

IN THE COURT OF APPEALS OF IOWA

No. 9-757 / 09-0124
Filed December 30, 2009

**IN THE MATTER OF THE
CONSERVATORSHIP OF
JOHN THOMAS KLEIN,**

Plaintiff-Appellee/Cross-Appellant,

vs.

**DONALD N. LAING, as Conservator
and Individually, D. SCOTT
RAILSBACK, As Attorney for
Conservatorship and Individually, and
LAING & RAILSBACK LAW FIRM,**

Defendants-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Keokuk County, Mary Ann Brown,
Judge.

Donald N. Laing, D. Scott Railsback, and the Laing & Railsback Law Firm
appeal, and John Thomas Klein cross-appeals, from the district court order
setting attorney and conservator fees. **AFFIRMED AS MODIFIED.**

Stephen N. Greenleaf of Lynch, Greenleaf & Michael, L.L.P., Iowa City, for
appellant.

Garold F. Heslinga of Heslinga, Heslinga, Dixon & Moore, Oskaloosa, for
appellees.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

This appeal and cross-appeal concern over twenty years of fees and expenses awarded to Donald N. Laing and the Laing & Railsback Law Firm for reported services performed and monies expended in the administration of the John Thomas Klein conservatorship. Defendants Laing, D. Scott Railsback, and the Laing & Railsback Law Firm appeal, and John Thomas Klein cross-appeals, from the district court order that reduced certain amounts of fees previously awarded to Laing and the law firm. Upon our de novo review, we affirm as modified.

I. Background Facts and Proceedings.

John Thomas Klein was born in 1950. He served in the armed forces and was honorably discharged in April 1973. Klein's mother died a few months later, and he received an inheritance including money and numerous acres of farmland. In approximately 1974, Klein was diagnosed with paranoid schizophrenia. Klein also has a history of substance abuse. At the time of trial, Klein had no close living relatives or any individuals for whom he was concerned about preserving his estate upon his death.

In 1974 Klein sought to establish a voluntary conservatorship for himself because he believed he could not manage his financial affairs due to his mental condition.¹ Klein asked attorney Donald Laing, who had handled some legal affairs for Klein's family, to serve as his conservator. On May 21, 1974, the

¹ Klein also is the beneficiary of a trust. The trust is managed separately by a bank and is not at issue here.

district court appointed Laing conservator of Klein's property and required a \$50,000 surety bond, which Laing obtained.

Laing filed annual reports for the conservatorship, and he annually sought compensation for his services as conservator, and as attorney for the conservatorship, as well as for out-of-pocket expenses spent administering the conservatorship. In the beginning years of the conservatorship, the annual reports did not report specific hours worked or the amount of expenses claimed by Laing. Rather, the reports requested that the court "fix and allow the reasonable compensation" for his services. The district court in the early years approved the annual reports and awarded fees in a lump sum with no delineation of conservator or attorney fees.

In approximately 1979, Laing's law partner, D. Scott Railsback, began performing services for the conservatorship. Although Railsback was generally identified as the attorney for the conservator, both Laing and Railsback performed both conservator and legal services for the conservatorship. In the fifth annual report, filed in 1979, Laing sought and received compensation for both himself and Railsback.²

In May 1983, Laing filed the ninth annual report for the conservatorship. Attached to the report were affidavits of compensation for Laing and Railsback, reporting that together they had spent in excess of 300 hours with respect to Klein. The reported 300 hours included 120 hours spent traveling to Connecticut to visit Klein, who was at that time residing in a treatment facility there. The court

² Laing reported an approximate combined number of hours he and Railsback spent providing services to the conservatorship.

initially approved the report and awarded Laing and the law firm \$12,000 for services rendered. However, on August 11, 1983, the court set the matter for hearing for reconsideration. Further, the court appointed another attorney to act as interim conservator for the purpose of the hearing. The court ordered the conservator and attorney for the conservatorship to have present at the hearing "all receipts, vouchers and other proofs of payment of expenditures as well as all evidence of income received by the Conservator during the period of the Report." In a letter to Laing and Railsback, the judge indicated that since Laing's firm was also the attorney for the conservatorship, "it is a much better practice where the fees are substantial that the matter be set for hearing and notice prescribed." The judge suggested that the attorneys provide an itemization of all fees paid to the firm as well as an itemization of funds spent on the trips to visit Klein. Notice was sent to the conservator, the interim conservator, and to the ward's aunt, all of whom appeared at the hearing. Following a hearing on the matter, the court approved the ninth report except for the matter of fees, in which the allowance of \$12,000 was rescinded. The court found the evidence submitted failed to show the trip to Connecticut was necessary and reduced the fees allowed to \$8500.

