14 days thereafter;

8. The Petition to Settle Cause of Action, any argument related to the 304(A) language and all other matters are hereby Continued to July 3, 2019 at 10:00 a.m.

/s/ James P. Murphy
Judge

PETITION FOR LEAVE TO APPEAL PURSUANT TO SUPREME COURT RULE 315 (MARCH 31, 2022)

IN THE SUPREME COURT OF ILLINOIS

ESTATE OF BASAVAPUNNAMMA K. RAO,

Deceased,

DR. PADMA RAO,

petitioner,

v.

ANITA RAO, FMS LAW GROUP, AND MIDLAND TRUST COMPANY,

Respondents.

128472

Appeal from the First District Consolidated Appeals No. 1-21-316 and 1-21-465

Appeal from Cook County Cir. Ct. No. 2013 P 6243 Hon. James P. Murphy

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ORAL ARGUMENT REQUESTED
IF PETITION GRANTED

Now comes petitioner Dr. Padma Rao and respectfully petitions this Court for leave to appeal this matter pursuant to Supreme Court Rule 315. The First District affirmed a fee-shift against Petitioner Dr. Rao of $532,807 in legal fees and costs incurred by the Estate. Until this case, in the entire history of Illinois law, there has never been a case where a party was forced to pay for a separate party's fees or costs absent a contract, statutory or Supreme Court Rule authority, or the imposition of punitive damages for fraud, or a finding that such fees directly benefited the first party. Nevertheless, in this matter the First District created an entirely new fee-shifting doctrine against Dr. Rao for the Estate's legal fees and administrative costs incurred in probate court, as well as legal fees incurred in appeals of probate decisions. The First District held that the American Rule does not apply in probate court litigation because the parties there are purportedly not adversaries, and the court has inherent equitable authority to shift all legal fees and administration costs to a single party, including fees from appeals to higher courts of review.

Judgment Below

On March 31, 2022, the First District issued its Order (A-1) affirming the judgment of the circuit court.

Points Relied Upon for Review of the Judgment of the Appellate Court

I. The Decision Below

In this matter, the litigation fees at issue originated from Dr. Rao's opposition to a wrongful death and Survival Act settlement implemented and ordered in a Law Division Court for $2.1 million, with all proceeds going to Dr. Rao and her sister Anita who are daughters of the decedent. (A 2-3). Estate Administrator Midland Trust filed a motion in the Probate Court for the Probate Court's approval of the settlement (A-6). Dr. Rao, in her role as previous Estate Administrator, had already filed a Motion in Law Division Court to vacate the settlement, in which she attached a lengthy personal affidavit that the settlement was both improperly imposed and against the religious values of her deceased mother and herself to settle against the people responsible for her death. (A 3-5, C721-23). Dr. Rao also personally filed briefs opposing Midland's Motion in Probate Court for approval of the settlement, and Dr. Rao attached as an exhibit her previously filed affidavit (A-28, 29). The Probate Court approved the settlement and authorized Midland to withdraw the Motion to Vacate in the Law Division Court. (A-6). On July 11, 2019, Dr. Rao appealed these Probate Court Orders to the First District, and then with a PLA to this Court, and then with a petition for writ of certiorari to the United States Supreme Court, but all these appeals were unsuccessful. (A-7).

Anita and Estate counsel filed Motions for Rule 137 sanctions in the Probate Court against Dr. Rao and her counsel for her probate court briefs in

opposition to Midland's Motion seeking to withdraw the Motion to Vacate (C838-1023, C1108), but the motions were denied after extensive briefing. (A-46). Anita then filed a Petition to Allocate Fees asserting that all legal fees incurred by Estate Counsel in probate court and on appeal, as well as all administration fees incurred by Midland, should be paid by Dr. Rao instead of by the Estate because all these fees had been caused by Dr. Rao pursuing her own personal interests in her personal court filings. (A-15). The trial court granted the motion, shifting all Estate administration costs and litigation fees of $532,807 against Dr. Rao as an exercise of equitable authority because Dr. Rao caused these fees and costs to be incurred by choosing to litigate against the settlement for her own personal interests. (A-15). The trial court held that the "American Rule" did not apply as to legal fees in Probate Court or on appeal because the estate was not bringing a citation against Dr. Rao so no litigation was allegedly involved. (A-15).

