Affirmed and Opinion filed April 26, 2001.

In The

Fourteenth Court of Appeals

———————————

NO. 14-99-01094-CV

———————————

MARK B. LEVIN, THE LAW OFFICES OF MARK B. LEVIN, and ALAN J. WINTERS, Appellants

V.

CLARENCE B. HARRINGTON, INDIVIDUALLY and AS AUTHORIZED REPRESENTATIVE ON BEHALF OF THE PERSON and THE ESTATE OF OPAL M. HARRINGTON, Appellee

---

On Appeal from Probate Court Number One
Harris County, Texas
Trial Court Cause No. 285,729–401

O P I N I O N

Appellants Mark B. Levin and the Law Offices of Mark B. Levin ("Levin"), and Alan J. Winters ("Winters"), assert three issues on appeal from a summary judgment entered by the probate court in favor of appellee Clarence B. Harrington, individually and as authorized representative on behalf of the person and the estate of Opal M. Harrington ("Harrington"). This case involves claims by Levin and Winters to $50,000 in attorney's fees out of the

settlement proceeds from a personal injury claim Clarence B. Harrington filed as guardian for Opal M. Harrington, personally, and for her estate ("Estate") against The Methodist Hospital System. By cross-appeal, Harrington asserts that the probate court abused its discretion when it reduced the attorney's fees awarded to Harrington against Winters from $10,000 to $500. For the reasons stated below, we affirm the probate court's judgment.

Background and Procedural History

In June of 1996, Opal Marie Harrington, then 83 years old, was admitted to Methodist Hospital for surgery to repair a fractured right hip. Her doctor had previously diagnosed Mrs. Harrington with Alzheimer's Disease, and her medical chart at Methodist stated that, because of her disoriented condition and history of falling, she should be restrained as needed. Nevertheless, on June 18, 1996, while she was recovering from surgery, Methodist Hospital left Mrs. Harrington unattended and unrestrained and, while attempting to leave her wheelchair, she allegedly fell, fracturing her left hip. Mrs. Harrington required more surgery to mend her left hip. Allegedly as a result of the fall, Mrs. Harrington's condition deteriorated from Level I Alzheimer's Disease to Level IV or V.

Because of Mrs. Harrington's deteriorating condition, Mrs. Harrington's daughter, Karen L. Hooper, sought the assistance of attorney Michael Holland to have a guardian appointed for Mrs. Harrington. When Hooper raised the issue of pursuing a claim against Methodist Hospital, Holland referred her to Levin. Levin met with Hooper and gave Hooper a power of attorney for her mother to sign. On July 1, 1996, Mrs. Harrington signed a "Power of Attorney," which purports to retain Levin to prosecute Mrs. Harrington's claims against Methodist Hospital in exchange for a contingent fee ("Levin Document"). Under the terms of the Levin Document, Mrs. Harrington would pay Levin attorney's fees in the amount of 33 **a** percent of any settlement made before filing suit or 40 percent if the case settled after suit. At the time Mrs. Harrington signed the Levin Document, Hooper and many others considered Mrs. Harrington mentally incompetent to care for herself and to make her own decisions. In

fact, Hooper had to physically help her mother sign the document.

Later, Levin referred Hooper to another attorney, Alan J. Winters. Hooper signed an "Agreement for Legal Services" with Alan J. Winters authorizing him to "prosecute, compromise, and settle all claims" arising from Mrs. Harrington's fall ("Winters Document"). Under the terms of the Winters Document, Winters's fee was either a percentage of the recovery, varying from 33 **a** to 45 percent, or an amount representing his hourly rate, "whichever results in the greater fee." The Winters Document purports to be an agreement between "Family of Opal Harrington [sic] . . . and Alan J. Winters, M.D., J.D." In the "CLIENT(S)" signature block of the Winters Document, only Hooper signed.

