

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of MARGARET LANGLAND,  
Deceased.

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MARION BROWN, JOHN MARTIN, THERESA  
HUGHES, and ELIZABETH MAZELL,

Petitioners-Appellants,

v

MICHAEL MARTIN, MARIO PARLETTA,  
THOMAS P. NORRIS, and CAROL A. MORRIS,  
Successor Personal Representative and Successor  
Trustee of the Estate of MARGARET  
LANGLAND, Deceased,

Respondents-Appellees.

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In re Estate of MARGARET LANGLAND,  
Deceased.

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CAROL A. MORRIS, Successor Personal  
Representative and Successor Trustee of the Estate  
of MARGARET LANGLAND, Deceased,

Petitioner-Appellee,

v

STEVEN G. COHEN, MARION BROWN, JOHN  
MARTIN, THERESA HUGHES, and  
ELIZABETH MAZELL,

Respondents-Appellants.

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UNPUBLISHED  
June 27, 2006

No. 255287  
Wayne Probate Court  
LC No. 02-653718-TV

No. 256134  
Wayne Probate Court  
LC No. 02-653718-TV

In re Estate of MARGARET LANGLAND,  
Deceased.

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CAROL A. MORRIS, Successor Personal  
Representative and Successor Trustee of the Estate  
of MARGARET LANGLAND, Deceased, E.  
MICHAEL MORRIS, ROBERT LITT, MARCIA  
ROSS, and MORRIS & MORRIS, P.C.,

Petitioners-Appellees,

v

No. 258476  
Wayne Probate Court  
LC No. 02-653718-TV

MARION BROWN, JOHN MARTIN,  
ELIZABETH MAZELL, and STEVEN G.  
COHEN, d/b/a COHEN & ASSOCIATES, P.C.,

Respondents-Appellants.

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Before: Cooper, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

In these consolidated appeals,<sup>1</sup> the heirs and their counsel appeal as of right from the trial court's orders granting attorney fees and costs in this will contest action. We affirm.

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<sup>1</sup> In Docket No. 255287, petitioners, Marion Brown, John Martin, Theresa Hughes, and Elizabeth Mazell (collectively designated as "heirs"), represented by their attorney, Steven G. Cohen ("Cohen"), appeal as of right from the probate court order granting attorney fees and costs in the amount of \$30,064.41 to respondents Mario Parletta ("Parletta") and Thomas P. Norris ("Norris") for legal representation provided by their attorneys in the challenge to the appointment of Parletta as personal representative and trustee for the decedent's estate. In Docket No. 256134, the heirs and their counsel, Cohen, appeal as of right from the probate court order granting petitioner Carol Morris' ("Morris") request for payment of fees, costs, and sanctions, in the amount of \$18,642.50 incurred in her capacity as the successor personal representative and the successor trustee of decedent's estate. The heirs also challenge the award of \$11,297.81 in fees and costs provided by E. Michael Morris of Morris & Morris, P.C., on behalf of Morris in her capacity as successor personal representative and trustee. In Docket No. 258476, the heirs and Cohen appeal as of right from the probate court order granting petitioners, Morris and E. Michael Morris, additional attorney fees and costs in the amount of \$7,068 and \$11,745.50, respectively, and the holding that the awards of costs and attorney fees were to be given priority for payment of fee claims from the decedent's estate.

The heirs alleged that during Margaret Langland's lifetime, Parletta and Norris improperly influenced her to prepare an estate plan that gave the majority of any assets to Parletta.<sup>2</sup> The heirs further alleged that after Margaret Langland's death on June 27, 2002, Parletta improperly exercised control over her assets. The heirs allegedly were required to file proceedings in the probate court to obtain information regarding the available estate assets and to preclude Parletta's alleged conversion of estate assets. Although the heirs moved the probate court to remove Parletta as trustee, the probate court refused, noting that assets were contained within the estate and the only expenditure by Parletta was the cost of the funeral. The probate court never found cause to remove Parletta from his fiduciary position. However, Parletta ultimately was unable to continue in his fiduciary capacity when he could not obtain a bond, and Morris was appointed by the probate court as the successor trustee and personal representative.

