

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

HERITAGE FOUNDATION; ALL FAITHS)
FOOD BANK; EASTER SEALS OF)
SOUTHWEST FLORIDA; MEALS ON)
WHEELS PLUS; THE SALVATION ARMY;)
SAHIB SHRINERS HOSPITAL FOR)
CHILDREN; and PACE CENTER FOR)
GIRLS, INC.,)

Appellants,)

v.)

ESTATE OF WALTER SCHMID, JR.;)
IDA SCHMID THOMAS, individually;)
IDA SCHMID THOMAS, as personal)
representative of the Estate of Walter)
Schmid, Jr., deceased; DONNIE WALTER)
THOMAS; GRACE ELEANOR OPEKA)
THOMAS, a minor; MATTHEW GENE)
THOMAS, a minor; BELLA MARIE)
THOMAS, a minor; IDA SCHMID)
THOMAS, DONNIE WALTER THOMAS,)
BURDETTE PARENT, JR, and URSULA)
BALMOS, as members of the board of)
trustees of the Walter Schmid, Jr.)
revocable trust dated September 5,)
2008; UNIVERSITY OF FLORIDA)
AGRICULTURE EXTENSION SERVICE;)
MANATEE COUNTY EXTENSION;)
WHITFIELD PRESBYTERIAN CHURCH;)
and FAMILY PARTNERSHIP CENTER,)

Appellees.)

Case No. 2D18-2301
2D18-2477

CONSOLIDATED

Appeal from the Circuit Court for Manatee County; Deno Economou, Judge.

Mary Fabre LeVine of Blalock, Walters, P.A., Bradenton, for Appellants Heritage Foundation, Meals on Wheels Plus, Easter Seals of Southwest Florida, Sahib Shriners Hospital for Children, All Faiths Food Bank and The Salvation Army.

S. Grier Wells and Cynthia M. Montgomery of GrayRobinson, P.A., Jacksonville, for Appellant PACE Center for Girls, Inc.

Kimberly A. Bald and James E. Lynch of Harlee & Bald, P.A., Bradenton, for Appellees Ida Schmid Thomas, Donnie Walter Thomas, Grace Eleanor Opeka Thomas, Matthew Gene Thomas, Bella Marie Thomas, and Ida Schmid Thomas, Donnie Walter Thomas, Burdette Parent, Jr., and Ursula Balmos, as members of the board of trustees of the Walter Schmid, Jr., revocable trust Dated September 5, 2008.

No appearance for remaining Appellees.

SILBERMAN, Judge.

The legal question at the core of this appeal is whether section 733.1061, Florida Statutes (2014), limits the sources of payment of an attorney's fee award to a party's interest in the decedent's estate, other property of the party, or both, thereby precluding an award from the corpus of the estate. We reject the appellants' assertion that section 733.1061 imposes that limitation and conclude that a probate court has the discretion to award attorney's fees from the corpus of the estate. Because the probate court did not abuse its discretion in awarding fees under the facts of this case, we affirm.

Walter Schmid, Jr. (the Decedent), died on September 25, 2014, at the age of ninety-one. The Decedent never married or had children, and his only sibling was Ida Schmid Thomas (Ms. Thomas). Ms. Thomas's only son was Donnie Walter Thomas, and Donnie's only child at that time was Grace Eleanor Opeka Thomas. In the Decedent's most recent will, the 2009 will, he named Ms. Thomas as the personal representative. He also divided his Estate into 100 shares and apportioned it among ten different charities, seven of which are appellants (the Charities). This was a departure from the Decedent's previous wills, which had made Ms. Thomas, Donnie, and Donnie's issue primary beneficiaries.

After the 2009 will was admitted to probate, Ms. Thomas, both individually and as personal representative, Donnie Walter Thomas, Donnie Walter Thomas's issue, and members of the Board of Trustees of the Walter Schmid, Jr., revocable trust dated September 5, 2008 (together Thomas), petitioned to revoke or reform the 2009 will. Thomas maintained that the 2009 will did not comport with the Decedent's testamentary intent because it mistakenly omitted a devise to Ms. Thomas, Donnie Walter Thomas, and his issue.