The First District affirmed in this matter, holding that the American Rule does not prohibit or even apply to fee-shifting in Probate Court or resulting appeals because the Estate is not an adversary to anyone in Probate Court litigation. (A-19). The First District held that the trial court had equitable authority under the doctrine of equitable contribution to fee-shift all Estate administration costs and legal fees against Dr. Rao in the court's discretion. (A-19). The First District noted that the Sections 27-1 and 27-2(a) of the Probate Act provide that the estate representative and the attorney for the representative receive reasonable compensation (A-18), and the Court held that the trial court in a "proper exercise of its

equitable power" could make Dr. Rao pay all such Estate legal fees and administration fees and costs instead of the Estate itself. (A-20).

II. The First District's New Doctrine that a Court has Equitable Power to Shift All Estate Legal Fees and Administration Costs Against Any Party Is of Tremendous General Importance, Given the Volume of Cases Under the Probate Act and the Huge, Uncertain and Confusing Effect of This Rule on Such Cases

The First District's decision here is of tremendous general importance for three reasons. First, there is an enormous volume of cases under the Probate Act, with tens of thousands of cases of probate cases being heard every year. And of this vast number of cases, those probate cases involving multiple parties or any motion practice of any kind are potentially affected by this decision.

The First District's new doctrine will also have enormous effect on the practice of probate cases. Now any party who files any motion must be very afraid that if they lose-even if the motion is in full compliance with Rule 137 as in this matter–they will have to pay both all of the Estate's attorney fees as well as all its general administration fees and costs if they lose such a motion. Likewise, any party must be terrified that if they appeal a probate court decision against them, the court may choose to fee-shift all of the Estate's attorney fees and administration costs against them in its equitable discretion. Supreme Court Rule 304(b)(1) authorizes interlocutory probate appeals on several matters, and it is likely that any appeal of a

probate matter will delay the final closing of an Estate. As trial court judges generally do not like having their decisions appealed, nor such a delay in completing their cases, probate judges may tell parties: "While you are entitled to immediately appeal this decision against you under Rule 304(b)(1), you may want to look at this new First District case of *Estate of Rao*, where the court affirmed a fee shift totaling $532,807 under my equitable authority just for delaying the resolution of an estate to pursue litigation for personal preferences or conscientious beliefs. The *Rao* party not only had to pay the Estate's legal fees, but over $172,000 in administration fees and costs too. So if you are contemplating whether to appeal my ruling as your personal preference and likewise prolong this litigation, please keep *Estate of Rao* in mind."

Simply put, if a party in probate can be punished with hundreds of thousands of dollars of Estate legal fees and administration fees and costs merely for losing a motion or taking an appeal, we will be seeing a tremendously reduced amount of any motion practice in probate courts and far fewer appeals. This will indeed quicken the legal process, but also with the certain loss of accuracy and justice where people cannot pursue valid claims because they are subject to catastrophic fee-shifts for pursuing claims (or appeals) even if such claims fully comply with Rule 137 (and Rule 375 for appeals).

The First District's decision is truly novel and revolutionary-it is an entirely different and English approach to the administration of our legal system in probate court, and until now in Illinois such fee-shifting has only been allowed under express statutory

grant from the legislature. Moreover, under the new revised Rule 23, the First District's decision here may be cited for persuasive purposes in any court in this state, and the settled expectations of probate (and all) litigants will be completely overturned throughout Illinois until this Court resolves this foundational probate and overall issue.

III. The First District Decision Here Conflicts with the Precedents of This Court and Other Appellate Districts

A. Every Other Appellate District Holds that Under the American Rule, Each Party Must Bear Their Own Attorney Fees and Costs Absent Statutory Authority Otherwise, Regardless of Whether Another Party Is an "Adversary" or the Nature of the Other Party's Fees and Costs

Whether the trial court had authority to shift the Estate's attorney fees against Dr. Rao is a question of law which is reviewed de novo. *In re Estate of Martin*, 2020 IL App (2d) 190140, ¶ 57. The Second District in *Martin* recently held in its probate matter: "Illinois has long followed the 'American rule' which provides that each party must bear its own attorney fees and costs, absent statutory authority or a contractual agreement." *Id.* (Emphasis added). The exact same quoted language—"each party must bear its own attorney fees and costs"—also appears in the Fourth District case of *Thomann v. Dept. of State Police*, 2016 IL App (4th) 150936 at ¶ 58; and the Fifth District case of *Kunkel v. P.K. Dependable Constr., LLC*, 902 N.E.2d 769, 775 (5th Dist. 2009).