In July 1984, Laing filed the tenth annual report for the conservatorship. Attached to the report were affidavits of compensation for Laing and Railsback, along with an itemized statement of the hours worked by the attorneys. However, the statement was not separated out by the attorney performing the service or type of service performed, i.e. legal versus conservator services. The attorneys requested compensation at the rate of sixty dollars per hour for all services.

The court set the tenth report for hearing, provided notice to Klein, and appointed an attorney to represent Klein pursuant to Iowa Code section 633.118 (1984). Following a hearing, the court entered an order reducing Laing and Railsback's fees. The court stated:

It is obvious from the outset that the conservator in this case is acting in a dual capacity [as both guardian and conservator], and this has caused some of the misunderstandings and problems which have arisen in regard to the allowance of fees. . . .

. . . .
. . . As part of the tenth report, the conservator states that he believes the court should appoint a guardian for the ward and that the conservator would decline to further serve in that capacity. . . . A petition should be presented to the court pursuant to sections 633.552 of the Iowa Probate Code so a guardian may be properly appointed. The conservator testifies that there is no one else present and able to undertake these duties. He also indicates a promise made to the ward's mother to continue to look after the property. If the conservator declines to serve, he should make it known so that future misunderstandings as to the allowance of fees will not arise. If the conservator determines that no one else is available and continues to serve in that capacity, he should at least segregate his accounts and time records so that separate applications could be presented to the court. This court still believes that the latter method is the less acceptable method and that it would be preferable to have a separate guardian and conservator.

The court, after reviewing the attorneys' statement of services, reduced both the time charged and the fees for the conservator services from sixty dollars an hour to thirty dollars an hour.

Despite the court's suggestion that a guardian be appointed, Laing continued to perform both guardian- and conservator-type duties for Klein. On February 10, 1986, Laing filed the conservatorship's eleventh annual report. Notice was given to Klein, and an attorney was appointed to represent him. It appears the court awarded Laing and Railsback's requested hours for both

conservator and legal fees at the rate of sixty dollars an hour; however, notice was given to Klein, and it does not appear that Klein's attorney objected to the hourly fees.

The eleventh report was the last report of which Klein received notice. Annual reports twelve through thirty-three (June 1986 through June 2007) were approved by the district court, including the exact fees and expenses requested by Laing and Railsback in their affidavits attached to the reports, without notice to Klein or the appointment of an attorney for Klein. Although their compensation attachments gave a total of hours to be billed as conservator fees and legal fees, the individual charges were not separated by the attorney performing the service or by the type of service until the thirty-fourth report.

For reporting periods twelve through thirty-three, the conservator charged between \$42 per hour and \$125 per hour for fulfilling the general conservatorship and guardianship duties.³ The conservator's reported time for reports nineteen through thirty included numerous hours managing the ward's investments, among other things.

For reporting periods twelve through thirty-three, the average hourly legal fee for legal services provided to the conservatorship by Laing and Railsback was \$108.59 per hour.⁴ The reported legal services performed by Laing and Railsback included preparation of the annual reports, tax returns, social security

³ The conservator's hourly fee started at \$61.57 per hour for the twelfth reporting period. The fee dropped as low as \$42 per hour during the seventeenth report period, and rose as high as \$125 per hour for the thirtieth reporting period

⁴ The hourly legal fee in the twelfth report was \$61.57 per hour. The hourly fee steadily increased over the years, reaching \$150 per hour for the twenty-seventh reporting period. The fee fell to \$135 per hour during the thirty-first reporting period.

payee reports, and farm leases. Laing and Railsback reported in their attachment to the twelfth report that completion of the eleventh annual report took ten hours. The hours to complete the report remained between ten and fifteen hours until the twentieth report, where it was reported the prior annual report took thirty-seven hours to complete. That number rose substantially over the years, reaching a reported seventy-six hours in their attachment to the twenty-sixth annual report. The number dropped to forty-eight hours in the next report, and it stayed somewhere between thirty to forty-eight hours thereafter. Additionally, the time reported to complete the conservatorship's tax returns rose steadily over the years. The attachment to the twelfth report reported four hours for preparation and completion of the tax returns; by the twenty-sixth report, the hours had risen to twelve and have generally remained at about twelve hours per year.