Winters then attempted to negotiate a settlement with the Methodist Hospital. To enable the Harrington family to signify their acceptance of an alleged settlement offer from Methodist Hospital, Winters purportedly drafted a letter to himself, dated August 19, 1996 ("August Letter"). After Mr. Harrington and all of his children signed the August Letter, Methodist Hospital allegedly declined to settle because of questions concerning proper guardianship and representation of Mrs. Harrington's interests.

At a hearing regarding Mrs. Harrington's competency in October of 1996, the probate court appointed Jim Shelton as Mrs. Harrington's guardian ad litem pending a decision on Mr. Harrington's application to act as his wife's guardian. On November 20, 1996, attorney Marshall Brown notified Winters and the Methodist Hospital that he had been retained to pursue Mrs. Harrington's claims against Memorial Hospital and that Harrington would not recognize any previous settlement agreements that might be alleged to exist. In February of 1997, the probate court appointed Mr. Harrington as his wife's guardian.

Harrington then filed suit against Methodist Hospital in the probate court. Winters intervened, seeking attorney's fees and expenses allegedly due under the Winters Document. Harrington moved to strike Winters's intervention, asserting that Winters had no contract with Mrs. Harrington or any person with authority to contract on her behalf. The probate court

granted the motion to strike. Winters then tried a different recovery method, filing a sworn claim against the Estate for his alleged fee, but he did not file suit within the time period required by the Probate Code. *See* TEX. PROB. CODE ANN. § 800 (Vernon Supp. 2000).

Levin also attempted to recover fees; he intervened separately, seeking attorney's fees under the Levin Document. In response, Harrington filed a counter-claim against Levin and a third-party action against Winters seeking, among other things, the following: (1) a judgment declaring the Winters Document unenforceable under TEX. GOV. CODE § 82.065 and under TEX. PROB. CODE § 800; and (2) an award of attorney's fees under Chapter 37 of the Texas Civil Practice and Remedies Code.[1]

Levin and Winters filed a joint motion for summary judgment asking for a take-nothing judgment as to Harrington's claims for declaratory relief and asking the court to enter judgment for Levin on his intervention ("Levin's Motion"). Levin's Motion asserted these grounds: (1) the August Letter ratified the Levin Document and bound the Estate; (2) no evidence supported Harrington's affirmative defense of novation; and (3) Levin was entitled to attorney's fees for enforcing the Levin Document.

Harrington responded and moved for summary judgment, seeking attorney's fees and a declaratory judgment that the Winters Document and the Levin Document are unenforceable as a matter of law. In this regard, Harrington argued as follows : (1) Mrs. Harrington lacked sufficient mental capacity to form a contract when she signed the Levin Document; (2) none of the people who signed the August Letter had authority to bind the Estate when they signed the August Letter; (3) TEX. GOV. CODE § 82.065 and TEX. PROB. CODE § 800 bar the enforcement of the Levin Document and Winters Document; and (4) the August Letter does not ratify the Levin Document.

---

[1]In the meantime, on October 22, 1998, Mrs. Harrington died. Around this same time, Methodist Hospital paid $150,000 plus $1,734.00 in costs to settle Harrington's lawsuit. Methodist deposited the settlement funds in the court's registry and then was dismissed from the case.

The probate court denied Levin's Motion and granted Harrington's motion for summary judgment without explaining the basis for its ruling. The court ordered that Levin and Winters take nothing on their claims, declared Winters's claim to be barred as a matter of law, and awarded Harrington $10,000 in attorney's fees under the Texas Declaratory Judgment Act. It then granted Levin and Winters's motion to modify the judgment in part, reducing the attorney's fees awarded from $10,000 to $500. Levin and Winters have appealed, and Harrington has filed a cross-appeal.

Issues Presented

Levin and Winters present the following issues for review: (1) even if Mrs. Harrington was incompetent when she signed the Levin Document, did the Harrington family ratify the Levin Document? (2) did the probate court err by granting summary judgment on grounds that are either not contained in a pleading, reserved for the jury, or previously disposed of in the case? and (3) can Harrington recover attorney's fees regarding a matter "not in the case" and which Levin and Winters have not opposed. On cross-appeal, Harrington asserts that the probate court erred in reducing the award of attorney's fees from $10,000 to $500.

