

Matter of Kinley

2007 NY Slip Op 32523(U)

August 5, 2007

Supreme Court, Albany County

Docket Number: 0005192/0061

Judge: Joseph C. Teresi

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In the Matter of the Petition for a Compulsory
Accounting of Mary L. Kinley 1989 Trust,
created under Agreement dated December
14, 1989 as amended.

DECISION and ORDER
RJI NO.:01-06-084580
INDEX NO.: 519-06

Albany County Supreme County All Purpose Term, May 29, 2007
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioner, Linda McCall as Guardian of the Person of Mary L. Kinley, brings this motion for an award of attorney's fees from her action to compel an accounting from Respondent, KeyBank National Association as Trustee of the Mary L. Kinley 1989 Trust (hereinafter the Trust). As per this Court's April 26, 2007 Order, Petitioner has filed an affidavit of services. Respondent opposes the motion.

After fully reviewing the record, this Court grants Petitioner's motion for attorney's fees as modified, awarding Petitioner \$71,200.00 in fees and \$4,566.29 in disbursements.

On December 6, 2000, this Court appointed Petitioner to be the Guardian of the person of

Mary L. Kinley, but specifically did not grant her financial guardianship over the Mary L. Kinley 1989 Trust. The Guardianship Order granted Linda McCall “authority to direct Key trust Company as attorney-in-fact under Power of attorney dated May 3, 1995 and as Trustee of the Mary L. Kinley Trust... to pay for the care and maintenance of Mary L. Kinley.” Petitioner, as Mary L. Kinley’s Guardian is required to examine all relevant circumstances, including financial circumstances in order to determine the best care, treatment and place of residence for Mary L. Kinley. After several a lengthy disputes with Respondents regarding the use of Trust assets Petitioner demanded an accounting of Trust assets on the grounds that she required the information to make financial decisions regarding the care of her ward. Respondent refused, arguing that Petitioner did not have standing to compel an accounting. On March 10, 2006 this Court denied Petitioner’s motion to compel an accounting. On October 19, 2006, the Appellate Division, Third Department reversed this Court and held that, as the personal Guardian of Mary L. Kinley, Petitioner did have standing to compel an accounting in Mary L. Kinley’s stead.

The current matter before this Court concerns Petitioner, as the personal Guardian of Mary L. Kinley, seeking an award of \$108,437.50 in attorney’s fees and \$6,920.77 in disbursements incurred in the proceeding for the compulsory accounting and subsequent appeal. Petitioner claims that if Mary L. Kinley were of sound mind and brought the suit for an accounting herself, she would be entitled to have her attorney’s fees paid for from Trust assets. On March 19, 2007, this Court found that regardless of whether Mary L. Kinley could, herself, demand payment of these attorney’s fees, Petitioner, as Mary L. Kinley’s personal Guardian, is entitled to reasonable attorney’s fees for the underlying action. In that same March 19, 2007 Order, this Court expressed concerns regarding the amount of legal fees in question.

Specifically, Petitioner presented a bill for \$111,762.50 in attorney's fees without listing any of the services rendered or hourly rates, thereby giving this Court no means to review the propriety of the fees. Rather than deny legal fees, this Court Ordered that Petitioner present this Court with an affidavit of legal services.

On April 26, 2007 this Court rejected Petitioner's affidavit of services as facially invalid because it described services associated with the accounting co-mingled with legal services relating to Petitioner's annual reports as a personal guardian and relating to a dispute regarding land owned by the Mary Kinley Trust; matters outside the scope of this Court's March 19, 2007 Order granting attorney's fees and also outside the scope of Matter of Greatsinger (67 NY2d 177 [1986]) upon which Petitioner's entitlement to attorney's fees relies.

In the current motion, Petitioner has submitted an affidavit of services associated solely with the accounting, amounting to \$108,437.50 in attorneys fees and \$6,920.77 in disbursements. Respondent objects, contending that such fees are overall excessive and notes a few points of excess. For instance, included in Petitioner's \$6,920.77 of disbursements are payments to drivers to chauffeur their attorneys, several federal express and messenger deliveries, the use of Counsel Press (a convenient, but expensive method of reproducing the Record on Appeal), an over statement of the cost of an index number by \$45 and an unexplained disbursement of \$156 to Nancy H. Reisman, Esq. For "litigation expenses." Accordingly, this Court grants Petitioner's a modified \$4,566.29 in disbursements.

Respondent also opposes the requested \$108,437.50 in attorney's fees, noting that both the hourly rate and the time spent are unreasonable. Although, a significant amount of time was spent by Petitioner's attorneys, it was not per se unreasonable. However, New York Courts and

the Northern District of New York have determined on a consistent basis that the prevailing rates for experienced attorneys with numerous years of practice is \$175 per hour, \$125 for attorneys with four or more years of experience, \$100 for attorneys with less than four years of experience and \$65 per hour for work performed by paralegals (*See, New York State Teamsters Conference Pension & Retirement Fund v. United Parcel Service, Inc.*, 2004 WL 43747 [ND NY, Feb 27, 2004]; *DiSorbo v. City of Schenectady*, 2004 WL 115009 [ND NY Jan 9, 2004]; *Daimler Chrysler Corporation v. Karman*, 5 Misc3d 567 [Albany County Supt Ct. 2004]). Accordingly, Respondents are entitled to the following rate of compensation: Richard J. Miller, Esq. \$175 an hour, Judith Dillon Segreti, Esq. \$175 per hour, Karen B. Lukas, Esq. \$175 per hour, Nancy H. Reisman, Esq. \$175 per hour, Elizabeth Ingold, Esq. \$100 per hour and Sarah M. Biscone, Esq. \$125 per hour. This amounts to \$71,200.00.

Accordingly, this Court grants Petitioner's motion for attorney's fees as modified, awarding Petitioner \$71,200.00 in fees and \$4,566.29 in disbursements.

All papers, including this Decision and Order, are being returned to the attorney for the Petitioner. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED!

Dated: July ~~2007~~ August 5, 2007

Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Petitioner's Affidavit, dated May 9, 2007.
2. Respondent's Opposition, dated May 22, 2007 with Attached Exhibit A.
3. Petitioner's Reply, dated May 29, 2007.