In billing for their time, Laing and Railsback included their time spent on the telephone. For the twelfth through the twenty-sixth reports, each call listed on their compensation affidavit was billed at a minimum time of a quarter of an hour. The minimum billed call time rose to a half an hour for each call listed in the attachments to the twenty-seventh through thirty-third reports.⁵ The attachments generally did not contain any description of the call or indicate whether the call required legal or conservator services.⁶

⁵ There appears to be one exception to Laing and Railsback's billing: in the attachment to the twenty-eighth report, Laing and Railsback charged one hour total for four calls from Klein.

⁶ Calls were clearly included in the totals of the legal and conservator hours reported to the court.

Over the years, Laing and Railsback also requested additional compensation for their out-of-pocket expenses advanced in administering the conservatorship, which often included copying, postage, phone service, and mileage costs. The attachments to reports twelve through sixteen did not expressly set forth any mileage charges. Thereafter, every report included a mileage fee. The mileage fees included, among other things,⁷ Laing's driving the ward to appointments, taking the ward shopping, and dropping off conservatorship deposits at the firm's bank in a neighboring city.

The twelfth report reported that the total value of Klein's assets, including 240 acres of farmland valued at \$1500 per acre, was \$371,607.30. The total value of Klein's assets, including 240 acres of farmland valued at \$4000 per acre, had increased to \$1,133,434.42 in the thirty-fourth report. Although the value of the estate rose throughout the years, the court approved the annual reports noting the original surety bond was still in place and did not require the bond amount to be increased.

Klein visited at least two different attorneys over the years, seeking to have Laing removed as conservator. Laing refused to resign. In approximately 2007, Klein visited attorney Garold F. Heslinga, again seeking to have Laing removed as conservator. Although Klein did not have any objections to Laing and Railsback's overall services, Klein wanted more money dispensed to him

⁷ For example, in the seventeenth and twenty-sixth reports, defendants charged 2.5 and 3.5 hours, respectively, plus mileage to visit Klein for Christmas. On the seventeenth report, they also charged 2.5 hours plus mileage to take Klein a birthday cake on his birthday.

from the conservatorship. Klein also told Heslinga he had heard he was being overcharged. Klein requested that a bank serve as his conservator.

On July 26, 2007, Klein filed his petition in equity, seeking removal of the conservator pursuant to Iowa Code section 633.65 and reimbursement of losses he allegedly suffered as a result of the actions of Laing and Railsback for, essentially, overbilling and charging unreasonable rates over the years. The petition, as later amended, requested removal and reimbursement on the grounds of fraud, theft, and malpractice, among other things. Klein requested damages to compensate him for his losses, punitive damages, and attorney fees.

On May 8, 2008, Laing and Railsback filed their motion for summary judgment, seeking dismissal of Klein's older claims under the five-year statute of limitations for fraud. See Iowa Code § 614.1(4). However, the district court denied Laing and Railsback's motion, finding because Klein had not been provided notice for orders entered in the conservatorship after May 20, 1985, all actions of the conservator and the attorney for the conservator after that date were reviewable by the court as provided for in Iowa Code section 633.37.

A bench trial was held on July 29, 30, and 31, 2008, on the previously approved twelfth through thirty-third annual reports, along with the pending thirty-fourth and final reports of Laing and Railsback.⁸ Klein testified that he did not have a problem with the services provided to him by Laing and Railsback, he just

⁸ The parties stipulated that the trial would constitute final hearing for the purposes of Iowa Code section 633.37 on all reports of the conservatorship filed after May 20, 1985, including the pending annual reports for the thirty-fourth reporting period of May 21, 2007, to May 20, 2008, and Laing and Railsback's final report period for the period of May 21, 2008, to October 17, 2008.

wanted more money provided to him.⁹ He further testified that he wanted a bank to serve as his conservator. Attorney Hugh Faulkner, who practiced in the area of probate and tax law, testified as an expert witness for Klein. Faulkner opined that tax returns, using the tax software he and Laing and Railsback used, should take no more than an hour to two hours to complete, at most. He further testified that in his opinion, the amount of time spent completing an annual report should take no more than a half day to a day, at most. He testified that the hourly rate for legal fees charged by Laing and Railsback was consistent with the area, but he questioned the hours charged by them for completing the annual report. He testified that he found it improper to charge a half an hour for every call, and testified that he had not seen an individual charge \$100 an hour to do guardianship-type work. Faulkner acknowledged that Klein's conservatorship was unusual given Klein's condition and other aspects. Additionally, Faulkner testified that certified public accountants charged two to three times as much as he would for a comparable return, and that he had trained his clients to bring their tax information to him in a format that helps him keep his cost of preparing tax returns low.