Despite the allegations of a conspiracy and improper conduct by Parletta and Norris, the heirs agreed to enter into a settlement agreement. On July 18, 2003, Cohen, acting on behalf of the heirs, sent a letter containing the terms of a counteroffer presented by the attorney for Parletta and Norris, and this letter indicated that the counteroffer was accepted:

As I understand it, your counteroffer contains the following terms:

1. Respondents are to receive two-thirds of the Henry Ford Village proceeds and the Petitioners [heirs] are to receive the remainder of the probate, trust and other assets of Margaret Langland;
2. The two-thirds Henry Ford Village proceeds are to be distributed to Respondents immediately;
3. Respondents are to receive full releases of liability from all necessary persons; and
4. Administrative costs relating to this matter, including those related to the successor trustee, Ms. Morris, are to be paid by Petitioners.

With this understanding, the counteroffer of Respondents is accepted.

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<sup>2</sup> The heirs provide a detailed factual statement regarding the relationship between Parletta, Norris, and Langland, and the circumstances surrounding the execution of an estate plan, relying on deposition testimony. Appellate review is limited to the record established in the lower court, and a party may not expand the record on appeal. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Because of the limited appellate review, the appellants have the duty to ensure that the record on appeal is complete. See *Band v Livonia Associates*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). We do not consider any alleged evidence proffered by the parties for which there is no record support. *Id.* Although the lower court docket entries indicate nearly two hundred and fifty events reflecting the filing of pleadings, orders, or motion hearings, the record on appeal consists of transcripts and duplicate copies of some orders filed by the lower court. Consequently, we have limited our review to the information contained in the lower court record. There is no indication in the docket entries that the depositions were filed in the lower court.

The parties could not agree on the language of the settlement agreement. Correspondence between the parties indicated that Cohen objected to attorney fees and costs requested by Parletta covering the time period when he acted as a fiduciary for the estate. A hearing was held before the probate court, and the court concluded that the language of the counter offer addressed administrative costs that include costs and attorney fees. Consequently, the probate court entered a written order delineating the settlement agreement that provided: “All administrative costs shall be paid by the estate.”

Despite the entry of the settlement agreement, the parties continued to debate the propriety of costs and attorney fees. The probate court allowed the heirs to engage in discovery regarding the charged costs and attorney fees. Further, the probate court held evidentiary hearings regarding the costs and attorney fees to be paid by the estate. However, during the hearings, Cohen would repeatedly challenge facts and proceedings that occurred before the settlement agreement. The probate court repeatedly had to admonish Cohen to elicit information that was relevant to the issue at hand. As the proceedings continued, the exchanges between the parties’ attorneys became acrimonious. The probate court’s comments to Cohen also indicated a level of frustration regarding the content of the hearings and the need for additional hearing time. The probate court at various points during the proceedings sanctioned Cohen for failing to abide by the court’s rulings and the filing of frivolous pleadings. The sanction imposed resulted in an award of costs and attorney fees for the attorneys opposing Cohen. The heirs challenge the awards of costs and attorney fees in these consolidated appeals.

As a result of the acrimonious nature of the proceedings, Cohen apparently orally requested that the probate court sua sponte disqualify itself. The probate court acknowledged the deficiencies in the motion,<sup>3</sup> but ultimately denied the request. The chief judge of the probate court also denied the motion for disqualification. See MCR 2.003(C)(3)(a). The heirs also challenge the denial of the motion for disqualification on appeal.

The heirs first allege that the settlement agreement did not provide for a claim of costs and attorney fees by Parletta, the probate court denied them due process by failing to allow full discovery and evidentiary hearings regarding this claim, and the probate court’s factual findings and conclusions of law were deficient. We disagree. This court reviews a trial court’s decision regarding attorney fees and costs for an abuse of discretion. *Kernen v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002). An agreement to settle a pending lawsuit constitutes a contract, and the agreement is governed by the legal principles applicable to interpretation and construction of contracts. *Columbia Associates v Dep’t of Treasury*, 250 Mich

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<sup>3</sup> The applicable court rule indicates that a motion to disqualify must be filed within fourteen days of discovering the grounds for disqualification in order to avoid delaying the trial or inconveniencing the witnesses. MCR 2.003(C)(1). A written motion was never filed. The probate court noted that the motion was not raised within fourteen days of discovery of the basis for the disqualification. Moreover, the probate court repeatedly held that Cohen was engaging in delay tactics and inappropriately causing the heirs to incur additional fees. An affidavit delineating the grounds for disqualification did not accompany the motion as required by the court rule. MCR 2.003(C)(2). Despite these deficiencies, the probate judge and chief probate judge entertained the motion and denied the requested relief.

App 656, 668; 649 NW2d 760 (2002). The goal of contract construction is to determine and enforce the parties' intent based on the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2001).

