

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR**

Conservatorship of the Person and
Estate
of ROBERT FEIST.

FRUMEH LABOW, as
Conservator, etc.,

Petitioner and Respondent,

v.

MARC B. HANKIN et al.,

Claimants and Appellants.

B149324

(Super. Ct. No. SP003455)

APPEAL from an order of the Superior Court of Los Angeles County,
Robert Letteau, Judge. Reversed.

Evan D. Marshall for Claimants and Appellants.

No appearance for Petitioner and Respondent.

INTRODUCTION

Appellants Marc B. Hankin and Law Offices of Marc B. Hankin (hereinafter collectively referred to as Hankin) represented professional conservator Frumeh Labow in conservatorship proceedings regarding Robert Feist, an elderly gentleman who was subjected to elder abuse. After two years of rendering legal services, Hankin requested statutory attorney fees. He appeals from the order awarding attorney fees, contending that the deficient amount awarded was unsupported by the record and was the product of bias on the part of the trial court. Because we agree, we reverse the order, remand the matter to the trial court, and order that the matter be transferred for further consideration by the Central District of the Superior Court.

FACTUAL AND PROCEDURAL BACKGROUND

The Conservatorship Proceedings

Robert Feist (Feist), 79 years old and suffering from memory dysfunction and dementia, was being cared for by Lee Lane (Lane), who began living in his home in August 1996. Friends and family became concerned that Lane was not adequately caring for Feist, was verbally and emotionally abusive toward him particularly when she was drunk, and was mismanaging his finances. Lane began isolating Feist and limiting his contact and communications with others.

Adult Protective Services (APS) was informed of Feist's circumstances, and APS contacted Hankin. Hankin met with Feist and his brother, Bruce Feist. They told him Lane had obtained a durable power of attorney from Feist and had used it

without his consent, and had been making frequent withdrawals from Feist's bank accounts with his ATM card.

In mid-September 1997, Hankin filed on behalf of professional conservator Frumeh Labow a petition for her appointment as conservator of Feist's person and estate. Labow was appointed temporary conservator. Hankin also successfully brought an ex parte motion for an order suspending all powers of attorney held by Lane or her mother pending the ruling on the petition for appointment of a permanent conservator.

In late September 1997, Lane and Feist got married in Las Vegas. Although Lane tried to prevent Feist from having contact with others, his long-time friend Ralph Delli-Bovi found out about the marriage. Delli-Bovi saw that Feist's bedroom was extremely filthy, while Lane's living quarters were clean and tidy. Delli-Bovi spoke with Feist and found his memory had deteriorated, and that he was amenable to a conservatorship that would limit Lane's involvement in his financial affairs. Lane had been taking large sums of cash out of Feist's bank accounts, using his ATM card. Labow found out that Lane had hired an attorney, Mitch Rosen.

Hankin filed a petition for an order determining that Feist lacked the capacity to hire counsel because of his mental deficits, an ex parte petition seeking appointment of a Probate Volunteer Panel (PVP) attorney for the conservatee and to restrain Attorney Rosen from performing any legal services pending a determination of Feist's capacity to hire counsel, and an ex parte petition for appointment of an independent psychiatric medical examiner pursuant to Evidence Code section 730.

Rosen filed opposition to the ex parte petition seeking to restrain him from representing Feist. He stated in a declaration that he had been retained by Feist, and had interviewed him alone. He requested authority for Feist to retain him as

his attorney in the conservatorship proceedings. Rosen opined that Feist might need a conservator of his estate but had the capacity to choose his own caregiver. Rosen filed an ex parte petition to remove Labow as temporary conservator and to dismiss in-home caregivers employed by Labow to care for Feist.

Hankin also filed a petition on behalf of Labow as temporary conservator for an order compelling Lane to file an accounting of her use and management of Feist's assets. Further, Hankin successfully filed a petition seeking to compel Lane to answer interrogatories and requests for admissions, and to produce documents. (Prob. Code, § 2617.) The trial court ordered Lane to appear on November 21, 1997.