Laing testified that he tried to find a guardian for Klein over the years, but he could not find anyone to serve. Laing testified Klein also refused to have a guardian appointed. Laing testified he did not resign as conservator because he

⁹ At the time of trial, Klein was living in a residential treatment facility, but he was generally free to go out during the day. Klein testified that he was given a spending allowance of \$350 a month from the conservatorship. The administrator of the facility handled the spending allowance for Klein and dispensed five dollars a day to him. Klein testified that he liked to buy energy drinks and cigarettes, but did not have enough money to make the purchases he wanted. The record gives no indication as to how the balance of the spending allowance was utilized.

was not asked, he did not think Klein wanted him to resign, and he thought Klein would change his mind. Laing testified he personally managed the investments, and when asked why he did not simply attach the investment company's report of the investment activities to the annual report, Laing explained that there were often errors in the reports that needed to be corrected. Laing testified that he and Railsback did not keep an hour-by-hour record of their time, but testified that they kept track of the total hours worked. Laing testified that the phone calls were listed in blocks; essentially one call listed on the attachment to the annual report represented several calls received. Laing testified he drove the conservator's deposits to the bank, located in the neighboring city, instead of mailing them because he was a fiduciary and wanted the receipts.

Railsback testified that although he and Laing billed for a quarter- or half-hour per call, it did not mean that the phone call lasted that exact amount of time. Railsback testified that they determined whether the work performed was legal or conservator service using office records, notes, files, and work product. Railsback testified the going rate for good support staff was ten dollars an hour.

Admitted into evidence was the deposition of Laing and Railsback's expert witness, attorney Philip Leff. Leff opined that Laing and Railsback's billing was typical except their billing practice of charging a half-hour for each telephone call. He testified his office charged a minimum of a tenth of an hour. He also opined that because of the ward's mental health issues, more time was likely necessary to be expended for his care. Leff testified that his office's typical fee for preparing tax returns involving farms was \$800-900 per return and that some certified public accountants charged up to \$1500-\$1600 for the same kind of returns.

On December 22, 2008, the district court entered its statement of issues, findings of fact, conclusions of law, judgment and decree. The court found that because Klein had not been provided notice for orders entered in the conservatorship after May 20, 1985, the court should make an independent determination of whether the attorney fees and conservatorship fees previously ordered were reasonable and necessary. The court found the vast majority of the work claimed by the conservator was for guardianship-type duties, and those types of tasks could have and should have been performed for a fee far less than the amount charged by the attorney conservator. The court found the conservator did not show the reasonableness of the amount charged for the duties performed. The court then reduced the conservator's rate to fifteen dollars per hour, explaining:

It is very difficult for the court to evaluate the individual events and transactions that have taken place over the past twenty-three years in this case. The remoteness in time reduces the court's ability to precisely determine whether the duties performed by the conservator should have been done. If the court allows all of the conservator's hours in the past but at a reasonable rate, the court is recognizing the unique nature of this conservatorship and the ward's needs for assistance on multiple levels. The undisputed record is that most of the duties, if not all, of those performed by the conservator could have been performed by a competent legal secretary or paralegal. The defendants testified that the starting rate for such employees in their office is \$10 per hour at this time. Given the fact that we are going back twenty-three years, the regular or anticipated rate of pay at that time might have been less. In an effort to try to recognize that the conservator may not have been able to retain someone at a starting rate of pay to do some of these duties, the court will calculate all of the conservator's hours at \$15 per hour.

The court also found the time charged for preparing the tax returns for the conservatorship should not be adjusted. However, the court found the time

reported for preparing the annual report beyond fifteen hours was excessive, reasoning that the early annual reports took between ten and fifteen hours and there was nothing about the conservatorship that would require that much more time for preparation of the annual report than was necessary in the early years. The court applied its conclusions to the thirty-fourth and final reports, finding the reports should be approved, but adjusting the rate of the conservator to fifteen dollars per hour and allowing only fifteen hours for the completion of annual reports. Additionally, the court found Laing breached his fiduciary duty to do what was in the best interests of the conservatorship when he refused to step down when Klein's action was filed. Citing Iowa Code section 633.160, the court found Laing should be responsible personally for a portion of the attorney fees charged by Klein's attorney.