Review of the documentation reveals that attorney for the heirs, Cohen, sent a letter to opposing counsel delineating the terms of the settlement between the parties. This letter stated that: "Administrative costs relating to this matter, including those related to the successor trustee, Ms. Morris, are to be paid by Petitioners." When a dispute arose regarding the extent of the payment of costs and attorney fees, the probate court concluded that administrative costs involving an estate matter include attorney fees and costs. Therefore, the probate court entered a written order providing that "All administrative costs shall be paid by the estate."

We cannot conclude that the probate court erred in its interpretation of the contract based on the terms expressed in the counter offer. *Columbia Associates, supra*. The documents comprising the settlement agreement, while specifically including the administrative costs incurred by Morris, neither limit nor restrict payment to only those administrative costs. The use of the term "all" indicates an intent that any administrative costs incurred "relating to this matter" are to be paid by "petitioners [heirs]." Hence, the probate court's ruling that "the costs in determining whether or not the documents were valid, and pursuing all of that is included in the administrative costs, and therefore, are to be paid," is in full accord with the terms of the settlement. Additionally, the settlement agreement is not dispositive on this issue. The entitlement to fees and costs incurred for administration of the estate, and in defending the validity of the testamentary documents in conjunction with Parletta's appointment as a fiduciary, are governed and permitted by statute, leaving only the reasonableness of the fees, not their award, to be the only legitimate issue. MCL 700.7401(2)(v); MCL 700.3720.

Cohen does not contest the terms utilized in the counter offer, but rather, admits that "some loose language" was conveyed in the acceptance letter. It is further alleged that what the heirs and Cohen "meant, but did not convey very well" was that they intended to take over administration of the estate from Morris immediately after distribution and would be responsible for all administrative costs of the matter incurred to close the various estates. This acknowledgement of inartful drafting does not provide a basis to disregard the plain language of the settlement agreement. Opposing counsel relied upon the terms utilized in the settlement agreement and was unaware of what Cohen "meant, but did not convey very well." Moreover, the heirs fail to cite any authority in support of their request that this Court disregard the plain language of the settlement agreement. "A party may not simply announce a position and leave it to this Court to discover the basis for his claims and serve for authority to sustain his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

The assertion by the heirs that the probate court violated due process by restricting the scope of hearings and by the "sua sponte" issuance of dispositive rulings is disingenuous. The only sua sponte rulings by the probate court involved the award of sanctions, which is fully authorized by MCR 2.114(E) and (F). The issuance of sanctions is mandatory and not discretionary. MCR 2.114(E). Furthermore, a judge's authority is unrestricted with regard to "the proper conduct and administration of the court in which the judge presides." MCR 9.205(A). The restrictions imposed by the probate court were attributable to Cohen's repeated insistence upon arguing the merits of motions or his position, on behalf of the heirs, despite prior instructions or rulings by the court to limit areas of inquiry or testimony. It is undisputed that a

“trial judge is empowered to control proceedings in the court and, if necessary, to punish for contemptuous behavior.” *In re Peisner*, 78 Mich App 642, 643; 261 NW2d 30 (1977); MCL 1701. See also, *In re Hocking*, 451 Mich 1, 23; 546 NW2d 234 (1996).

The heirs’ assertion that due process was violated cannot be substantiated, given the probate court’s provision of multiple evidentiary hearings to Cohen in response to his objections. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *In re Estate of Adams*, 257 Mich App 230, 234; 667 NW2d 904 (2003) (citation omitted). The refusal of the probate court to unnecessarily prolong proceedings, or to permit duplicative or previously determined irrelevant testimony or evidence, is within the discretion of the court and not a violation of due process. The probate court “complied with all due-process requirements by giving petitioner full and ample opportunity to present its position to the court by hearings and by briefs.” *Id.* Cohen had a full opportunity for hearing. The fact that he misused the hearings is not violative of due process.<sup>4</sup> Moreover, on the limited record available, we cannot conclude that the probate court’s factual findings and conclusions of law were deficient. The trial court has the inherent power to award costs and attorney fees as a sanction. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 637-639; 607 NW2d 100 (1999). In this case, the probate court awarded costs and attorney fees to sanction Cohen for his repeated failure to abide by the probate court’s rulings and his interjection in the proceedings of issue that the probate court had determined were resolved. The pleadings filed by the heirs fail to distinguish between administrative costs incurred in administering the estate and the costs and attorney fees awarded as sanctions. Moreover, the pleadings fail to challenge any specific costs or attorney fee imposed. Therefore, the pleadings are insufficient to raise a challenge on appeal. *Wilson, supra*.

