

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D25219  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 28, 2009

STEVEN W. FISHER, J.P.  
FRED T. SANTUCCI  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

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2009-00504

DECISION & ORDER

In the Matter of Richard McNeil, deceased.  
James H. Cahill, Sr., nonparty-appellant;  
Mary McNeil, respondent.

(Index No. 2617/99)

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Cahill & Cahill, Brooklyn, N.Y. (James H. Cahill, Sr., pro se, of counsel), for nonparty-appellant.

Seth Rubenstein, P.C., Brooklyn, N.Y., for respondent.

In a proceeding to settle the final account of the administrator of the estate of Richard McNeil, James H. Cahill, Sr., the guardian ad litem of Raven Tiara McNeil, appeals, as limited by his brief, from so much of a decree of the Surrogate's Court, Kings County (Johnson, S.), dated November 19, 2008, as awarded him a fee in the sum of only \$4,995 and, in effect, denied him an award of disbursements.

ORDERED that the matter is remitted to the Surrogate's Court, Kings County, to set forth the factors considered and the reasons for its determination with respect to the appellant's request for an award of a guardian ad litem's fee, and the appeal is held in abeyance in the interim. The Surrogate's Court, Kings County, shall file its report with all convenient speed.

“A guardian ad litem is entitled to reasonable compensation for services rendered in estate matters, as determined by the Surrogate . . . The value of those services is governed by the factors applicable

December 1, 2009

Page 1.

MATTER OF McNEIL, DECEASED

to the determination of the value of legal services . . . The relevant factors are the nature and extent of the services, the actual time spent, the necessity therefore, the nature of the issues involved, the professional standing of counsel, and the results achieved” (*Matter of Morris*, 57 AD3d 674, 675 [internal citations omitted]).

Here, the Surrogate, in both the decision and the decree, failed to explain her reasoning for the guardian ad litem’s fee award and made no reference to any of the above factors. Accordingly, we remit the matter to the Surrogate’s Court, Kings County, for the purpose of setting forth the factors considered and the reasons for its award (*see Matter of Audrey J. S.*, 34 AD3d 820, 821; *Matter of Martha O.J.*, 22 AD3d 756, 757; *Matter of Catherine K.*, 13 AD3d 534, 536).

We decide no issues at this time.

FISHER, J.P., SANTUCCI, DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court