SUMMARY
June 6, 2024

2024COA63

No. 23CA1058, *Estate of Gonzalez* — Probate — Compensation and Cost Recovery — Fee Disputes — Factors in Determining the Reasonableness of Compensation and Costs

A division of the court of appeals interprets for the first time section 15-10-604(4), C.R.S. 2023, and holds that the district court must hold a hearing before it compensates a person who provided a benefit to an estate when another interested person challenges the requested compensation. The division also concludes that, in determining the reasonableness of the compensation amount, the court must consider the factors in section 15-10-603(3), C.R.S. 2023, and any other factor the court deems appropriate under the circumstances of the case, and it must issue an order that makes findings of fact and conclusions of law referencing the factors it relied on.

COLORADO COURT OF APPEALS **2024COA63**

Court of Appeals No. 23CA1058
Adams County District Court No. 22PR30587
Honorable Sarah S. Price, Judge

In re the Estate of Ramiro Calderon Gonzalez, deceased.

Hortensia M. Villano,

Appellee,

v.

Ramiro G. Calderon,

Appellant.

ORDER REVERSED
AND CASE REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE JOHNSON
Freyre and Brown, JJ., concur

Announced June 6, 2024

Solem Woodward & Mckinley, P.C., Peter T. Harris, Stephanie T. Schrab, Englewood, Colorado, for Appellee

Palmer, Goertzel & Associates, P.C., Andrew H. Goertzel, Greenwood Village, Colorado, for Appellant

¶ 1 This probate case requires us to interpret for the first time specific provisions in the Compensation and Cost Recovery Act of the Colorado Probate Code (the recovery statute), sections 15-10-601 to -606, C.R.S. 2023, specifically section 15-10-604(4), C.R.S. 2023. That provision governs the procedures a court must follow when an individual who provides a benefit to an estate requests compensation from the estate, and another interested person challenges the requested compensation.

¶ 2 Ramiro G. Calderon (Calderon) and Hortensia M. Villano (Villano) are children of the decedent, Ramiro Calderon Gonzalez (father). Calderon raises two contentions on appeal. First, he contends that the district court erred by awarding reimbursement of Villano's attorney fees — which she asserts she incurred because she provided a benefit to father's estate — without first holding a hearing so he could challenge the request. Second, Calderon argues that the court erred by failing to make statutorily mandated findings of fact and conclusions of law regarding the reimbursement.

¶ 3 We agree with Calderon that the statutory scheme required the court to provide Calderon with a hearing before awarding

Villano her attorney fees. We also conclude that the court did not make all the necessary findings of fact and conclusions of law concerning the factors in section 15-10-603(3)(a), C.R.S. 2023, or any other factor the court deemed appropriate under the circumstances. Consequently, we reverse the order and remand the case to the district court for further proceedings consistent with this opinion.

I. Background

¶ 4 Father died intestate and was survived by six of his seven children, including Calderon and Villano.

¶ 5 After father's death, Villano filed a petition for adjudication of intestacy and formal appointment of a personal representative (PR), seeking the appointment of herself and Calderon as co-PRs in the unsupervised administration of father's estate. Calderon objected to Villano being a PR, alleging that she was the subject of an ongoing criminal investigation for "forgery, theft, elder abuse, financial exploitation, [and] elder abuse by a person in a position of trust." He alleged that, as far as he knew, father "did not have anything at the time of death." The court set the matter for an evidentiary hearing.

¶ 6 The day before the hearing, Villano amended her petition and nominated Jeannette Goodwin (Goodwin), a professional fiduciary, as the PR. Villano reasoned that "the family members would be unable to serve as [PRs] in a neutral manner towards all legal heirs." Calderon objected, alleging, among other things, that Villano's counsel and Goodwin are "closely aligned," and therefore Goodwin "will be unable to act as a neutral and independent fiduciary." He also reiterated that he "is not convinced that there are any estate assets at this time and, as such, questions whether a PR is needed in the first place." In the event that the court deemed it necessary to appoint a PR, however, Calderon nominated two different professional fiduciaries.