Secondly, Cohen and the heirs allege that the probate court erred in granting attorney fees to Morris and Michael Morris and the amount of fees awarded. Equitable principles govern probate court proceedings, and appeals are on the record and not de novo. MCR 5.802(B)(1); MCL 600.866(1); *In re Green Charitable Trust*, 172 Mich App 298, 331; 431 NW2d 492 (1988). Factual findings of the probate court are reviewed for clear error, *In re Webb H Coe Marital and Residuary Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999), substantive determinations, including a decision to surcharge a fiduciary, are reviewed by this Court for an abuse of discretion. *In re Rice Estate*, 138 Mich App 261, 270; 360 NW2d 587 (1984). Additionally, this Court’s review of the imposition of sanctions for “frivolous claims” is for clear error. *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002).

It is well-recognized that fiduciaries, MCL 700.3719(a); MCL 700.7503(2), and attorneys are entitled to reasonable compensation for necessary legal and administrative services performed on behalf of an estate or a personal representative. MCR 5.313(A); MCL 700.3722;

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<sup>4</sup> The appeal is governed by the issues raised in the statement of questions presented. MCR 7.212(C)(5); *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995). There was no argument or issue in the statement of questions presented to distinguish between any award for services provided to Parletta as opposed to Norris, and therefore, we do not address it.

MCL 700.3715(v); MCL 700.7401(2)(v). While a probate court may exercise broad discretion in determining the amount that comprises a reasonable compensation, *In re Krueger Estate*, 176 Mich App 241, 248; 438 NW2d 898 (1989), that discretion is not unfettered. Specifically, MCR 5.313 requires that, “In determining the reasonableness of fees, the court must consider the factors listed in MRPC 1.5(a).” When evaluating a fee petition, the probate court must review the requested attorney fees for reasonableness with a commensurate focus on preserving the assets of the estate for the beneficiaries. *In re Sloan Estate*, 212 Mich App 357, 364; 538 NW2d 47 (1995). Specifically, legal services that are rendered on behalf of an estate are compensable if the services confer a benefit to the estate through either increasing or preserving the estate’s assets. *Id.* at 362.

Cohen asserts that Morris was overcompensated by the probate court based on her dilatory performance as a fiduciary. This allegation was reviewed and rejected by the probate court on more than one occasion. Because Cohen has failed to demonstrate clear error regarding this portion of the probate court’s rulings, there exists no viable issue with respect to Morris’ entitlement to reimbursement for attorney fees and administrative fees incurred in accordance with MCL 700.3722, MCL 700.3715(v) and MCL 700.7401(2)(v).

The real issue comprises an assertion by Cohen that the probate court improperly awarded compensation to Morris and Michael Morris that was not properly recoverable because it constituted “fees for fees.” *In re Sloan Estate, supra* at 360-364. This Court has defined “fees for fees” claims as claims that have been brought on behalf of the attorney seeking those fees. *In re Sloan Estate, supra* at 363. In *Sloan*, this Court determined that such fee claims neither increased nor preserved an estate’s assets and that an estate may not be diminished to pay for such ordinary costs and fees incurred. *Id.* Specifically, this Court has determined that such costs:

[A]re inherent in the normal course of doing business as an attorney, and the estate may not be diminished to pay those fees and costs. [*In re Sloan, supra* at 363.]

However, an exception applies:

[W]here *extraordinary* fees and costs are incurred because of an opposing party’s fraud, unjustified objections raised in bad faith, or other extraordinary circumstances, the probate court is authorized to impose appropriate sanctions via various fee-shifting mechanisms. [*Id.* at 363 n 2, citing MCR 5.114; MCR 2.114(B) – (F).]

Extraordinary circumstances existed to support the probate court’s award of attorney fees as sanctions. MCR 2.114(E), (F); MCR 5.114(B)(2). Cohen’s behavior unnecessarily prolonged the time necessary to resolve the estate and directly resulted in the incurrence of exorbitant attorney fees through his repeated objections, demands for evidentiary hearings, and ongoing failure to abide by probate court directives regarding the conduct and parameters of the proceedings. Cohen clearly was incapable of distinguishing between making and preserving a record for appellate review from merely beating a dead horse. In light of the extraordinary circumstances, the probate court did not err in awarding sanctions as measured by costs and attorney fees.