The First District's decision here conflicts with these three other districts, instead holding that the American rule allows forcing a party to pay the fees and costs of another party, as long as that other party is not an adversary in litigation. (A-19). As to the Estate's legal fees, the First District further explained that because Dr. Rao failed to identify "which of FMS's fees related to litigation and were adversarial to her" (A-19), the trial court could simply allocate all of the Estate's legal fees against Dr. Rao without violating the American Rule (even though Dr. Rao had cited *Martin* that no fee shifting was allowed at all). (A-19). The First District here cited no case law to support its new doctrine that the American Rule only applied to bar allocation of attorney fees specifically incurred in litigation by adversaries. In fact, under this new doctrine co-defendants or co-plaintiffs in any case in any type of law could be unexpectedly hit with fees of their fellow party and have no recourse.

In addition to being contrary to the Second, Fourth and Fifth District holdings above, this new First District doctrine is also contrary to the principles set out by the Third District in *Toland v. Davis*, 295 Ill. App. 3d 652 (3rd Dist. 1998). *Toland* explains how the American Rule is based on several sound policy principles–first, litigation is inherently uncertain, and it would be unjust to punish litigants for exercising their rights in a lawsuit. *Id.* at 657-658. Moreover, people would be discouraged from vindicating their rights for fear of being penalized with their opponents' attorney fees, and also the time, expense and difficulty of litigating fees would pose substantial burdens for judicial administration. *Id.* Thus it is inappropriate

for the judiciary, without legislative guidance, to re-allocate the burdens of litigation. *Id.* All of these Third District views conflict with the First District's decision here.

Likewise, as to the allocation of Midland's administration fees and costs against Dr. Rao, the court explained that this was also allowed under the American Rule as Midland's fees "were neither the fees of an adversary nor the fees related to litigation. They were fees for the supervised administration of the Estate" (A-19). This holding again directly conflicts with the Second, Fourth and Fifth District cases of *Martin*, *Thomann*, and *Kunkle* stating: "each party must bear its own attorney fees and costs."

The First District here also explained that the allocation of Midland's administrative fees and costs against Dr. Rao was proper because these additional administrative matters resulted from purportedly "meritless filings" that Dr. Rao instigated. (A-19). Yet where all of Dr. Rao's filings were expressly found in compliance with Rule 137 (A-46), the decision here is again in direct conflict with the Third District precedent of *Toland*. *Toland* held: "The purpose of Rule 137 is to prevent the filing of frivolous or false lawsuits without legal or factual foundation, not to penalize litigants and their attorneys simply because they were zealous but unsuccessful." 693 N.E.2d at 1200-1201. *Toland* reversed a fee award against a party that had simply been zealous as outside the bounds of Rule 137, holding: "Since the rule is penal in nature, its terms must be strictly construed." *Id.* Accordingly, the First District's decision here to punish Dr. Rao with over $172,000 in Midland's administration fees and costs for purported "meritless filings"

that were in compliance with Rule 137 is precisely the punishment of zealous litigants that is prohibited under the Third District precedent of *Toland.*

B. The Decision Here on Equitable Contribution Directly Conflicts with the Second District and This Court Where Dr. Rao Received No Personal Benefit from the Estate's Litigation or Administration Fees and Costs

After determining as shown above that the American Rule had numerous new exceptions that prevented its application here, the First District held that the probate court had general equity powers to allocate the Estate's legal fees and administration costs under the doctrine of equitable contribution. (A-18-20). The First District did not specifically explain the equitable contribution doctrine or its application here, but claimed a court has general "equitable power" to allocate against Dr. Rao under this doctrine for fees and costs incurred on the Estate's behalf. (A-19-20).