Defendants appeal. Klein cross-appeals.

II. Scope and Standards of Review.

A hearing on allowance of attorney fees stands in equity and thus is reviewable de novo. *In re Estate of Simon*, 288 N.W.2d 549, 551 (Iowa 1980); *In re Estate of Bass v. Bass*, 196 N.W.2d 433, 435 (Iowa 1972); *In re Estate of Bolton*, 403 N.W.2d 40, 42 (Iowa Ct. App. 1987). In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the district court, but we are not bound by them. Iowa R. App. 6.904(3)(g).

"The burden of showing the services rendered and value thereof rests upon the claimant." *In re Estate of Myers*, 238 Iowa 1103, 1107, 29 N.W.2d 426, 428 (1947). In endeavoring to ascertain a reasonable legal fee, relevant factors include the time necessarily spent by the attorney, the nature and extent of the

service, the amount involved, the difficulty of handling and the importance of the issues, the responsibility assumed, the results obtained, and the experience of the attorney. *Simon*, 288 N.W.2d at 552. “To a considerable extent the compensation of an attorney rests in the discretion of the court. Yet, as stated, this must be a reasonable degree of discretion.” *Glynn v. Cascade St. Bank*, 227 Iowa 932, 939, 289 N.W. 722, 725 (1940).

III. Discussion.

On appeal, defendants assert the district court erred in several respects: (1) reducing the payment of the conservator at a rate of fifteen dollars per hour; (2) reducing the amount of time allowed in preparing the annual reports; (3) punishing Laing for remaining as the conservator after the lawsuit was filed; and (4) calculating damages. Klein cross-appeals, asserting the district court erred in failing to (1) award Klein for all of his attorney fees; (2) reduce the fees awarded concerning telephone calls, mileage, and tax returns; and (3) sanction or admonish defendants for failing to provide an adequate bond. Klein requests appellate attorney fees. We address their arguments in turn.

A. Defendants’ Appeal.

1. Rate of the Conservator.

Defendants argue that the district court erred in reducing the conservator’s hourly rate to fifteen dollars an hour and that amount is unreasonable, arbitrary, and punitive. They cite to the district court’s 1984 order that reduced the conservator’s hourly fee from sixty to thirty dollars as evidence that the reduction to fifteen dollars an hour was unreasonable. Additionally, the defendants

seemingly argue that the conservator's hourly rate as charged was reasonable because Klein admitted the conservator reviewed the annual reports with him.

Conservators have a duty to protect and preserve the estate, invest it prudently, provide an accounting, perform all other duties required by law, and deliver the assets to the ward upon termination of the conservatorship. Iowa Code § 633.641. They must give "personal care" in managing the estate. *In re Moore's Guardianship*, 227 Iowa 735, 737, 288 N.W. 880, 881 (1939); *In re Brubaker's Guardianship*, 214 Iowa 413, 416, 239 N.W. 536, 537-38 (1931). As stated above, the burden to establish the reasonableness of the rate fell upon the conservator. See *Myers*, 238 Iowa at 1107, 29 N.W.2d at 428.

Here, no evidence was presented, other than Laing's self-serving testimony, to establish the conservator and guardian services performed could not be performed at a lower cost or that the higher amount charged by Laing and Railsback was reasonable. Many of the hours billed by Laing and Railsback were for services that required no face-to-face contact with Klein and could have been performed by competent office staff, such as depositing funds at the bank, paying real estate taxes, calling automotive repair shops about Klein's vehicle, picking up Klein's car, buying gifts or gift cards for Klein, and mailing gifts and letters. Clearly many of these tasks, billed at a rate as high as \$125 an hour, could have been billed at a much lower rate, evidenced by Railsback's testimony that the going rate for good support staff was ten dollars an hour. Additionally, the undisputed evidence was that Klein was unable to manage his financial affairs due to his mental condition, and he entered into a voluntary conservatorship to protect his assets. Upon our de novo review, we find

defendants failed to establish the reasonableness of their billed hourly rate or the thirty dollar hourly rate for their conservator services. We find the district court's determination that the hourly rate should be set at fifteen dollars an hour to be reasonable under the circumstances, and therefore affirm on this issue.

2. Managing Klein's Investments and the Annual Report Hours.

Defendants next argue that the district court erred in holding the conservator did not perform any useful function in managing the ward's non-real estate assets. Defendants also argue the district court erred in reducing the hours allowed for preparation and completion of the annual reports. Because the two issues are related, we address them together.