¶ 7 At the October 2022 evidentiary hearing, both Calderon and Villano testified concerning father's assets and whether a PR was necessary. The court found good cause to appoint a third-party neutral fiduciary to serve as the PR of the estate due to the conflict. In a written order, the court (1) appointed Christopher Turner (Turner), the Public Administrator for the Seventeenth Judicial District, as PR of the estate; (2) imposed a constructive trust over all

disputed estate assets; and (3) ordered the parties to cooperate with Turner.

¶ 8 Later, Villano sought reimbursement of her attorney fees and costs, asserting that she "successfully petitioned the Court to appoint a third-party neutral fiduciary to serve as [the PR] of the estate" and that her actions "provided a benefit to the estate because the estate's administration by [Turner] will now be more orderly and less contentious, in a way that would not have been possible had a member of the family been appointed." Villano requested "payment from the estate for her attorney fees and costs in the amount of $35,406.70," which were "incurred investigating the needs for a [PR], drafting and filing her Petitions, and preparing for the hearing in this proceeding." Villano included with her motion invoices detailing the work completed by her counsel that related to the protection of estate assets.

¶ 9 Calderon objected, arguing that (1) the fees "are exorbitant" and (2) "the large majority of work done by Ms. Villano's counsel was for her own personal benefit and/or did not benefit the Estate." After briefing, the court summarily granted Villano's motion and ordered the estate to reimburse her the full amount she had

requested as a creditor's claim under section 15-12-805(1)(h), C.R.S. 2023.

¶ 10 On appeal, Calderon contends that the court erred by awarding Villano attorney fees and costs without following the fee dispute procedure set forth in the recovery statute, specifically section 15-10-604(4), which mandates, among other things, that the court hold a hearing on an objection to compensation or costs and make findings of fact and conclusions of law.[1] Before we turn to the merits, however, we must address Villano's jurisdictional challenge.

II. Finality

¶ 11 Villano contends that we lack jurisdiction to review the attorney fee order because it is not a final appealable order.

¶ 12 We must independently determine our jurisdiction over an appeal. *People v. S.X.G.*, 2012 CO 5, ¶ 9.

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[1] Calderon does not challenge on appeal that Villano provided a benefit to the estate, and thus, we deem that issue abandoned. *See Houser v. CenturyLink, Inc.*, 2022 COA 37, ¶ 9 n.3 (noting that a party abandons issues when he presents no appellate arguments on them and, therefore, an appellate court will not address them).

¶ 13 Subject to exceptions inapplicable here, an appeal to the court of appeals may be taken only from a final judgment. § 13-4-102(1), C.R.S. 2023; *see also* C.A.R. 1(a); *People in Interest of R.S. v. G.S.*, 2018 CO 31, ¶ 37.

¶ 14 Probate cases follow the same rules of finality as other civil cases, such that "an order of the probate court is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding." *Scott v. Scott*, 136 P.3d 892, 896 (Colo. 2006). A probate proceeding is defined as follows:

> [O]nce a petition is filed, it defines a proceeding. Further pleadings relating to the same subject matter, whether labeled motions or petitions, are part of the same proceeding. When the subject matter of two petitions overlap, it would generally be appropriate to consider both petitions as belonging to the same proceeding.

Id. at 897 (quoting *In re Estate of Newalla*, 837 P.2d 1373, 1377 (N.M. Ct. App. 1992)).

¶ 15 The court's order awarded Villano a sum certain for her attorney fees and costs on the basis that her petition seeking

appointment of a PR provided a benefit to the estate. Thus, the subject matter of her petition — appointment of a PR — resolved all "claims," and the proceeding concluded with her request for, and the court's award of, attorney fees and costs in a sum certain. *See People in Interest of S.C.*, 2020 COA 95, ¶ 6 ("In determining whether an order is final, we look to the legal effect of the order rather than its form." (quoting *Marks v. Gessler*, 2013 COA 115, ¶ 15)). Thus, the attorney fee order is a final appealable order.