The trial court appointed Irwin Goldring as PVP attorney to represent Feist. He filed a report on November 19, 1997, recommending that the conservatorship petition be granted and Labow be made conservator of Feist's person and estate. Goldring said it was obvious that Feist had impaired short-term memory, and had little understanding regarding his assets. He was confused as to who various people were, including Attorney Rosen. Goldring opined that it was in Feist's best interests that an independent party have control over his finances and have the responsibility of monitoring his physical well being.

Lane filed a declaration admitting she was a recovering alcoholic but denying the allegations that she was violent when drunk or ever inflicted harm on Feist. She denied that she was taking financial advantage of Feist, and said he insisted on paying for her necessities since she did not receive a salary for caring for him. Feist told her he was happier with her around than he had been in years, and intended to leave the house to her in his will in return for her continuing to stay and care for him. Her attorney father had advised her to have Feist put his intentions in writing in a will or trust. She asserted that she had drastically

improved the cleanliness of Feist's home and had done as much cleaning as he would allow her to do.

After a contested hearing on November 21, 1997, the trial court appointed Labow as conservator of Feist's person and estate. Goldring suggested to the court that while Feist probably lacked the capacity to retain counsel, it was appropriate to allow Rosen to address the court and unnecessary to decide the issue of Feist's competence. Accordingly, the court denied without prejudice the petition to determine whether Feist lacked the capacity to retain counsel. Lane was ordered to provide responses to discovery by mid-January 1998 and to prepare an accounting within 60 days. The court denied the petition for Lane's appointment as Feist's conservator. Letters of conservatorship were issued on November 25, 1997.

When Lane failed to provide discovery responses, on February 6, 1998, Hankin filed a request for an order to show cause to Lane and her new attorney, Fred Browne, to compel discovery responses. Hankin also requested that Lane be compelled to provide the overdue accounting. The court issued the order and scheduled a hearing for March 20, 1998.

In late February 1998, Hankin filed on behalf of Labow as conservator a petition for instructions to file a petition to dissolve Feist and Lane's marriage because he lacked the requisite capacity to marry her. (Prob. Code, § 2403.) Accompanying the petition was a declaration dated September 1997 prepared by psychiatrist Dr. Alan Schneider, who examined Feist in July 1997 and twice thereafter. Dr. Schneider said Feist suffered from memory dysfunction, language difficulties, and appeared to demonstrate poor judgment and insight.

Lane, represented by new counsel Richard Caleel, filed opposition to the proposed instructions to petition for dissolution of Lane and Feist's marriage. She contended that she was providing excellent care for Feist, while the conservator was failing to properly provide for Feist and maintain his home. She said she had

turned over all financial documents to the conservator, and that the conservator had failed to provide her with records she needed to provide the required accounting.

Lane served her accounting in late February 1998. She filed a supplemental accounting in March 1998.

The court continued the hearing on the petition for instructions to dissolve or annul the marriage and the OSC until June 26, 1998. Goldring was appointed as PVP attorney for Feist as to those issues. He reported to the court that the conservator was acting properly and recommended Labow remain as conservator. The parties had begun negotiating concerning annulment or dissolution of the marriage; Lane was also seeking to be paid for acting as caregiver to Feist and to gain an interest in Feist's home which would increase based on the time she remained as his caregiver. Pursuant to Goldring's recommendation, the court ordered the parties to meet and confer and again continued the hearing.

Goldring reported to the court in October 1998 that negotiations between the parties had progressed, but Lane was insisting on remaining the beneficiary of three annuities. He recommended that Labow remain as conservator, and that the marriage should be dissolved or annulled. The matter was again continued until January 1999. In his report for that hearing, Goldring repeated his prior recommendation, and recommended that Lane continue as caregiver, that she receive an interest in Feist's home which would vest upon his death, and that she be removed as beneficiary on the three annuities.

On the day before the hearing was scheduled, attorney Culver Van Buren filed an application for an order authorizing him to be retained as counsel for Feist as conservator. The application was denied.

The parties reached a settlement in March 1999. The agreement was incorporated in a stipulation and order on April 5, 1999. It provided that Lane agreed to dissolution of the marriage, and that she would receive an interest in

Feist's home vesting at the rate of 10 percent per year, as of November 1998, for each year during which she served as Feist's caregiver. She was also to receive compensation at the rate of \$95 per day for caring for Feist, retroactive to November 21, 1997, to be increased if the usual per diem for caregivers increased. The issue regarding the annuities was resolved by providing a specific bequest to Lane from Feist's estate to vest over several years. Provision was also made for other contingencies, such as in the event Feist required convalescent care.