However, the First District's holding here conflicts with numerous other probate precedents holding that fees and costs cannot be allocated against Dr. Rao as "equitable contribution" where Dr. Rao received no personal benefit herself from such fee-shifted work for the Estate. This Court explained in *Roe v. Estate of Farrell* that the doctrine of equitable contribution means a party pays its fair share of the costs from an obligation arising after such party receives a joint benefit with another-it "results from the principle [of contribution] among joint debtors, co-sureties, co-contractors, and all others upon whom the same pecuniary obligation arising from contract,

express or implied, rests." 69 Ill. 2d 525, 532-533 (1978). This Court continued: "the burden in all such cases should be equally borne by all the persons upon whom it is imposed * * * to equalize that burden whenever one of the parties has [paid] any amount greater than his proportionate share." *Id.* Accordingly, the question at issue was whether contribution "was required of the surviving tenants for costs of administration and for attorneys' fees for services that directly resulted in benefit to them." *Id*. at 527-8 (emphasis added). *Roe* shifted only those fees that directly benefited the tenants' non-probate assets, holding that the trial court had correctly prorated contribution for the attorneys' fees and fees for the administratrix "concerning the time and service required by their attention to the nonprobate assets." *Id*. at 533. In this matter, where none of the Estate's fees "directly result in benefit" to Dr. Rao so as to apply equitable contribution–in fact it is undisputed that Dr. Rao received no benefit at all—the First District's decision conflicts with *Roe*.

The Second District in *Martin* also recently examined the equitable contribution doctrine regarding a probate matter, reversing the trial court's decision and disallowing the shifting of any such fees against assets that did not directly benefit from the services performed for such fees. *Id.* at ¶¶ 50, 51. *See also Morris B. Chapman & Assocs. v. Kitzman*, 193 Ill. 2d 560, 572 (2000) (fees can be spread in common fund doctrine among those who benefit from the litigation, but otherwise American Rule applies).

Accordingly, the doctrine of equitable contribution under Illinois law in *Roe*, *Martin* and *Morris* is not that tricky at all–if a party receives a direct benefit

from the litigation undertaken by another party, then that party should contribute its equitable share of the litigation fees incurred. The First District here though does not even attempt to claim that the Estate fees and costs directly benefited Dr. Rao. Because Dr. Rao received no personal benefit from the Estate's litigation or administration, the First District's decision that she had to pay such Estate fees and costs incurred as a punishment for "meritless filings" under equitable contribution conflicts with this Court's holdings in *Roe* and *Morris* and the Second District probate precedent of *Martin.*

Statement of Facts

Dr. Rao incorporates Part I above for many of the facts regarding the fee allocation decision against her. The deceased died in October 2013 survived by daughters Dr. Rao and Anita, and Dr. Rao was appointed as Estate Administrator in 2013. (A-2). A few months later, the Estate through Padma as Administrator filed a wrongful death and survival complaint in the law division of Cook County circuit court. (A-2).

In August and September of 2018, the law division court entered settlement orders finding that a settlement had been reached totaling $2.1 million. (A 26-27). In October 2018, Dr. Rao as Estate Representative filed a Motion to Vacate the Settlement as inconsistent with the wishes of decedent and the service of justice (A-27), and filed a 17-page affidavit detailing the basis of her beliefs that the settlement was improperly imposed and against the wishes of decedent to settle with wrongdoers. (A-28, C721-23).

Anita then Petitioned to remove Dr. Rao as Estate administrator, which was granted in December

2018. (C 579). At the hearing on the removal Petition, the court first expressed its great admiration for Dr. Rao's firm beliefs: "There is evidence to me again, that she has firm beliefs, and what she believes in, she believes in her heart. And it's very admirable." (C3123, ln 22-24). Yet the Court held that such beliefs made Dr. Rao unsuitable to continue as administrator: "is someone capable if their religious belief is that they can never settle? * * * I understand that those are your religious beliefs. And I believe you, that those are your religious beliefs. But my duty is to the estate. And my question that I have to answer is, can you suitably and capably administer the estate with those beliefs. And I think the answer is no." (C 3126 ln 24, C 3127 ln 1 and ln 17-22).