¶ 16 We are not persuaded by Villano's reliance on *Chavez v. Chavez*, 2020 COA 70, ¶¶ 26-27, in which a division of this court held that the order appealed was not final because the probate proceeding had yet to determine prejudgment interest and attorney fees as part of a damages calculation. The *Chavez* division reasoned that "[a]n order establishing liability without determining damages is not final or appealable." *Id.* at ¶ 28 (quoting *Grand Cnty. Custom Homebuilding, LLC v. Bell*, 148 P.3d 398, 400 (Colo. App. 2006)). Notably in *Chavez*, the district court had not yet reduced prejudgment interest and attorney fees to a sum certain, which is not the situation here.

¶ 17 Nonetheless, Villano also argues that even if her motion for reimbursement may be considered an independent proceeding within the overall probate case, the court's order did not "completely determine the rights of the parties as to that proceeding" because "[t]he order was not an entry of judgment under C.R.C.P. 58." Instead, she continues, the court's order is nothing more than an approval of a creditor's claim under section 15-12-805(1)(h).

¶ 18 Section 15-12-805(1) provides that claims against the estate of a decedent shall be paid by the PR in a certain order of priority. Villano reasons that her "right to the approved reimbursement cannot be considered fully determined until it has been abated as necessary to satisfy" higher priority claims under the hierarchy of section 15-12-805(1), "and such abatement is yet to be determined as the probate case itself is ongoing." We disagree for three reasons.

¶ 19 First, we reject Villano's characterization of her motion for reimbursement as a petition. As we stated above, the petition was her request to appoint a PR, which was resolved when the court selected Turner. Her request for attorney fees flows from the

actions she took to seek appointment of a PR and the monies she expended as part of that petition.

¶ 20 Second, we agree with Calderon that the abatement process only affects the *enforcement*, not the finality, of the court's order. We acknowledge that Villano's attorney fee award may be decreased in amount because her reimbursement claim may yield to higher priority claims under section 15-12-805(1). But the abatement process is overseen by Turner, not the court, *see* § 15-12-805(1), so the court has nothing further to do "to completely determine the rights of the parties as to [this specific] proceeding." *Scott*, 136 P.3d at 896.

¶ 21 Finally, Villano has not cited, nor are we aware of, any authority holding that a probate proceeding is not final for appellate review until completion of the claim process.[2]

¶ 22 Because we are assured that the order is final for appeal purposes, we turn to the merits.

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[2] *Chavez v. Chavez*, 2020 COA 70, ¶ 34, acknowledged that not all questions of finality in a probate matter are "clear," but this is not one of those "exceptional" cases in which finality is in doubt.

III. Attorney Fee Order

¶ 23 Calderon contends that by summarily granting Villano's motion for reimbursement, the court deprived him of (1) "his right to a hearing to dispute the reasonableness of the fees and costs," under section 15-10-604(4); and (2) his right to have the court "make specific findings of fact and conclusions of law supporting the reasonableness of the fees," under section 15-10-603(3).[3] We agree with both of Calderon's contentions and reverse.

A. Standard of Review

¶ 24 We review a court's application of procedural rules de novo. *See In re Estate of Dowdy*, 2021 COA 136, ¶ 9; *Premier Members Fed. Credit Union v. Block*, 2013 COA 128, ¶ 9. And to the extent our analysis requires us to interpret the probate code, statutory interpretation is a question of law that we review de novo. *Garcia v. People*, 2023 CO 41, ¶ 14.

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[3] Calderon cites other provisions in the recovery statute that grant an individual challenging the requested compensation access to the documentation supporting the benefit, discovery upon a showing of cause, and consultation with an expert. *See* § 15-10-604(3), (4), C.R.S. 2023. To the extent Calderon argues that the court also violated these provisions, we decline to review those contentions because we do not address arguments raised for the first time in a reply brief. *In re Estate of Liebe*, 2023 COA 55, ¶ 19.