During the time the settlement negotiations were taking place, Lane knew she was pregnant, but did not reveal that fact. She gave birth in September 1999. Labow hired new caregivers for Feist, funding Lane incapable of providing fulltime care.

Feist was examined by Dr. Samuel Park, who reported that Feist suffered from moderate dementia and had no insight into his situation. He was emotionally agitated by his relationship with Lane, and extremely jealous and angry over her other romantic involvements. Dr. Park concluded that Lane should be replaced as Feist's caregiver.

As a result of these changes, Hankin filed on Labow's behalf a motion and ex parte motion to vacate the settlement and discharge Lane, contending the settlement agreement was procured by deceit and concealment on Lane's part, and because she was incapable of fulfilling the settlement terms.

Goldring reported to the court in October 1999 that Lane had not cooperated with regard to dissolving the marriage. As to the settlement, he stated that he never would have agreed to it had he known she was pregnant. Lane filed opposition, stating she remained capable of caring for Feist and that the conservator had frustrated her efforts to care for Feist. She opposed being removed as his caregiver and vacating the settlement agreement, although she admitted her child was not Feist's.

Goldring filed a supplemental declaration. He stated that Lane was not cooperating with the dissolution proceedings. He opined that by marrying Feist she intended to take financial advantage of him, and that Lane thought her child would have some presumed claim to Feist's estate.

After additional negotiations, a new settlement agreement was reached by the parties (the terms of which are not before us) and approved by the court in April 2001.

Hankins's Request for Fees

On December 21, 1999, Labow as conservator filed a first and final account and report of temporary conservator and first account of conservator, which included a request for conservator fees and attorney fees. Hankin requested compensation totaling \$62,539.75, plus \$1,280.03 in costs for legal services rendered from September 11, 1997 through December 11, 1999. Attached to the request were time records detailing the legal services rendered, which totaled 275 hours, charged at the rate of \$275 per hour for Hankin's services and \$100 per hour for paralegal time. Hankin also sought \$1,600 in compensation for attorneys he consulted regarding the marital dissolution issues involved in the case. The value of Feist's estate was over \$1.2 million.

Hankin included in his declaration a statement regarding the public policy involved in awarding fees in conservatorship cases. "It is common in our industry for Conservators and their lawyers to do less than is necessary in a litigation context such as this one. This is because Conservators and their lawyers expect to be told by the Court that they cannot get their normal hourly rate (which the Court normally finds to be a reasonable hourly rate) when the litigation has dragged on and the fees have mounted. [¶] ... It is the Court's practice of cutting the fees of

Conservators and their lawyers. That is perhaps the strongest weapon in the arsenal of those people who abuse the elderly for profit as a regular business practice. That practice discourages work by the fiduciaries and encourages the 'perps' to drag out the litigation. [¶] . . . The public policy of favoring access to the courthouse door to vindicate the rights of people who have been abused is suffering from a lack of confidence in the Bar and in professional conservators that they will be paid adequately for their time."

Goldring filed a report and recommendation on February 24, 2000, in which he recommended that the first account of the conservator be approved, and that Hankin's fee request should only be approved for services rendered through the end of August 1998 (the end of the initial accounting period), which fees totaled \$31,250. Hankin agreed with that recommendation.

Labow filed a supplement to the first account, covering fees for the period of September 1, 1998 through December 31, 1999. Goldring filed a further report recommendation in which he stated: "I am very familiar with the time and effort of both the conservator and her counsel in this very difficult case and I recommend to the court, specifically, the fees requested."