For reports one through eighteen, the average number of hours reported to complete the annual report was 12.3 hours. During those reporting periods, no separate time was billed for managing the investments. In the nineteenth annual report, fifteen hours were reported for completing the annual report and an additional twenty-five hours were reported for managing Klein's investments. The next year, the hours billed for completing the annual report rose to thirty-seven hours, and the hours for managing Klein's investments rose to thirty-two hours. For the nineteenth through the thirtieth reporting periods, Defendants billed and were paid for time managing Klein's investments in addition to the hours reported to prepare and complete the annual reports. The district court did not reduce any time billed for managing the investments, only the time it found defendants overbilled for preparing the annual reports. In reducing the allowable hours for preparation and completion of the annual reports, the district court stated: "It appears that the attorney made 'busy work' in completing the type of

annual report that was prepared in this case. The detail contained in the annual report about investments was not necessary.” We agree.

Defendants’ argument that substantial time was required to compile investment information for the annual reports simply does not hold water given the amount of time they billed separately for managing the investments. Similarly, defendants’ argument that additional time was required to compile the reports because there were often errors in the investment documents makes little sense, given that Laing, as conservator, hired the investment firm and stayed with the firm through the years despite the claimed errors. An expert testified that the annual reports should take no more than a half day to a day at most to complete, and the defendants failed to establish that the hours billed by them in excess of a day was reasonable. We find the district court’s determination that the amount of time billed for the annual reports should not have exceeded fifteen hours to be generous but reasonable, and therefore affirm on this issue.

3. Attorney Fees.

Defendants next argue that the district court erred in requiring Laing to pay a portion of Klein’s attorney fees. The district court found that by refusing to step down when this action was filed, Laing breached his fiduciary duty to do what was in the best interests of this conservatorship. We agree.

Laing argues that Klein’s only complaint was that he needed more spending money, so Laing stepping down was not necessary or justified. However, the argument ignores that the petition, filed on July 26, 2007, sought to remove defendants because of alleged violations of fiduciary duties. Moreover, we find Laing’s argument that the fact Klein had tried twice before to have Laing

removed but ultimately dismissed those actions to be unpersuasive. We conclude the district court's determination that Laing should be responsible personally for a portion of the attorney fees charged by Klein's attorney to be reasonable and therefore affirm on this issue.

4. Calculating Damages.

Finally, defendants contend the district court erred in its damages calculation. Defendants argue the court confused hours charged for payment of bills with hours charged for preparation of final reports. Defendants' annual reports are not models of clarity and undoubtedly contributed to any confusion. Additionally, defendants argue that the court incorrectly listed the fees set by previous orders.

Upon our de novo review, we note there were a few minor errors in the figures listed in the district court's exhibit A, which set forth previously approved fees and rates for the twelfth through the final annual reports. This resulted in the district court incorrectly reducing the conservator's hours by .08 for the thirty-first report and the attorneys' hours by two hours for the final report, and we adjust the court's damages calculation accordingly (see attachment 1).

Additionally, we find the district court incorrectly determined defendants' legal hours for the twenty-sixth report. That year, defendants' attachment reported a combined seventy-six hours for completing the annual report, a service defendants ordinarily billed at the attorney fee rate, and for paying bills and doing accounting work for the conservatorship, a service they ordinarily billed at the conservator's rate. Defendants billed seventy-four of the seventy-six hours at the attorney fee rate and two hours at the conservator's rate. However,

the district court determined that of the lump sum of seventy-six hours, forty-eight hours was defendants' reported time for completing the annual report. The district court then reduced the forty-eight hours to fifteen hours, thus allowing a total of sixty-two legal hours. Upon our de novo review, we find the district court erred in determining forty-eight hours was the defendants' reported time for completing the annual report that year. It was the defendants' burden to show the services rendered and the value thereof. We find nothing in the record to evidence that of defendants' seventy-four hours billed at the attorney fee rate, forty-eight hours were for the annual report and the remaining twenty-six hours were for other legal services. We therefore find that seventy-four hours was defendants' reported time to complete the annual report. We modify the district court's allowance of sixty-two legal hours that year to thirty-six hours, and we adjust the court's damages calculation accordingly (see attachment 2). We find no other errors in the district court's figures and calculations, and we therefore affirm in all other respects concerning the district court's figures and calculations.