As to Anita's Motion to Allocate, the trial court held it had authority to shift Estate attorney fees to other parties under equity where the Probate Act did not expressly mandate that the American Rule applied to Estate fees. (A 31-32). As to taxing the Estate administration fee of $172,417 as a cost, the court did not cite any statute but again held that equity allowed taxing this cost in its discretion. (A 31-35). The trial court's order held that Dr. Rao's filings and conduct were not based on any evil motive, rather quite the opposite: "This court appreciates Padma's devotion to her mother. Individually, as a daughter, her loyalty is wonderful and admirable." A-43. Yet the court held that it would be "unfair" not to shift all Estate fees and costs against Dr. Rao where she had pursued litigation with "odds against her." (A-42). The trial court had previously denied Anita's Motion for Rule 137 sanctions against Dr. Rao for this same litigation. (A-46). Dr. Rao filed a Notice of

Appeal on March 19, 2021, then numbered 1-21-316 in the First District, to appeal under Rule 304(b)(1) this allocation order against her as well as the trial court's prior fee award decisions that are further addressed below. (C-3515).

On March 26, 2021, the court issued an Order enforcing its prior Order by reducing Dr. Rao's $1,266,403.94 share of an Estate distribution by $532,807.88 to $733,596.06 as payment to the Estate. C-3518. Dr. Rao filed a Notice of Appeal on April 23, 2021, then numbered 1-21-465 in the First District, to appeal under Rule 304(b)(1) this March 26, 2021 enforcing the prior allocation order against her. (C-3527). The First District granted Dr. Rao's Motion to Consolidate the Appeals 1-21-465 and 1-21-316.

Dr. Rao briefly discusses below additional facts regarding the other fee award claims decided by the First District that Dr. Rao wishes to preserve for appeal should this Court grant this Petition and allow appeal. First, Dr. Rao appeals the award of administration fees to Estate Administrator Midland of $172,417.22. (A 9-10). Midland had been the new Estate administrator only the last two years of the Estate, yet Midland sought an administration fee of 3% of the Estate pursuant to its fee schedule for an amount of $172,417. (C 3172-3184). Midland's Petition did not provide any affidavit or other evidence to prove that it had done any significant work in this matter (C 3172-3184), but the trial court awarded the full $172,417 requested under the fee schedule because Midland "brought stability" and "gravitas" to the Estate administration with "its reputation." (R. 102-103). The First District affirmed the award. (A-21).

Dr. Rao also appeals the trial court's decision to award her only $37,500 for her work as Estate Administrator for the period 2013-2018. (A 11-12). Dr. Rao's fee petition requested the $156,000 recommended by prior Estate counsel, and Dr. Rao's Petition contained hundreds of pages showing work Dr. Rao accomplished on behalf of the Estate, including her work defeating a hospital claim against the Estate for over $274,000. (Appellate Brief Appendix A 148-383). Prior Estate counsel Michaeline Gordon wrote an email to Dr. Rao detailing how Dr. Rao had used her medical billing expertise to defeat the claim: "your research [was] the key to getting them to realize that it would be difficult to prove that there were unpaid bills that were the patient's responsibility." (App. Appendix A-379). Gordon concludes: "In the end it was your research of the policy terms and the website that caused the claim to go away. So thank you for doing this. You saved the Estate money." (App. Appendix A-379). While the trial court held that Dr. Rao worked at least 1500 hours as administrator, the court awarded a fee of only $37,500 based on a $25 per hour rate. (A 11-12). The First District's held this was not unreasonable and affirmed. (A-24).

Lastly, Dr. Rao appeals certain portions of the fees the trial court awarded to Estate counsel FMS, including fees awarded for counsel's work responding to a Rule 137 Motion sanctions against counsel itself, and fees for defending Midland from an IDFPR Complaint outside of probate court. (A 21-23). While Dr. Rao argued that such work did not benefit the Estate and thus should not awarded as fees from the Estate,

the First District held that the fee award was not unreasonable and affirmed. (A-22).

Argument

I. The Appellate Court's Decision Allocating Fees and Costs Against Dr. Rao Should Be Reviewed by This Court and Reversed

Dr. Rao incorporates Part I above in her section on Points Relied Upon for Review, and further addresses here why the decision should be reviewed and reversed.