Standards of Review

The first two issues presented by Levin and Winters are governed by the familiar standard of review that applies to traditional motions for summary judgment. [2] *See Quanaim v. Frasco Restaurant & Catering*, 17 S.W.3d 30, 41-42 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). The third issue presented by Levin and Winters and Harrington's cross-point both complain of the probate court's award of attorney's fees under the Texas Declaratory Judgment Act. This court will reverse an award of attorney's fees under the Texas Declaratory

[2] Levin's Motion was a no-evidence motion as to the novation issue; however, the parties have assigned no error involving the probate court's denial of this no-evidence part of Levin's Motion. Although Levin and Winters refer to the novation issue during part of their argument, the novation argument is not mentioned in the issues presented, and it is not a subsidiary question fairly included in any of the issues presented. *See* TEX. R. APP. P. 38.1(e). Even if Levin and Winters had assigned error on the novation issue, we would not need to reach that issue to dispose of this case, and so we would still not use the no-evidence standard of review.

Judgment Act only if the lower court abused its discretion by either (1) awarding fees when there was insufficient evidence that the fees were reasonable and necessary, or (2) acting arbitrarily, unreasonably, or without regard to guiding legal principles in its determination that the fees awarded were equitable and just. *Bocquet v. Herring*, 972 S.W.2d 19, 20-21 (Tex. 1998).

Did the Harrington Family Have Authority to Bind The Estate in August of 1996?

In his first issue on appeal, Levin[3] asserts that, even if Mrs. Harrington lacked the mental capacity to form a contract when she signed the Levin Document, Harrington ratified[4] the Levin Document when he signed the August Letter.[5] Levin asserts ratification under the following theory: Winters was allegedly working under the Levin Document, so when Harrington accepted a settlement negotiated by Winters, Harrington ratified the Levin Document as a valid contract. We agree that ratification of a contract occurs when a party to the contract recognizes its validity by acting under the contract, performing under the contract, or otherwise affirmatively acknowledging the contract. *Fowler v. Resolution Trust Corp.*, 855 S.W.2d 31, 35 (Tex. App.—El Paso 1993, no writ). However, as we explain, that did not happen here.

Harrington admits that he signed the August Letter; however, he claims that this act did

---

[3] Levin and Winters filed a joint brief asserting the same three issues. For convenience, however, we will often refer to the arguments of Levin and Winters as if they were made only by Levin because Winters does not have any apparent interest in most of the issues in this appeal. We will refer to both Levin and Winters as to the third issue where Winters has an interest at stake.

[4] Harrington argues that Levin may not assert ratification on appeal because, contrary to TEX. R. CIV. P. 94, Levin did not plead ratification. Levin responds that Harrington has waived this argument because Harrington did not raise it in the probate court. To assert on appeal that Levin failed to plead ratification, Harrington must have raised this argument in the probate court. *Roark v. Stallworth Oil and Gas, Inc.*, 813 S.W.2d 492, 494-95 (Tex. 1991). Harrington did not raise this issue in the probate court, and therefore, Harrington may not assert this argument on appeal. *Id.*

[5] The parties have not alleged any reason why Mrs. Harrington's children would have authority to bind the Estate by signing the August Letter. And, after reviewing the record, this court has found nothing reflecting that Mrs. Harrington's children had this authority. At oral argument, counsel for Levin clarified that Levin relies upon Mr. Harrington's alleged authority to bind the Estate to the August Letter, rather than on his children's authority.

not ratify the Levin Document because he had no authority to bind the Estate when he signed the August Letter. The August Letter can bind the Estate only if one of the signatories to this letter had authority to bind the Estate in August of 1996. *Fowler*, 855 S.W.2d at 35-36 (party asserting ratification by an agent must prove that agent had authority to bind the principal through the conduct alleged to be a ratification). As we explain further below, Harrington could not sign for his wife.