B. Klein's Cross-Appeal.

1. Trial Attorney Fees.

Klein argues that the district court erred in not awarding him the entirety of his trial attorney fees. As stated above, we agree with the district court that by refusing to step down when this action was filed, Laing breached his fiduciary duty to do what was in the best interests of this conservatorship. We conclude the district court's determination that Laing should be responsible personally for a portion of the attorney fees charged by Klein's attorney to be reasonable and therefore affirm on this issue.

2. Fees for Calls, Mileage, and Tax Returns.

Klein next argues that the charges for calls, mileage, and the hours completing tax returns were excessive and the district court erred in not reducing these charges. Although the later reports indicate each call was billed at a half an hour per call, defendants at trial produced evidence that the one call recorded on the attachment to the annual report was in fact blocks of calls representing that amount of time. Although we highly disagree with this reporting method, we find Klein did not rebut defendants' evidence of the calls. Additionally, although the amount charged as mileage was indeed a large amount, defendants' reports evidence numerous services were provided to Klein that required driving, and thus a mileage charge was reasonable. Finally, we agree with the district court's conclusion that the hours billed and the amount charged for completion of the tax returns was reasonable under the facts of this case. Defendants' expert testified certified public accountants may charge an amount similar to defendants for like tax returns, supporting their charges. We therefore affirm on this issue.

3. Sanction and Bond.

Klein argues that defendants were required to increase the conservatorship bond after the value of the conservatorship's assets rose. Although it would have been prudent to have increased the bond amount, we disagree that the defendants were required to do so.

Iowa Code section 633.633 states that its provisions as to bonds apply to all fiduciaries. Section 633.170(1) states:

Except as herein otherwise provided, the court or the clerk shall fix the penalty of the bond in an amount equal to the value of the

personal property of the estate, plus the estimated gross annual income of the estate during the period of administration.

At the time the conservatorship was opened, the bond was adequate. The district court did not require that it be increased. We therefore find no error and affirm on this issue.

4. Appellate Attorney Fees.

Finally, Klein requests appellate attorney fees. We decline to award attorney fees in this case. Costs on appeal are taxed to defendants.

IV. Conclusion.

Upon our de novo review, we modify the district court's \$175,511.60 judgment against Defendants to \$178,497.91 (see attachments). We affirm in all other respects.

AFFIRMED AS MODIFIED.

ATTACHMENT 1

Previously Approved Reports - Conservator Fees for Reports 12-33						
Report #	Total conservator hours reported	Hourly rate charged/ requested	Conservator fee paid/ requested	Total conservator hours allowed	Hourly rate adjusted	Adjusted conservator fee award
12	35.40	\$61.57	\$5,172.00	35.40	\$15.00	\$531.00
13	42.85	\$57.46	\$3,927.50	42.85	\$15.00	\$642.75
14	41.30	\$60.00	\$5,155.50	41.30	\$15.00	\$619.50
15	36.10	\$57.57	\$3,345.00	36.10	\$15.00	\$541.50
16	31.75	\$55.00	\$1,746.25	31.75	\$15.00	\$476.25
17	52.66	\$42.00	\$2,896.30	52.66	\$15.00	\$789.90
18	98.25	\$55.00	\$5,403.75	98.25	\$15.00	\$1,473.75
19	72.25	\$50.00	\$3,612.50	72.25	\$15.00	\$1,083.75
20	79.00	\$60.00	\$4,740.00	79.00	\$15.00	\$1,185.00
21	59.00	\$75.00	\$4,425.00	59.00	\$15.00	\$885.00
22	88.75	\$75.00	\$6,656.25	88.75	\$15.00	\$1,331.25
23	72.25	\$80.00	\$5,780.00	72.25	\$15.00	\$1,083.75
24	64.50	\$80.00	\$5,160.00	64.50	\$15.00	\$967.50
25	60.00	\$80.00	\$4,800.00	60.00	\$15.00	\$900.00
26	69.25	\$85.00	\$5,886.25	69.25	\$15.00	\$1,038.75
27	47.00	\$100.00	\$4,700.00	47.00	\$15.00	\$705.00
28	58.50	\$125.00	\$7,312.50	58.50	\$15.00	\$877.50
29	63.50	\$125.00	\$7,937.50	63.50	\$15.00	\$952.50
30	111.50	\$125.00	\$13,937.50	111.50	\$15.00	\$1,672.50
31	215.08¹⁰	\$100.00	\$21,508.00	215.08	\$15.00	\$3,226.20
32	158.00	\$100.00	\$15,800.00	158.00	\$15.00	\$2,370.00
33	236.00	\$100.00	\$23,600.00	236.00	\$15.00	\$3,540.00
Totals	1792.89		\$163,501.80	1792.89		\$26,893.35