The matter came on for hearing on June 2, 2000, before Judge Robert Letteau. The court approved in full the conservator fees in the amount of \$49,397. It then stated that it would place at the end of the calendar discussion regarding the request for attorney fees, "because it is going to take some considerable discussion." The court further stated: "We are talking about an estate of a million dollars. I don't need to know more about the hearings. We are spending a lot of money on attorney's fees. I know Mr. Hankin here, he has requested over \$60,000 for this two-year period. And certainly he is entitled to some fees, but I'm not going to just sign off like a blind check on \$62,000 even though, and I know, Irwin [Goldring], you are satisfied the fees have been earned, but I do want to talk about

results, the pregnancy, Colonel Feist, you know, there, are a lot of things that I need to know about. And it may well be that I am never going to approve it. In fact, I have to tell you, I doubt I am going to ever approve the request made for \$62,000 in fees."

The court made reference to the public policy statements included in Hankin's declaration, stating that the court wanted to talk about Hankin's comments "in which he really ascribes elder abuse to the court" based on the court's not "giv[ing] the lawyers enough money," saying that such comments are not fair. The court then said, "because of your concerns and your comments that somehow the court is contributing to elder abuse, I intend to circulate this [Hankin's declaration] so it can be considered by all of my colleagues on the bench." Hankin told the court that many members of the estate planning and probate bar had "indicated a fear of retribution if they let the court know that their fees might be cut." The court responded, "I would like a copy of Mr. Hankin['s] remarks that he just made regarding retribution." The matter was continued for further hearing because the conservatee's PVP attorney, Goldring, and Labow, the conservator, had to leave.

The matter was again heard on June 9, 2000, although Hankin expressed that he had not known the matter was going to be heard, and Goldring was not present. Judge Letteau said he would "probably end up continuing Feist to a further point in time" because he had not yet decided what to do. The court asked Hankin if he would object to the court's talking to Judge Shimer, who had initially presided over the matter. The court then said, "I'll probably end up putting this over for a couple of months at some point in time, because you are asking for 60-some thousand dollars in fees, derived in significant part from the work that was done by you while Judge Shimer was presiding over the case.... I'll probably end up

appointing a referee that can then talk to Judge Shimer." The court invited Hankin to submit the name of a referee.

At the next scheduled hearing on June 23, 2000, Hankin asked that the fee matter be placed off calendar, as he was prepared to file a motion for the court to recuse itself due to bias against him based on the court's comments at the hearing on June 2, 2000. The court replied that he had had months to file such a motion, and denied the motion to place the matter off calendar to permit filing a motion for recusal. The court stated its opinion that a lot of time was spent on court appearances, and directed Hankin to prepare a brief synopsis of what was accomplished at each hearing, and file it by August 1, 2000. The court also directed Hankin to submit the names of possible referees to review the voluminous time records. Hankin objected to the appointment of "Judge [Edward M.] Ross [(Retired)] or another person who would share your view of me." The court replied: "I hadn't thought about Judge Ross, but since you mention it, that would be one possibility." Hankin reminded the court that he had "affidavited" Judge Ross previously.

The conservator informed the court that there had been several lawyers involved representing Lane and attempting to represent Feist before Judge Letteau became involved in the case. The court responded, "That's always influenced me in terms of dealing with fee issues, because I know when you have a bunch of different attorneys on one side, it becomes more difficult and consumes more time when you basically are having to educate a series of lawyers."

The conservator advised the court that if Hankin felt other lawyers could handle certain areas of the litigation more expeditiously, he (Hankin) would ask them to participate in the case. She said: "I can't see where Mr. Hankin spent frivolous time on the case." Goldring added that many of the numerous court appearances and difficulties were made necessary because of Lane's actions.

The court stated: "So I've made the decision since we've had this long discussion, that I will not ever talk to Judge Shimer about this case, even though I think it might have been helpful, productive and constructive. And we'll probably do it in virtually every other situation where there didn't seem to be this personal animus by Mr. Hankie towards the court, which I'm willing to ignore."

Hankin filed his list of eight potential referees, which included Judge Shimer, but not Judge Ross. On July 10, 2000, Judge Letteau issued a minute order stating the request for fees appeared high in amount relative to the size of the estate, covered a period in excess of two years, and encompassed services performed before Judge Shinier, necessitating the appointment of a referee. The court selected Lyn Hinojosa, one of the people proposed by Hankin, but also named Judge Ross to serve as a "second referee/special master."