When discovery was completed, Thomas agreed to voluntarily dismiss the petition to revoke or reform the 2009 will. The court then entered an order dismissing the petition and awarding the Charities attorney's fees pursuant to section 733.1061 to be paid from the corpus of the Estate. In so ruling, the court rejected the Charities' argument that attorney's fees must be assessed against the Thomas family individually,

rather than against the Estate. In this consolidated appeal, the Charities seek review of this portion of the fee order.¹

The parties do not dispute the Charities' entitlement to fees under subsection 733.1061(1). The dispute is over the sources of payment of the fee award. The Charities argue that subsection 733.1061(2) limits the sources of payment to a party's interest in the estate, other property of the party, or both. The Charities assert that the trial court erred by awarding attorney's fees from the corpus of the Estate. The Charities alternatively argue that even if the court had the discretion to award fees from the corpus of the Estate, it abused that discretion in awarding fees under the facts of this case.

Our review of the Charities' first argument rests upon the statutory interpretation of section 733.1061, which we review de novo. See Kumar v. Patel, 227 So. 3d 557, 558 (Fla. 2017). The purpose of statutory construction is to determine the intent of the legislature. Charles v. S. Baptist Hosp. of Fla., Inc., 209 So. 3d 1199, 1207 (Fla. 2017). In order to determine this intent, courts first consider the plain language of the statute. Id. If a statute's plain language is clear and unambiguous, then the courts need not consider other evidence of intent or apply the rules of statutory construction. Id. But statutory provisions may not be read in isolation and should be interpreted to bring harmony to each part. Id.

¹Case No. 2D18-2301 was filed by The Heritage Foundation, All Faiths Food Bank, Easter Seals of Southwest Florida, Meals on Wheels Plus, The Salvation Army, and Sahib Shriners Hospital for Children (together Heritage). Case No. 2D18-2477 was filed by PACE Center for Girls, Inc. (PACE).

The general statutory authority for attorney's fees in probate matters can be found in section 733.106, which is entitled "Costs and attorney's fees." See Shefner v. Shefner-Holden, 2 So. 3d 1076, 1079 (Fla. 3d DCA 2009). The statute provides for the award of attorney's fees "as in chancery actions." § 733.106(1). Thus, the probate court "may, as justice requires, order that costs follow the result of the suit, apportion the costs between the parties, or require all costs be paid by the prevailing party." Dayton v. Conger, 448 So. 2d 609, 612 (Fla. 3d DCA 1984) (citing Akins v. Bethea, 33 So. 2d 638, 640 (Fla. 1948)); First Union Nat'l Bank v. Turney, 839 So. 2d 774, 779 (Fla. 1st DCA 2003) (quoting Estate of Brock, 695 So. 2d 714, 716 (Fla. 1st DCA 1996)); Nalls v. Millender, 721 So. 2d 426, 427 (Fla. 4th DCA 1998) (quoting Estate of Brock, 695 So. 2d at 716). Subsection 733.106(4) provides, "When costs and attorney's fees are to be paid from the estate, the court may direct from what part of the estate they shall be paid."

Section 733.106 does not provide that the court may impose personal liability on a beneficiary for costs or fees. Due to the *in rem* nature of probate proceedings, see § 731.105, Fla. Stat. (2014), the absence of such a provision precludes the court from holding a beneficiary personally liable for costs or fees of the estate under section 733.106. See Anderson v. McDonough, 189 So. 3d 265, 266 (Fla. 2d DCA 2016); Bennett v. Berges, 50 So. 3d 1154, 1158 (Fla. 4th DCA 2010); Dayton, 448 So. 2d at 611.

Section 733.1061, which is entitled "Fees and costs; will reformation and modification," provides an additional basis for a fee award in conjunction with probate reformation and modification proceedings. That section provides as follows:

(1) In a proceeding arising under s. 732.615 or s. 732.616, the court shall award taxable costs as in chancery actions, including attorney's fees and guardian ad litem fees.

(2) When awarding taxable costs, including attorney's fees and guardian ad litem fees, under this section, the court in its discretion may direct payment from a party's interest, if any, in the estate or enter a judgment which may be satisfied from other property of the party, or both.

§ 733.1061 (emphasis added). Subsection 733.1061(1) includes the same provision as section 733.106(1) providing for the award of attorney's fees "as in chancery actions."

Unlike section 733.106, subsection 733.1061(2) adds specific language permitting the probate court to impose personal liability for attorney's fees by authorizing payment from a party's "other property" in addition to his or her share of the estate.