Mrs. Harrington's claims against Methodist Hospital were either her separate property or her sole management community property. TEX. FAM. CODE §§3.001(3), 3.002 and 3.102(a) (Vernon 1998). The case law holds that, absent actual authority, the mere relationship of husband and wife does not give one spouse authority to enter into contracts concerning the other spouse's separate property. *Whittlesey v. Miller*, 572 S.W.2d 665, 669 (Tex. 1978); TEX. FAM. CODE §§3.001(3) and 3.101. In addition, absent actual authority, unless the other spouse has been judicially declared to be incapacitated, the mere relationship of husband and wife does not give one spouse authority to contract with regard to the other spouse's sole management community property. TEX. FAM. CODE §§ 3.002 and 3.102(a); TEX. PROB. CODE § 883 (Vernon Supp. 2000); *City of Fort Worth v. Brandt*, 444 S.W.2d 210, 211-13 (Tex. Civ. App.—Fort Worth 1969, writ ref'd n.r.e.). This right of one spouse to act for an incapacitated spouse as to community property does not exist until the incapacitated spouse has been judicially declared to be incapacitated, even though that spouse may have been incapacitated long before this judicial declaration. TEX. PROB. CODE §883; *Brandt*, 444 S.W.2d at 211-13.

The probate court did not declare Mrs. Harrington to be incapacitated until February 3, 1997. The record contains no allegation or evidence of any durable power of attorney or any other document that would give Mr. Harrington actual authority to act as his wife's agent in August of 1996. Thus, even if the August Letter ratified the Levin Document, as a matter of law, Mr. Harrington had no authority to bind Mrs. Harrington and her Estate when he signed the August Letter. TEX. FAM. CODE §§3.001(3), 3.002, 3.101, and 3.102(a); TEX. PROB. CODE §883; *Whittlesey*, 572 S.W.2d at 669; *Brandt*, 444 S.W.2d at 211-13. The August Letter

cannot ratify any alleged contract between Mrs. Harrington and Levin.

Nonetheless, Levin asserts that Harrington must have been authorized to bind Mrs. Harrington and her Estate because (1) the probate court found that, as of November 20, 1996, Marshall Brown had legal authority to act as Mrs. Harrington's attorney; and (2) if Mr. Harrington had authority to act for Mrs. Harrington in retaining Brown's services in November of 1996, then Mr. Harrington must also have had authority to bind Mrs. Harrington by signing the August Letter. However, Levin bases his ratification argument on a false premise—that the probate court found that Mr. Harrington had authority to bind Mrs. Harrington on November 20, 1996.

At a hearing on Levin's motion to show authority on April 8, 1999, the probate court simply found that Brown—the Estate's trial counsel—had shown himself to be authorized to represent the Estate. The court did not find that Mr. Harrington had authority to act for Mrs. Harrington before the court appointed him guardian. The probate court determined that Brown had authority to prosecute this suit on April 8, 1999, long after Mr. Harrington had been appointed guardian and had authority to bind the Estate. Thus, Levin's argument fails because the probate court's determination that Brown had authority to represent the Estate in April of 1999 does not prevent Harrington from asserting that he lacked authority to bind Mrs. Harrington and her Estate in August of 1996.[6] We conclude that the August Letter does not bind Mrs. Harrington and her Estate because none of its signatories had authority to bind Mrs. Harrington and her Estate in August of 1996.

Did the August Letter Ratify the Levin Document?

Even if Mr. Harrington had authority to sign the August Letter for Mrs. Harrington, as a matter of law, the August Letter does not ratify the Levin Document under the unambiguous language of these two documents. Because the terms of the Levin Document and the August

[6] Additionally, we note that, although Levin raises this argument, he cites to no case law or other authority in support of his argument. It is an argument based solely on logic or deduction.