Total requested (12-33) : \$163,501.80

Total allowed: \$26,893.35

Amount owed back (12-33): \$136,608.45

Pending Conservator Fees - 34 & Final Reports			
Report #	Total conservator hours reported	Hourly rate adjusted	Adjusted conservator fee award
34	63.41	\$15.00	\$951.15
Final	39.66	\$15.00	\$594.90

Total adjusted award: \$1,546.05Conservator Fees Owed to Ward for Reports 12-33: **\$136,608.45**Conservator Fees Owed to Defendants for 34 & Final Reports: **\$1,546.05****Amount Owed to Ward for Conservator Fees: \$135,062.40**

¹⁰ Numbers in bold in the table are numbers corrected from the district court's exhibit A or calculations.

ATTACHMENT 2

Previously Approved Reports – Legal Fees for Reports 20-33*								
Report #	A. Total Legal Hours Reported	B. Annual Report (AR) Hours Reported	C. Total Hours Less reported AR Hours = (A - B)	D. Allowed/ Adjusted AR hours	E. Adjusted Legal Hours = (C + D)	F. Rate	G. Adjusted Legal Fee = (E x F)	H. Amount Previously Paid to Defendants
20	103.75	37.0	66.75	15.0	81.75	\$100.00	\$8,175.00	\$10,375.00
21	98.00	42.0	56.00	15.0	71.00	\$100.00	\$7,100.00	\$9,800.00
22	76.25	45.0	31.25	15.0	46.25	\$100.00	\$4,625.00	\$7,625.00
23	69.75	48.0	21.75	15.0	36.75	\$125.00	\$4,593.75	\$8,718.75
24	58.00	48.0	10.00	15.0	25.00	\$125.00	\$3,125.00	\$7,250.00
25	70.75	54.0	16.75	15.0	31.75	\$121.92	\$3,870.96	\$8,625.50
26	95.00	74.0	21.00	15.0	36.00	\$125.00	\$4,500.00	\$11,875.00
27	109.00	48.0	61.00	15.0	76.00	\$150.00	\$11,400.00	\$16,350.00
28	104.00	48.0	56.00	15.0	71.00	\$150.00	\$10,650.00	\$15,600.00
29	101.00	45.0	56.00	15.0	71.00	\$150.00	\$10,650.00	\$15,150.00
30	56.00	30.0	26.00	15.0	41.00	\$150.00	\$6,150.00	\$8,400.00
31	75.00	45.5	29.50	15.0	44.50	\$135.00	\$6,007.50	\$10,125.00
32	93.00	44.0	49.00	15.0	64.00	\$135.47	\$8,670.08	\$12,599.00
33	75.00	38.0	37.00	15.0	52.00	\$135.00	\$7,020.00	\$10,125.00

Total \$96,537.29 \$152,618.25

Total previously paid to Defendants (20-33) : \$152,618.25

Total adjusted \$96,537.29

Amount owed back to Ward (20-33): \$56,080.96

*Reports 12-19 did not require any adjustment of legal fees because the annual report and tax returns were less than the allowed amounts.

Legal Fees							
Report #	Total Legal Hours Reported	Annual Report (AR) Hours Reported	Total Hours Less AR Hours	Adjusted AR hours	Total	Rate	Adjusted Legal Fee
34	71.84	42.00	29.84	15.00	44.84	\$135.00	\$6,053.40
Final	67.33	33.50	33.83	15.00	48.83	\$135.00	\$6,592.05

Total Legal Fees Due to Defendants for Pending Reports: \$12,645.45

Legal Fees Owed to Ward for Reports 20-33: \$56,080.96

Legal Fees Owed to Defendants for 34 & Final Reports: \$12,645.45

Amount Owed to Ward for Legal Fees: \$43,435.51

ATTACHMENT 3

Amount Owed to Ward for Conservator Fees:	\$135,062.40
Amount Owed to Ward for Legal Fees:	\$43,435.51
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Total Amount Owed Back to Ward	\$178,497.91

Division of Amount Owed Back to Ward

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Amount of Judgment Against Laing Personally:	\$4,508.25
Amount of Judgment Against Defendants (Total Amount Owed Back to Ward less Laing's personal judgment):	\$173,989.66