On July 19, 2000, Hankin filed a Code of Civil Procedure section 170.6 declaration of disqualification of Judge Ross as referee, and a formal objection to the July 10, 2000 minute order appointing the referees. On July 20, 2000, the court issued a minute order rejecting the section 170.6 motion to disqualify Judge Ross, and giving Goldring the opportunity to object to the reference. Goldring filed an objection to the appointment of referees, and noted he had previously filed his report in support of Hankin's fee request based on his belief regarding the affirmative effect of Hankin's services on the preservation of Feist's estate.

On July 25, 2000, the court vacated its order appointing the referees, stating: "In due course and following receipt of documents requested from [Hankin], this Court intends to render its determination of requested attorney fees."

On July 26, 2000, Hankin filed an objection to the court's stated intention of deciding the fee matter without holding a hearing to give him an opportunity to address issues of concern to the court. On the same date, Hankin also filed a motion for an order disqualifying Judge Letteau from deciding the fee request,

based on the court's demonstrated bias. An identical motion was filed after the court advised that the disqualification motion had not been personally served. Hankin filed on August 1, 2000, a summary of the services he had rendered at each hearing. Of the 21 hearings held, Hankin had billed for 11.¹

On August 18, 2000, the court ordered the motion for disqualification stricken on the grounds that it was untimely because the court had presided over the case since at least June 1998, that Hankin lacked standing as he is not a party to the proceedings, and that he had failed to state a basis in either fact or law for the disqualification. The court stated that it was not prejudiced either personally or professionally against Hankin, and had ruled on more than one hundred of his probate-related petitions and fee requests, and rarely if ever reduced his fee request by any significant amount save on two occasions.

On December 14, 2000, Hankin filed an amendment to his request for fees. He noted that his first request covered services up to December 11, 1999, and there had been a year's delay in payment; he therefore requested an additional \$4,882.30, representing 7.5 percent interest, compounded monthly for the period of delay. His amendment brought his total fee request to \$67,422.05.

The matter was set for hearing on December 15, 2000. Hankin learned that the court file was missing and the matter would be continued. He informed the court's probate attorney that he would be out of town and requested a continuance to January 19, 2001, and the probate attorney agreed. Goldring appeared in court on December 15th. The court called the matter, noting it was continued to January 19, but said it was willing to continue the matter for only one week. "I'm willing to put it over a week, but it's a fee order. Everything else has already been resolved. There needn't be any discussion. I can even make the order now, but

¹ Hankin also provided a list of which judge presided at each hearing.

I'm willing to put it over a week. If he can be here, fine. If he can't, it won't make any difference." The matter was continued until December 22, 2000.

Hankin filed an ex parte motion on December 20, 2000, seeking to continue the hearing until a date in January because he was scheduled to be on vacation for the remainder of December.

The matter came on for hearing on December 22, 2000. Hankin was not present. The court ruled that Hankin was entitled to collect fees of \$11,134.71 and reimbursement of his costs of \$1,280.03. The court did not issue a written ruling explaining his reasoning in reaching the fee award, and the record does not contain a transcript of the December 22 hearing.

Thereafter, in February 2001, Goldring filed a petition for PVP attorney fees of \$28,025 for the period of January 15, 1999 to December 31, 2000, at the rate of \$295 per hour (for 95 hours). The court, by Judge Letteau, approved the request at the initial hearing on the matter. Goldring had previously been compensated \$16,151 for services prior to December 12, 1999. Goldring's total compensation thus totaled \$44,176.

This appeal followed.

After Hankin filed his opening brief, Goldring filed a letter stating: "Please be advised that I am. the court appointed attorney for the conservatorship in this matter. I do not intend to file any brief in the matter. The record will reflect that I supported the request for fees of the appellant."

DISCUSSION

Hankin contends on appeal that the trial court abused its discretion by failing to provide a reasoned basis for the amount of the fee award, that the award bears

no rational relation to the services reasonably rendered, and that the trial court was demonstrably biased against him. We agree.

"It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court [Citations.]" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096) In cases of elder abuse, an award of attorney's fees is to be based on `all factors relevant to the value of the services rendered. . . .' (Welf. & Inst. Code, § 15657.1.) A factor which must be specifically considered is `[t]he value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained.' (Id., § 15657.1, subd. (a).)" (*Conservatorship of Levitt* (2001) 93 Cal.AppAth 544, 549.)