In reference to Cohen's assertions on appeal of due process violations by the probate court, this Court notes the plethora of hearings afforded to Cohen, which he either abused or failed to use to his clients' advantage. In addition, there is no basis to Cohen's assertion that the probate court's limitation of discovery resulted in due process violations, because a trial court may limit discovery to relevant issues. *Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 35; 654 NW2d 610 (2002). The probate court frequently afforded Cohen leeway in his questioning of witnesses, restricting only repetitive questioning or the pursuit of evidence the probate court deemed irrelevant or duplicative based on its prior findings or rulings. Cohen failed to demonstrate wrongdoing by Morris. Without proof to substantiate his allegations of wrongdoing, there was no basis for Cohen's argument regarding a fee offset. For the probate court to have continued to permit repetitive and prolonged discovery, based solely on conjecture and vague allegations of wrongdoing, would have been tantamount to promoting and encouraging an impermissible fishing expedition. *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004); see also, *In re Hammond*, *supra*, p 386. As such, Cohen fails to demonstrate a viable claim that the probate court violated due process by defining the parameters of discovery. In addition, this Court determines Cohen's allegations to comprise merely an assertion of due process violations without any substantive discussion of the purported behaviors comprising the violations and without any discussion or citation to relevant or applicable law. "A party may not simply announce a position and leave it to this Court to discover the basis for his claims and serve for authority to sustain his position." *Wilson*, *supra*.

Lastly, the heirs and Cohen assert that it was error to deny their request for disqualification of the probate judge. Because the motion for disqualification was not filed in conformance with MCR 2.003(C)(1), and (2), where the filing was both untimely and failed to include the requisite supporting affidavit, the motion was procedurally defective and thus, the issue is not preserved for appellate review. *People v Bettistea*, 173 Mich App 106, 123; 434 NW2d 138 (1988). Typically, a trial court's findings of fact on a motion for disqualification are reviewed for an abuse of discretion, but the applicable facts applied to the law are reviewed de novo. *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001).

Cohen asserts that numerous statements and rulings made during the proceedings by the probate judge impugned his abilities as an attorney, demonstrated general disrespect and intolerance for his arguments, and demonstrated bias. We conclude that the heavy presumption of judicial impartiality has not been overcome.

MCR 2.003(B) describes the grounds for judicial disqualification as involving a trial judge's inability to "impartially hear a case" because of the judge being "personally biased or prejudiced for or against a party or attorney." MCR 2.003(B)(1). It is generally recognized that there exists a "heavy presumption of judicial impartiality," and, in order to overcome this presumption, a litigant must come forward with evidence of actual bias or prejudice. *Cain v Dep't of Corrections*, 451 Mich 470, 496-497; 548 NW2d 210 (1996). The evidence of prejudice or bias must be personal and must also have its basis in events or circumstances outside the judicial proceedings. *Id.* at 495-496. Without this demonstration, an adverse ruling, standing alone, is insufficient for judicial disqualification. *Gates v Gates*, 256 Mich App 420, 440; 664 NW2d 231 (2003).

Cohen relies on statements made during the course of the proceedings and the trial court's adverse rulings. Cohen fails to recognize that the probate court also chastised opposing



counsel's conduct, did not rule exclusively contrary to Cohen's position or his clients' interests, and routinely granted Cohen the opportunity for evidentiary hearings. The probate court limited the scope of certain proceedings in light of the terms of the settlement agreement and the court's factual conclusions that Cohen was acting to delay the proceedings and increase fees in the process. The probate court also reversed itself to grant relief in favor of the heirs, concluding that they were entitled to evidentiary hearings to determine the reasonableness of the costs and attorney fees. Counsel fails to acknowledge his penchant for ignoring procedural requirements and the directives of the probate court. The lower court transcripts evidence the development of palpable animosity between counsel involved in the hearings, and the growing frustration of the probate court with Cohen's tactics, which were viewed as unreasonable and serving no other purpose than to delay the proceedings.

Although we do not condone the statements made by the probate judge, the statements clearly reflect the frustration caused by Cohen's repeated disregard of the court's rulings. Case law recognizes that the trial court may become frustrated by the strategy of counsel, but bias will not be established where the parties receive a fair trial:

The trial judge also appeared to be agitated by the tactics of claimants' counsel . . . . As a result, the judge was apparently becoming frustrated and was losing his patience. Although the judge may not have displayed the utmost courtesy, being courteous is the ideal, not the requirement. What is required is that the parties receive a fair trial. Here, claimants have failed to show that the judge's views controlled his decision-making process. [*In re Forfeiture of \$1,159,420*, 194 Mich App 134, 153-154; 486 NW2d 326 (1992).]

Accordingly, even if this issue was properly preserved for appellate review, the presumption of judicial impartiality was not overcome.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood  
/s/ Stephen L. Borrello