A. The Decision Erroneously Approves a Shift of Fees and Costs Without the Necessary Express Statutory Authority Required Under Illinois Law

Statutes which allow for the recovery of fees or costs are in derogation of common law and must be narrowly construed. *Vicencio v. Lincoln-Way Builders, Inc.*, 789 N.E.2d 290, 293-4 (Ill. 2003). Thus where the Probate Act provisions at issue here of the Sections 27-1 and 27-2(a) do not specifically authorize fee shifting or taxing fees as costs, the court has no authority to impose such fee-shifting. *Vicencio* specifically prohibits shifting fees or costs to a party merely under a rationale of "doing equity" (789 N.E.2d at 295), which is precisely what the First District has done here and must be reversed. *See id.* (reversing court that taxed costs without specific statutory authority); *Estate of Downs v. Webster*, 307 Ill. App. 3d 65, 70 (3rd Dist. 1999) (reversing fee award–"statutes which allow for recovery of attorney

fees must do so by specific language"); *Estate of Dyniewicz*, 271 Ill. App. 3d 616, 628 (1st Dist. 1995) (when a probate matter does not fall within any of the recognized exceptions to the American Rule, fee shift must be denied); *In re W.W.*, 97 Ill.2d 53, 57 (1983) (reversed shifting of fees under a statute where the party to be shifted against was not specifically named in the statute); *Work Zone Safety, Inc. v. Crest Hill Land Dev., L.L.C.*, 2015 IL App (1st) 140088 at ¶ 33 ("We follow the American Rule in this case and reject Work Zone's argument that the circuit court could award fees based on equity alone.")

While the decision here cites the case of *Jackman v. North*, 75 N.E.2d 324 (Ill. 1947) as supporting fee-shifting under "equitable contribution" (A-19), *Jackman* did not impose fees pursuant to equitable contribution or mention the doctrine. *Jackman* was a probate matter where a guardian ad litem was appointed for two minors. 75 N.E.2d at 333. *Jackman* then allowed the guardian ad litem fees to be "taxed in a bill of costs", pursuant to a specific statute directly authorizing such GAL costs to be taxed against parties in the probate litigation. *Id.*, citing Sec. 6 of the Chancery Act (Ill. Stat. 1945, chap. 22, par. 6). Because the Probate Act provisions at issue here of the Sections 27-1 and 27-2(a) do not allow Estate attorney or administration fees to be taxed as a bill of costs against Dr. Rao, *Jackman* does not support the court's decision here.

Moreover, when the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts presume that the legislature acted intentionally and purposely in the exclusion, and that the legislature intended different meanings and results. *Chicago Teachers*

Union, Local No. 1 v. Bd. of Educ., 2012 IL 112566, at ¶ 24. Accordingly, the omission in the Probate Act to tax fees and costs as done here, unlike with GAL costs, further supports that the court here acted in direct contradiction to the intended meaning and results of the Probate Act. While the decision at issue somehow asserts that the *Jackman* statute is "strikingly similar" to the Probate Act (A-19), in fact the *Jackman* GAL statute does expressly state that the guardians fees may be "taxed in the bill of costs" (A-19) while the Probate Act Sections 27-1 and 27-2(a) do not. The fact that the statutes are so similar except for the absence of any "taxed in the bill of costs" provision applicable here only reinforces that the legislature intentionally left it out for Estate legal fees and administration fees and costs.

The court's decision also generally cites *In re Estate of Elias*, 946 N.E.2d 1015, 1019 (1st Dist. 2011) for the proposition that equitable contribution can be present in probate. Nevertheless, as shown above by *Roe*, *Martin* and *Morris*, equitable contribution is not present here where Dr. Rao did not receive a direct benefit from the litigation undertaken by the Estate. Nor are there any allegations of fraud against Dr. Rao that would compel her payment of those fees directly due to such fraud as in *Elias*.

Lastly, Dr. Rao notes the strangeness of the Court's decision that she must prove which fees are "adversarial" or in "litigation" when it is the fee-applicant's burden to establish entitlement to fees and costs. Nor was the adversarial nature a mystery on the prior appeals here when Dr. Rao was the Petitioner and Estate counsel was Respondent.

B. The Decision Is in Contravention to Illinois Law by Sanctioning Litigation in Full Compliance with Rule 137

By its novel fee-shifting procedure, the trial court effectively sanctioned Dr. Rao for litigation filings that were in compliance with Rule 137, thereby shifting legal fees to Dr. Rao as if she had violated Rule 137. The purpose of Rule 137 is to prevent frivolous filings. *McCarthy v. Taylor*, 2019 IL 123622, ¶ 19. The purpose of Rule 137 is not, however, to punish parties simply because they have been unsuccessful in the litigation. *Clark v. Gannett Co.,* 2018 IL App (1st) 172041 at ¶ 66. Penal in nature, Rule 137 is strictly construed, and courts reserve sanctions for egregious cases. *Clark* at ¶ 66; *see also McCarthy* at ¶ 17. The party seeking sanctions for a violation of the rule bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause. *Clark* at ¶ 66. Yet in direct violation of *McCarthy* and *Clark*, the decision here vastly broadened the grounds for fee-shifting sanctions far beyond the grounds required under Rule 137, and thus this decision must be reversed.

