

JERSEY / JUDGMENT

Ingram -v- Gottrell (Deceased)

[2018] JRC 062 (21 March 2018)

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judgment

the bailiff: 1. The Representor is the executor dative of the will of the late John Stanley Gottrell ("the deceased") by virtue of a grant of probate issued to him on 13 th June, 2012. The deceased died on 4 th May, 2010, leaving four children who are the first four Respondents to the Representation. By his will dated 25 th September, 2003, the deceased named the First Respondent as executrix. She originally instructed Messrs Viberts to assist her in relation to the estate of the deceased and in relation to the matters personal to her, but a week later appointed the Fifth Respondent to act for her in place of Messrs Viberts. There were various difficulties in relation to the administration of the estate which culminated on 30 th May, 2012, in the First Respondent being discharged from the office of executrix by Act of the Court on that day, and two weeks later on 13 th June the Representor was appointed to act as executor dative. 2. The Representation was brought because the Representor alleged that on numerous occasions he asked the Fifth Respondent to provide a detailed breakdown of his fees, distinguishing between his roles as legal adviser to the First Respondent personally, as legal adviser to the First Respondent as executrix of the deceased's will, and his legal fees in relation to the administration of the deceased's estate. The Representor asserted that he wished to complete the administration of the estate of the deceased but was unable to do so as it was claimed that Fifth Respondent had failed to obtain authority and approval from the First Respondent as to the breakdown and apportionment of his fees as between the First Respondent and the estate of the deceased. 3. Accordingly, the representation was ordered to be served on the residuary beneficiaries to the estate of the deceased and on the Fifth Respondent. The prayers for relief in the representation included a prayer for a declaration that the Representor be permitted to conclude the administration of the deceased to the satisfaction of the Court, a prayer for an order that the First Respondent pay the costs of and incidental to the representation on such basis as the Court considered appropriate and a prayer that the Court makes such provision as to the payment of the costs of and incidental to the summons by such party and on such basis as the Court considered appropriate. 4. A directions hearing was held on 11 th August, 2017, when a number of directions were given. The material ones being as follows:- (i) The Representor was given leave to withdraw his representation. The Representor's case was that it was appropriate to do so because the Fifth Respondent had resolved with the Representor the breakdown of his costs and

thus in his view it was in the best interests of the estate to withdraw it. The matter of the costs of the Fifth Respondent was left over. (ii) If agreement was not reached between the parties in respect of the Fifth Respondent's costs within four weeks, then the Fifth Respondent should within 21 days thereafter file a skeleton argument setting out the costs he claimed and why, and the Representor should within 21 days thereafter file a response; and within seven days of the filing of that response the parties should agree to attend upon the Bailiff's Judicial Secretary to fix a date for a hearing. 5. This judgment concerns the Fifth Respondent's application for costs as a result of the withdrawal of the representation. Argument was heard on 8 th November, 2017, and judgment reserved. 6. The Fifth Respondent's position is straightforward. He asserts that he was the respondent to a representation served upon him pursuant to an order of the Court, and that as a result, he spent time considering his position and taking steps to deal with the representation. The representation was subsequently withdrawn and costs should follow the event. In his view it was unnecessary to issue the representation. The Representor should have looked at his files and determined how much of the fees which he (the Fifth Respondent) had charged should have been allocated to each of his clients - the First Respondent as executrix, the First Respondent personally and the estate. I have distinguished between the estate and the First Respondent as executrix because unfortunately there appears to have been no distinction between work done on behalf of the real estate heirs and work done on behalf of the executrix of the personal estate (although the heirs were the same). The Fifth Respondent informed us that he had not been instructed by the real estate heirs, but as there was some delay in the registration of the will of real estate, rentals which had previously been paid to Advocate Benest as curator of the deceased were subsequently paid to him. 7. The costs which the Fifth Respondent has incurred include not only his own time costs but also costs with a costs assessor Ms Rachel Hall. 8. Advocate Corbel, on behalf of the Representor contended that this was not an average probate matter. It was apparent from a review of the Fifth Respondent's files, she said that concerns and/or complaint had been made as to the fees charged and actions taken. In July 2015 in a letter to the Representor, the Fifth Respondent had accepted that it was necessary to distinguish between the allocation of fees charged to the estate and those charged to the First Respondent in person. He had also suggested that it was for the First Respondent to go through the schedule of fees and mark up the items which were executorship matters or personal matters accordingly. Furthermore there was an error in time recording which had been wrongly charged to the estate in the sum of £1,749.50, and that sum was reimbursed at that time. 9. Regrettably neither the relationship between the Representor and the First Respondent nor the relationship between the First and Fifth Respondents permitted the issue to be resolved in any sensible timescale and, according to the Representor, he had no option but to bring the matter before the Royal Court seeking a resolution of it, and thus issued the representation on 6 th April, 2017. The issue of that representation was successful in all respects bar one - all issues were resolved with regard to the estate, other than the fees chargeable by the Fifth Respondent in respect of the representation itself. 10. From the skeleton argument filed by the Fifth Respondent in the present application, it would appear that fees of £13,527.40 were incurred between 5 th June and 27 th June, further time of £2,863 following notice that the hearing in June had been cancelled, and a further £2,839 in respect of preparations for a directions hearing between 9 th August, 2017, and 27 th September