B. Required Hearing on Attorney Fees

1. The Recovery Statute's Procedures

¶ 25 "If a lawyer or another person not appointed by the court provides services that result in an order beneficial to the estate, . . . the lawyer or other person not appointed by the court may receive costs and reasonable compensation from the estate . . . ." § 15-10-602(7)(b), C.R.S. 2023. The request for and the award of such compensation must follow specific statutory procedures.

¶ 26 First, "[t]he lawyer or other person shall file a request for compensation for services or costs alleged to have resulted in the order within thirty-five days after the entry of the order or within a greater or lesser time as the court may direct." § 15-10-602(7)(b)(I).

¶ 27 Second, "[a]n interested person disputing the reasonableness of the amount of compensation or costs requested for the beneficial services may file an objection," and if they choose to do so, the objection "must be filed within twenty-one days after the filing of the request." § 15-10-602(7)(b)(I), (IV).

¶ 28 Third, after a request for compensation or costs or an objection to such a request has been filed, "the court shall determine, *without a hearing*, the benefit, if any, that the estate

received from the services provided." § 15-10-602(7)(b)(II) (emphasis added).

¶ 29 Fourth, "[i]f the court determines that a compensable benefit resulted from the services, then the person requesting compensation or costs shall submit to the court only those fees or costs purportedly incurred in providing the beneficial services." § 15-10-602(7)(b)(III).

¶ 30 Fifth, if an interested person disputes the reasonableness of the amount of compensation or costs requested for the beneficial services under section 15-10-602(7)(b)(IV), "the proceedings to resolve the dispute *shall* be governed by section 15-10-604." (Emphasis added.) Under section 15-10-604(4), "the court *shall determine, after notice and hearing*, the amount of compensation and costs it considers to be reasonable and *shall issue its findings of fact and conclusions of law referencing the factors set forth in section 15-10-603(3)* and any other factors it deems relevant to its decision." (Emphasis added.)

2. Analysis

¶ 31 Calderon contends that, based on the recovery statute's plain language, he was entitled to a hearing to challenge the reasonableness of Villano's attorney fee request. We agree.

¶ 32 When interpreting statutes, we give effect to the General Assembly's intent. *See People v. Disher*, 224 P.3d 254, 256 (Colo. 2010). To determine that intent, we first look to the statute's language and give words their plain and ordinary meaning. *See Roup v. Com. Rsch., LLC*, 2015 CO 38, ¶ 8. We read and consider the statute as a whole to give consistent, harmonious, and sensible effect to all of its parts, and we presume that the General Assembly intended the entire statute to be effective. *See People v. Buerge*, 240 P.3d 363, 367 (Colo. App. 2009). If the statute's language is clear and unambiguous, we look no further. *See People v. Jenkins*, 2013 COA 76, ¶ 12. "Statutory language is unambiguous if it is susceptible of only one reasonable interpretation." *Montezuma Valley Irrigation Co. v. Bd. of Cnty. Comm'rs*, 2020 COA 161, ¶ 20.

¶ 33 We conclude that the district court and the parties followed steps one, two, and four of the recovery statute, but did not follow the remainder of the required procedures. First, it is undisputed

that Villano made a timely request for compensation. Villano's motion argued that, by filing a petition to appoint a PR, she provided a benefit to the estate. Second, Calderon timely filed an objection.

¶ 34 Third, although the court need not hold a hearing to determine whether an interested person provided a benefit to the estate, it must make a finding as to what constituted "the benefit." § 15-10-602(7)(b)(II). Such a determination is necessary to frame the scope of recoverable attorney fees and costs under the statute. Here, the court ordered that Villano was entitled to reimbursement for "her attorney's fees and costs that conferred a benefit in this matter," but it made no findings as to what benefit the estate received from Villano's efforts. Calderon argued below that Villano had not provided a benefit because the court did not appoint her requested PR. But because he does not raise this issue on appeal, we deem any error at this third step to be harmless. C.R.C.P. 61; *State Farm Mut. Auto. Ins. Co. v. Goddard*, 2021 COA 15, ¶ 68.