This Court specifically prohibited this type of fee-shifting in *In Re Estate of Shelton* and reversed a finding of liability, holding that it was improper for the lower court to "depart from the plain meaning of the statutory language by reading into it exceptions, limitations, or conditions not expressed." 2017 IL 121199, ¶ 36. This Court concluded that "if the legislature had intended to impose statutory liabilities and duties on [such parties] in derogation of the common law, it would have made its intention explicit."

Id., ¶ 36. The Supreme Court and our state legislature have made a public policy choice not to penalize litigants who make probate filings in compliance with Rule 137, and instead a court must apply the American Rule for all the reasons stated above in *Toland*. Even if the trial court somehow considered such pursuit of longshot filings to be "bad faith" by Dr. Rao (and it was not), Illinois courts have repeatedly held that there is no "bad-faith exception" to the American Rule that permits extension of fee-shifting beyond the express parameters of Rule 137. *Amerisure Mut. Ins. Co. v. Global Reins. Corp. of Am.*, 399 Ill. App. 3d 610, 625 (1st Dist. 2010); *Krantz v. Chessick*, 282 Ill. App. 3d 322, 330 (1st Dist. 1996); *Cummings v. Beaton & Ass.*, 249 Ill. App. 3d 287, 320 (1st Dist. 1992). The trial court's and First District's imposition of liability in derogation of the common law American Rule and against the public policy chosen by Illinois must be rejected, and particularly so where this decision conflicts with the express language of Rule 137 that is specifically intended to address this very issue.

C. The Decision Is in Contravention to Illinois Law by Allocating Fees Incurred in Other Courts, Such as This Court and the First District– and the Trial Court Had No Jurisdiction to Invent Its Own Novel Rule 375

Perhaps even more egregiously, this decision affirms the trial court's fee-shifting attorney fees incurred for Estate filings in the Appellate Court and Supreme Court, even though Dr. Rao's filings on appeal all complied with Rule 375. It is beyond the

trial court's purview and jurisdiction to decide whether Dr. Rao's appeal briefs were in compliance with Rule 375 and award fees for an appeal to a different court over which it has no jurisdiction. *See Lee v. Egan*, 184 Ill. App. 3d 852, 854 (1 Dist. 1989) (reversing appeal defense fees awarded in subsequent fee claim in the trial court, as a party must raise appeal fee request to appellate court at the time of appeal). The trial court is also not well-placed to make any judgments about the appeal: "It is elementary that no judge may sit in review of a case decided by him." *Kendler v Rutledge*, 396 N.E.2d 1309, 1313 (1st Dist. 1979). As shown above, it is not the trial court's prerogative to sanction litigants for taking an appeal of its rulings–the appellate court could have done so if Rule 375 had been violated–and thus the trial court's sanction of fee-shifting for fees incurred on appeal is particularly improper, as is the First District decision affirming.

D. The Decision Is Contrary to the Due Process Guaranty by Severely Sanctioning Dr. Rao Without Prior Warning for Litigation in Full Compliance with Rule 137 and Rule 375

Dr. Rao also had a constitutional right to be heard under procedural due process in the trial court and on appeal. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311 at ¶ 28; *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). Accordingly, as long as her pleadings were compliant with Rules 137 and 375, she should not be punished by the trial court for exercising her constitutional due process rights even if the odds were against her.

Some of the most important cases in history such as *Brown v. Board of Education* were longshots hoping to overturn established law. There is also no public policy of penalizing longshots—in the NCAA men's basketball tournament, a 16-seed has beaten a 1-seed less than one percent of the time, but the 16-seed is not obligated to forfeit the game. The trial court's creation here of a new "longshot exception" to the American Rule is improper under Rule 137 and due process, and its decision is contradicted by *Amerisure, Krantz, Cummings* and all the cases above.