2017. This apparently represents some 45 hours work during June, 10 hours' work in respect of the period between 27 th June and 4 th August and 10 hours works between 9 th August and 27 th September. In addition, the claim for costs would include costs relating to the hearing before me on 8 th November and perhaps other costs as well. 11. I have had the dubious privilege of reading the correspondence which has passed between the Representor and the Fifth Respondent and/or third parties - some 340 pages of it - in respect of the period both prior to June 2017 when the representation was served on the Fifth Respondent and since that date. It makes unhappy reading. There are some very long self-exculpatory letters from the Fifth Respondent and there is at least a significant amount of procedural point scoring in which both the Representor and the Fifth Respondent have engaged. 12. Having read the correspondence, I am in a position to state unequivocally that I do not regard the Fifth Respondent's claim for costs as being remotely justified. It is all very well now contending, as he does, that the issue of costs in principle ought to be determined by the Court upon the basis that the Representor issued the representation and has subsequently withdrawn it, and therefore should pay the costs, thus leaving taxation as an issue to be determined later. However that gives rise to two questions in my mind. The first is whether the Representor was justified in issuing the representation in the first place, and the second is whether the quantum of costs claimed might have a bearing on what would be a reasonable response to the claim for costs at all. 13. As to the first of these points, the fact is that the Fifth Respondent himself has recognised that he did not keep his records in such a state that it was clear what professional fees were being incurred in relation to the particular pieces of advice given, and therefore whether the fees should be attributable to the estate or the First Respondent. It is no good asserting that this was the function of the First Respondent to determine. In her, albeit temporary, capacity as executrix of the estate, no doubt she should have been able to determine that issue, but that does not absolve the service provider - the Fifth Respondent - of the obligation to ensure that he bills the correct client for the work which has been done. His failure to do so caused the very problem which the issue of the representation was intended to solve, and which it appears it did solve. I appreciate that the Fifth Respondent engaged a costs assessor to assist in that process, and indeed ultimately it may have done so, but this does not detract from the conclusion that the *causa sine qua non* of the dispute was the Fifth Respondent's initial failure to maintain an appropriate accounting administration. 14. As to the second issue, namely the quantum of costs which have been incurred, I view with dismay the contentions which the Fifth Respondent has put forward. I deal with that in three parts:- (i) From the date of the service of the representation upon him to date, there has been no contract in existence between the Fifth Respondent and any other party. It follows that there is no contractual basis upon which an hourly rate could properly be charged. If, in those circumstances, one looks at the claim for costs on a quasi-contractual basis - a quantum meruit, or in other words what the time spent was worth - the fact is that it was time almost completely wasted. No good came of it. It is hard to see how any fee could be justified on that basis. (ii) A large amount of the time in question seems to have been incurred in protecting the Fifth Respondent's personal position in his claim for costs. In my view that is not conduct appropriate for an advocate of this Court. I will not support it by a favourable costs order. (iii) In any event, the time spent is wholly disproportionate to what was involved. 15. Accordingly I have reached

the view that the costs which were incurred by the Fifth Respondent from the date the representation was served upon him to date are not costs for which he should be recompensed and in the exercise of my discretion I decline to make any costs order in his favour. 16. That leaves over two sets of costs. The prayer from the Representor in the Skeleton Argument includes a claim that although the representation was formally withdrawn on 11 th August, 2017, the prayer of that representation included a claim for payment of the costs of that representation by such party and on such basis as the Court considered appropriate. I do not consider that any order in relation to the Representor's costs of the representation would be appropriate because in my judgment the Act of Court of 11 th August, 2017, granted the Representor's application to withdraw the representation and left over the matter of costs in respect of the Fifth Respondent only in so far as the Fifth Respondent's costs were concerned, and not the costs of the Representor. That is in my judgment clear from a reading of the Act of Court which correctly reflected the position at that time. Accordingly I reject that part of the Representor's claim. 17. What is then left over is the question of the costs of and incidental to the Fifth Respondent's claim for costs, including the hearing on 8 th November, 2017. In my judgment, those costs follow the event. The Fifth Respondent has failed in his application, and should therefore pay to the estate of the late Mr Gottrell the costs of and incidental to his application on the standard basis. No

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