¶ 35 Fourth, after the court determines the person requesting compensation provided a benefit to the estate and makes a finding as to the specific benefit provided, the person "shall submit to the

court only those fees or costs purportedly incurred in providing the beneficial services." § 15-10-602(7)(b)(III). Villano did this by providing invoices evidencing her attorney fees and costs, which she asserts were incurred in seeking the appointment of a neutral PR.

¶ 36 But the district court reversibly erred at the fifth step. Because Calderon objected to Villano's requested compensation, the court was required under the plain language of the statute to provide him with notice of and hold a hearing before issuance of its order. But the court did not hold a hearing.

¶ 37 Section 15-10-604(4) says that a court "shall" determine the amount of compensation and costs it considers to be reasonable "after notice and hearing." § 15-10-604(4). When the General Assembly uses the term "shall" in a statute, we construe this to be mandatory, not permissive. *Godinez v. Williams*, 2024 CO 14, ¶ 30; *cf. Washington v. Crowder*, 12 P.3d 857, 859 (Colo. App. 2000) (use of the word "should" versus "shall" indicated that compliance with time period in the administrative regulation was permissive rather than mandatory).

¶ 38 Our interpretation that a hearing is mandated when a person challenges the requested compensation is further supported by the

contrast between the language the General Assembly used when a hearing is required (for the compensation component) and not required (for the benefit finding). *See Buerge*, 240 P.3d at 367; *Dep't of Transp. v. Stapleton*, 97 P.3d 938, 943 (Colo. 2004) ("[W]e presume that the General Assembly understands the legal import of the words it uses and does not use language idly, but rather intends that meaning should be given to each word.").

¶ 39 Indeed, unlike other statutes or court rules that require an individual to *request* a hearing on the reasonableness of the attorney fee request to preserve that hearing right, we see no language in section 15-10-604(4) that requires a party to request a hearing; instead, the language obligates the court to hold a hearing before making the compensation determination, regardless of whether a party requested a hearing. *Cf. In re Marriage of Collins*, 2023 COA 116M, ¶ 46 (citing cases holding that a party who fails to request a hearing to challenge the reasonableness of a requested attorney fee award waives the right to such a hearing); *Roberts v. Adams*, 47 P.3d 690, 699-700 (Colo. App. 2001) (when the party objecting to the attorney fee award requests a hearing, the court must hold a hearing on the reasonableness of the fees requested);

see also C.R.C.P. 121, § 1-22(2)(c) ("Any party which may be affected by the motion for attorney fees may request a hearing within the time permitted to file a reply.").

¶ 40 But Villano contends that we should not reverse the court's order because its failure to hold a hearing before granting compensation to Villano is harmless. Under the harmless error standard, we will not disturb a judgment unless a court's error affected the substantial rights of the parties. C.R.C.P. 61. An error affects a substantial right only if "it can be said with fair assurance that the error substantially influenced the outcome of the case or impaired the basic fairness of the trial itself." *Bly v. Story*, 241 P.3d 529, 535 (Colo. 2010) (quoting *Banek v. Thomas*, 733 P.2d 1171, 1178 (Colo. 1986)).

¶ 41 Villano contends that because the district court had all the information it would have needed to determine the reasonableness of her requested compensation, a hearing was unnecessary. She points to the invoices she submitted with her motion for compensation. She also relies on the parties' testimony at the evidentiary hearing held in October 2022 involving the request for appointment of a PR, as well as on the transcript from that hearing,

arguing that the court heard Calderon's arguments objecting to her compensation. We reject her arguments.