Letter are unambiguous, this court would give effect to them as a matter of law, if they were binding on the Estate. *See Stern v. Wonzer*, 846 SW.2d 939, 944 (Tex. App.–Houston [1st Dist.] 1993, no writ). In his first issue, Levin claims that by signing the August Letter, Harrington accepted a settlement negotiated by Winters and that Harrington ratified the Levin Document as a valid contract because Winters was allegedly working under the Levin Document. But, review of the August Letter shows that it cannot ratify the Levin Document.

Omitting the date and the addressee, the August Letter reads as follows:

> Re: Settlement with Methodist Hospital on behalf of Opal M. Harrington
>
> Dear Mr. Winters:
>
> It is my [sic] understanding that Methodist Hospital has made the following offer as settlement for injuries that Mrs. Opal M. Harrington received while she was a patient at Methodist Hospital:
>
> [alleged settlement terms]
>
> The family has discussed this offer and has decided that this is a fair settlement and we hereby authorize you to accept this offer in [sic] behalf of Mrs. Opal M. Harrington, as indicated by the signatures of the family members below.
>
> Very truly yours,
>
> [names and signatures of Mr. Harrington and his children]

The August Letter is addressed only to Winters. The August Letter does not mention Levin, and it does not specify any terms for any alleged contract with either Levin or Winters. The August Letter does not refer to the Levin Document or to the Winters Document. Levin—not Winters—claims attorney's fees against the Estate in this case. The summary judgment evidence does not indicate that Levin performed legal services for Mrs. Harrington or for the Estate. Furthermore, the Levin Document refers only to Levin as the attorney. It does not state or imply that Levin could assign the case to another attorney or that an attorney other than Levin could perform services. Consequently, even if Mr. Harrington had authority to sign the August Letter for Mrs. Harrington, the August Letter did not ratify the Levin

Document as a matter of law under the unambiguous language of the August Letter and the Levin Document. *See Westbrook v. Atlantic Richfield Co.*, 502 S.W.2d 551, 553-58 (Tex. 1973) (holding that party did not ratify lease as a matter of law under the unambiguous language of the alleged ratification document); *Stern*, 846 S.W.2d at 944 (express language of contingency fee agreements signed by parents authorized attorneys to represent parents in respect of child's injuries but did not give attorneys authority to represent injured child where the agreements did not refer to the injured child's claims).

Because the signatories to the August Letter had no authority to bind Mrs. Harrington or her Estate and because the unambiguous language of the August Letter does not ratify the Levin Document, we overrule Levin's first issue.

Should the Judgment Be Reversed Because Harrington Did Not Plead Res Judicata?

Levin's second issue complains that the probate court erred by granting summary judgment on grounds either "not contained by a pleading, reserved for the jury, or previously disposed of in [the] case." In this issue, Levin asserts that the probate court's judgment should be reversed because Harrington did not plead res judicata. Although he did not use the words "res judicata," it appears that Harrington did sufficiently plead res judicata in his Second Amended Answer. Even if Harrington had failed to plead res judicata, this would not be reversible error because Harrington moved for summary judgment on grounds other than res judicata, such as Mrs. Harrington's lack of mental capacity when she signed the Levin Document and the failure of Levin's ratification argument. See Tex. R. App. P. 44.1.

Can Summary Judgment Ever Be Granted on Mental Capacity to Form a Contract?

In his second issue, Levin also argues that Mrs. Harrington's mental capacity to execute the Levin Document is inherently a fact issue, as to which summary judgment can never be granted. Levin argues that courts should not grant summary judgment as to issues of intent, knowledge, and state of mind because these issues are not susceptible to being readily controverted. In support of this argument, Levin cites no mental capacity cases; however, he does cite three cases, including *Beaumont Enter. & Journal v. Smith*, 687 S.W.2d 729, 730 (Tex. 1985), *overruled by Casso v. Brand*, 776 S.W.2d 551, 557-59 (Tex. 1989). Levin fails

to mention, however, that the Texas Supreme Court has overruled *Beaumont Enter. & Journal* on this point. *See Casso*, 776 S.W.2d at 557-59, *overruling Beaumont Enter. & Journal*, 687 S.W.2d at 730. Levin's argument in this regard fails because it is contrary to *Casso* and other recent Texas Supreme Court cases allowing summary judgment as to issues of intent, knowledge, or state of mind. *See, e.g., Huckabee v. Time Warner Entm't Co., L.P.*, 19 S.W.3d 413, 420 (Tex. 2000).