Dr. Rao further directs this Court to the arbitrary, capricious and unfair nature of the trial court sanctioning Dr. Rao under its completely new doctrine even though Dr. Rao made court filings in full compliance with Rule 137–and in fact this is a violation of her due process rights. A retroactive change in the law that imposes a new duty is prohibited as a violation of the due process clauses of the Illinois and United States Constitution, and the legislature itself is without authority to enact such a law even if that is its express intention. *Lazenby v. Mark's Constr., Inc.*, 236 Ill. 2d 83, 98 (2010). Due process and fairness considerations prevent imposing retroactively a duty that did not previously exist. *Id.* Dr. Rao properly presumed that if she filed litigation meeting the pleading standards under Rule 137 and the history of precedents applying Rule 137, she would not be sanctioned at all, much less over $360,000 in fees and $532,807.88 total. The trial court's retroactive imposition of its new filing standard was thus also a violation of due process and must be reversed. *See id.* (retroactive duty cannot be imposed). An Illinois litigant should be able to proceed under the established

rules pursuant to Rules 137 and 375, and not expect punishment under a new previously unknown doctrine for pleadings filed in compliance with Rules 137 and 375 at the time of filing.

II. The First District's Decisions on Fees Payable to Midland, Dr. Rao and FMS Law Should Be Reviewed by This Court and Reversed

The decision affirming the trial court's award of $172,417 to administrator Midland was an abuse of discretion when Midland's Fee Petition failed to show that Midland had done any actual work. *In Re Estate of Weeks*, 950 N.E.2d 280, 290 (4th Dist. 2011) (affirmed reduction of fees, most important factor is amount of work performed). While the court here cites the amount of work done by Estate counsel FMS Law (A-21), the mere fact that Midland's attorneys have performed work (and been paid for it) does not entitle administrator Midland to separate additional compensation for such attorney's work, for which FMS was separately compensated $306,000. *See Weeks*, 950 N.E.2d at 288 (party cannot make a duplicative charge for work performed by another party that is also seeking Estate fee compensation). Midland of course cannot perform any legal work because it is not an attorney, and its fee Petition neither presented any affidavit nor provided other evidentiary support that Midland has actually undertaken any independent legal analysis or supervision of its attorneys at all. Without evidence in the record of Midland performing work, under *Weeks* the award of $172,417 was an abuse of discretion. *See also In re Estate of Enos*, 69 Ill. App.3d 129, 132-33 (5th Dist. 1979) (reversing

court to reduce the administrator fee to $2,500 where the record was barren of proof of substantial tasks.).

Likewise, the decision affirming the trial court's award of only $37,500 in Estate administration fees for Dr. Rao was an abuse of discretion under *Weeks* where it was Dr. Rao who actually performed all of the standard tasks for the Estate in its initial five years, which the trial court determined as 1,500 hours of work. Thus, under *Weeks,* it is Dr. Rao who must receive the vast majority of the reasonable compensation for administering the Estate—"The most important factor is the amount of time spent on the estate." 950 N.E.2d at 287 (emphasis added). While the trial court stated for unspecified reasons that Dr. Rao's work against the $274,000 Hospital claim may have been "unnecessary" and "that Gordon just wanted Padma occupied" (R. 127), Gordon's actual emails state how much Dr. Rao assisted the Estate by fighting the hospital claim: "In the end it was your research * * * that caused the claim to go away. So thank you for doing this. You saved the Estate money." (App. Appendix A-379).

Lastly, the decision erred in affirming some attorney fees for FMS Law which did not benefit the Estate. When counsel is litigating for its own personal benefit instead of for the benefit of the estate, time spent on such litigation does not benefit the estate and should not be allowed. *In re Estate of Halas*, 159 Ill. App.3d 818, 832 (1st Dist. 1987). *Halas*, 159 Ill. App.3d at 833 (1st Dist. 1987) (denying fees requested for drafting fee petition). The trial court allowed fees for FMS in three areas which did not benefit the Estate–responding to a Rule 137 Motion against counsel itself; responding to an IDFPR complaint

against administrator Midland outside of probate entirely, and filing factually false charges against Dr. Rao (which ed to the sanctions motion). None of these fees incurred benefited the Estate in any way, and under *Halas* they are not allowed.

WHEREFORE, Dr. Padma Rao requests that her Petition for Leave to Appeal under Rule 315 be granted.

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