As the foregoing recitation of facts demonstrates, the conservatorship proceedings were highly contentious, and marked by Lane's tenacious efforts to maintain control over Feist and gain possession of his assets--stopping at nothing less than a Las Vegas wedding and the birth of a child she apparently thought would be presumed to be Feist's. There is no suggestion anywhere in the record that any of the services rendered by Hankin on behalf of the conservator were unreasonable or unnecessary, or that his hourly rate of \$275 was inordinately high. Indeed, Goldring's rate of \$295 per hour was accepted by the trial court as reasonable and he was awarded the full amount he requested in fees.² Both Goldring and the conservator, Labow, commended Hankin's efforts to the court. Hankin provided the court with detailed time records, and at the court's request, provided a breakdown of all the court appearances he made. Through his efforts

² In contrast to Hankin's 275 hours of work on the matter at the rate of \$275 per hour, Goldring spent 150 hours on the case and charge d \$295 per hour. Hankin spent almost twice as much time and was awarded about one-fourth of what Goldring received. Furthermore, Goldring's fee was ordered paid without delay.

and those of Goldring, Lane was finally stopped and her emotional manipulation of Feist ended.

While the law is clear that the value of an estate is an appropriate factor to consider in setting fees,' the amount of Hankin's fee request was not grossly out of proportion to the size of the estate:³ \$62,000 is slightly over 5 percent of the \$1.2 million Feist estate. (Cf. *Levitt, supra* [reduction of \$72,537 fee request to \$64,000 where estate worth \$370,000, no abuse of discretion found; in companion case reduction of \$82,515 fee request to \$69,000 where estate worth \$130,000, no abuse of discretion found].) Against the backdrop of this record, the trial court's unexplained and drastic reduction of Hankin's fee request--from \$62,539.75 to \$11,134.71--is patently an abuse of discretion.

The one clear impression that emerges from this record is that there was palpable animosity between the trial court and Hankin. In his declaration in support of his request for fees, Hankin had raised the court's ire by stating that the court's practice of cutting fees is used as a weapon by those who abuse elders because they are encouraged to drag out the litigation while the conservators and their attorneys are discouraged from doing all that is necessary to protect the elderly victims. The trial court took this outspoken commentary as a personal affront and stated that Hankin was ascribing elder abuse to the court, even saying that the court would circulate Hankin's remarks to other judges.

Although Hankin's commentary was accusatory and immoderate, he was nonetheless entitled to have his fee request decided by an unbiased court. The court's thinly veiled hostility toward Hankin was manifest: the court said from the

³ "Welfare and Institutions Code section 15657.1 incorporates by reference the factors set forth in rule 4-200 of Rules of Professional Conduct of the State Bar of California, among which is '[t]he amount involved and the results obtained.' (Id., rule 4-200(B)(5).)" (*Levitt, supra*, at p. 549.)

outset that it doubted it would ever approve the fee request for \$62,000; the court appointed as one of two referees the very person to whom Hankin specifically objected; the court denied Hankin's oral motion for disqualification as untimely and unjustified even though his request for recusal was made within less than 30 days from his request for fees;⁴ the court inordinately delayed decision of the fee request for a full year; and ultimately the court refused to continue the hearing on the matter for even a few weeks to give Hankin an opportunity to appear and be heard. Here, the record demonstrates that the trial court's award of attorney fees is tainted by an evident bias against counsel and constitutes a clear abuse of discretion. The matter must be remanded to the trial court for further proceedings.

DISPOSITION

The order is reversed. The matter is remanded to the Supervising Judge, Probate Department, of the Central District of the Superior Court of Los Angeles County for assignment to a judge in the Central District. Under these circumstances, no costs on appeal are awarded.

VOGEL (C.S.), P.J.

We concur:

EPSTEIN, J.

CURRY, J.

⁴ Following the June 23, 2000 hearing in which the court denied Hankin's oral request for disqualification, on July 26, 2000, Hankin filed a formal motion for disqualification and it, too, was denied.