¶ 42 Calderon neither directly nor indirectly challenged Villano's compensation at the October 2022 hearing. This is not surprising because Villano did not file her motion for reimbursement until *after* the evidentiary hearing. In other words, until the court appointed a PR, Villano and her counsel had no basis to contend that she had provided a benefit to the estate for which she was entitled to reimbursement of expenses. And Villano does not point to any other part of the record to support that the court provided Calderon the opportunity to challenge Villano's request for compensation through other means equivalent to a hearing.

¶ 43 Therefore, based on the plain language of section 15-10-604(4), we conclude that the court reversibly erred when it awarded Villano her attorney fees and costs without first holding the mandated hearing.

C. Reasonableness Factors

¶ 44 In its summary grant of Villano's request for attorney fees and costs, the district court made no findings as to the reasonableness of the awarded compensation. In this regard, the court also erred.

¶ 45 At the hearing, "there shall be no presumption that any method of charging a fee for services rendered to an estate, fiduciary, principal, respondent, ward, or protected person is per se unreasonable." § 15-10-603(2). Instead "the court shall apply the standard of reasonableness in light of all relevant facts and circumstances." *Id.* In looking at the facts and circumstances, the court "shall consider all of the factors" identified in section 15-10-603(3)(a)-(m). *See Washington*, 12 P.3d at 859.

¶ 46 And "[i]n determining a reasonable amount of compensation or costs, the court may [also] take into account" the factors identified in section 15-10-602(7)(c)(I)-(IV). *See Washington*, 12 P.3d at 859. Specifically, in regard to a nonfiduciary or their lawyer (as is the case here), the court may also take into account (1) the value of a benefit to the estate; (2) the number of parties involved in addressing the issue; (3) the efforts made by the nonfiduciary or lawyer to reduce and minimize issues; and (4) any actions by the nonfiduciary or lawyer that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate. § 15-10-602(7)(c)(I)-(IV).

¶ 47 Following the hearing, the court "shall issue its findings of fact and conclusions of law referencing the factors set forth in section 15-10-603(3) and any other factors it deems relevant to its decision." § 15-10-604(4). The court has discretion to determine the weight it gives to each factor. *See Law Offs. of J.E. Losavio v. Law Firm of Michael W. McDivitt, P.C.*, 865 P.2d 934, 937 (Colo. App. 1993); *Murray v. Just in Case Bus. Lighthouse, LLC*, 2016 CO 47M, ¶ 16.

¶ 48 Here, after the mandated hearing is held on remand, the district court must issue an order that makes findings of fact and conclusions of law sufficient to give the appellate court an understanding of the basis of its order. Within this order, the court must reference the factors identified in section 15-10-603(3), any factors identified in section 15-10-602(7)(c) that the court considered, and any other factors it deems appropriate based on the specific circumstances of the case.

IV. Appellate Attorney Fees

¶ 49 Villano requests an award of her appellate attorney fees under C.A.R. 38, arguing that Calderon's appeal "lacks substantial justification and is substantially frivolous to justify an award of

attorney fees." *See Calvert v. Mayberry*, 2019 CO 23, ¶ 42 ("Colorado law provides that a court shall assess attorney[] fees against a party if the party brought an action that lacked substantial justification or was for the purpose of delay or harassment."); C.A.R. 38(b) (providing that an appellate court may award attorney fees when an appeal is frivolous). Because the court reversibly erred by not holding a hearing and by failing to make the requisite findings of fact and conclusions of law as to the reasonableness of the attorney fees and costs awarded, as required by section 15-10-604(4), this necessarily means that Calderon's appeal is not frivolous. Thus, we deny Villano's request for appellate attorney fees.

V. Conclusion

¶ 50 We reverse the court's order awarding Villano her attorney fees and costs. On remand, the district court must conduct proceedings consistent with this opinion. Any order issued by the court following the hearing may be appealed by the parties.

JUDGE FREYRE and JUDGE BROWN concur.