Subsection 733.1061(2) provides that in awarding attorney's fees "the court in its discretion may direct payment from a party's interest, if any, in the estate or enter a judgment which may be satisfied from other property of the party, or both." (Emphasis added.) The plain language of this subsection clearly provides the probate court with the discretion to direct payment of attorney's fees from the interests that are listed.

Although the legislature did not reiterate the probate court's authority to award attorney's fees from the corpus of the estate in section 733.1061(2), that authority is inherent in the court's *in rem* jurisdiction as reflected by the language in section 733.1061(1), allowing it to award fees "as in chancery actions."

Indeed, the statute contains no language proscribing consideration of the corpus as a source for fee awards. Instead, the legislature expressly provided the court the "discretion" to also choose any or all of the listed sources of the fee payment. § 733.1061(2). The legislature further emphasized the discretionary nature of the court's

authority under section 733.1061(2) by providing that the court "may direct payment from" those sources. See Wheaton v. Wheaton, 261 So. 3d 1236, 1243 (Fla. 2019) (noting that the legislature's use of the word "may" is generally permissive). Thus, the plain language of section 733.1061(2) does not limit the sources of payment to a party's interest in the estate, other property of the party, or both.

If we were to limit the sources of payment in section 733.1061(2) to those specifically listed, then the statute would preclude the award of attorney's fees to a prevailing beneficiary when the estate was the only opposing party. This would be inconsistent with section 733.1061(1)'s mandate that the court "shall award taxable costs as in chancery actions, including attorney's fees." (Emphasis added.); see Wheaton, 261 So. 3d at 1243 (holding that the word "shall" is a mandatory term).

In Bock v. Diener, 571 So. 2d 30 (Fla. 3d DCA 1990), the Third District considered a similar issue of statutory interpretation. There, the personal representative asserted he was entitled to attorney's fees under section 733.617, Florida Statutes (1989), based on his provision of legal services to the estate. Bock, 571 So. 2d at 30. Subsection 733.617(1) provided for the award of reasonable compensation to personal representatives and agents they employed and set forth several factors that should be considered in determining reasonable compensation. Bock, 571 So. 2d at 30 n.1. Subsection 733.617(3) provided, "If the personal representative is a member of The Florida Bar and has rendered legal services in connection with his official duties, he shall be allowed a fee therefor, determined as provided in subsection (1)." Bock, 571 So. 2d at 30 n.1.

The beneficiaries in Bock asserted that the personal representative was not entitled to fees for his services as an attorney because he was not a member of The Florida Bar (he was a member of The New Jersey Bar). Id. at 30. The Third District rejected that argument as "entirely without merit." Id. The court recognized that subsection 733.617(3) provided for the compensation of members of The Florida Bar but noted that it did not proscribe payment to other attorneys. See id. at 30-31. And the beneficiaries' interpretation was inconsistent with the entire statutory scheme, the thrust of which was "to provide for the employment and compensation of such professionals as may be needed in connection with probate." Id. at 31.

In this case, subsection 733.1061(1) mandates the award of attorney's fees as in chancery actions which permits an award payable from the corpus of the estate. Subsection 733.1061(2) broadens the court's authority to allow for compensation from a party's interest in the estate, personal property, or both. But it does not proscribe payment from the Estate. As with the beneficiaries' interpretation of the statute in Bock, the interpretation urged by the Charities is inconsistent with the entire statutory scheme. Under that scheme, the probate court has *in rem* jurisdiction that authorizes it to award costs or fees from the estate.

The Charities alternatively argue that even if the court had the discretion to award attorney's fees from the corpus of the Estate, it abused that discretion in awarding fees under the facts of this case. The Charities assert that "Ms. Thomas' unbridled self-interest drove the litigation" and that there was no basis for the petition to revoke or reform from the onset. However, the probate court considered the totality of the circumstances, including the Decedent's close relationship with Ms. Thomas and the

Decedent's previous bequests to her and her successors. The court also found that Thomas did not file the petition to revoke or reform the 2009 will in bad faith and that the petition was not ill-advised. These findings are supported by the evidence and support the court's ruling. See Weinstein v. Nash, 339 So. 2d 700, 702 (Fla. 3d DCA 1976). Accordingly, we find no abuse of discretion in directing payment of the fee award from the corpus of the Estate.

Affirmed.

SALARIO and ROTHSTEIN-YOUAKIM, JJ., Concur.