Levin also cites the *Galland's Estate* case and argues that summary judgment can never be granted as to a lack of mental capacity claim because of the presumption that Mrs. Harrington had the requisite mental capacity to contract. *See Galland's Estate v. Rosenberg*, 630 S.W.2d 294, 297 (Tex. App.—Houston [14th Dist.] 1981, writ ref'd n.r.e.). This case does not so hold. In *Galland's Estate*, the appellant presented no summary judgment evidence that would create a genuine issue of material fact regarding its claim that decedent lacked mental capacity when he designated his friend as the beneficiary of his life insurance policy. *Id*. at 297-98. Therefore, this court affirmed a summary judgment enforcing this beneficiary designation. *Id.* We did not hold that summary judgment can never be granted as to mental capacity. A presumption, such as the presumption of competency, may shift the burden of proof, but it does not preclude summary judgment. *See Swate v. Schiffers*, 975 S.W.2d 70, 74-75 (Tex. App.—San Antonio 1998, pet. denied) (presumption does not preclude summary judgment). Therefore, Levin's argument that courts cannot grant summary judgment on the issue of mental capacity fails.[7] We overrule Levin's second issue.

---

[7] Although not referred to in any other part of his brief, in two sentences of the argument section, Levin summarily states that "the Levin affidavit" shows there is a fact issue concerning Hooper's perceptions of and conclusions about Mrs. Harrington's mental capacity. A court of appeals cannot reverse a trial court's judgment in the absence of properly assigned error. *Texas Nat. Bank v. Karnes*, 717 S.W.2d 901, 903 (Tex. 1986). Levin has not assigned error as to this statement because he did not list it as an issue presented for review and because it is not a subsidiary question fairly included in his issues presented for review. TEX. R. APP. P. 38.1(e). In these two sentences, Levin provides no argument, no analysis, no citations of legal authority, and only one record citation. This citation purports to be a citation to the Levin affidavit; however, the pages cited in the record are not an affidavit at all but are actually the Levin Document, attached to Levin's Motion, which contains no affidavit by Levin. Therefore, even if Levin had assigned error in his issues presented, he waived review by his failure to provide argument, cite legal authorities, and to make relevant record references. TEX. R. APP. P. 38.1(h); *Baker v. Gregg County*, 33 S.W.2d 72, 79-80 (Tex. App.—Texarkana 2000, pet. dism'd); *Houghton v. Port Terminal R. R. Ass'n*, 999 S.W.2d 39, 51 (Tex. App.—Houston

Did the Probate Court Abuse Its Discretion in Awarding Attorney's Fees?

The probate court declared that Winters's claim against the Estate was barred as a matter of law. The probate court also awarded Harrington $500 in attorney's fees under the Texas Declaratory Judgment Act. In their third issue, Levin and Winters argue that the probate court erred in awarding attorney's fees because the validity of Winters's claim was "not in the case" and because Levin and Winters did not oppose Harrington's action for declaratory relief as to Winters's claim.

The third issue has no merit. The validity of Winters's claim was an issue in this case because Harrington asserted claims against Levin and Winters for a declaratory judgment as to Winters's claim. Levin and Winters opposed Harrington's action for declaratory relief by filing answers that denied Harrington's entitlement to declaratory relief and by filing Levin's Motion—which sought judgment that Harrington take nothing as to his request for declaratory relief. Levin and Winters have not shown that the probate court abused its discretion by awarding Harrington $500 in attorney's fees under the Texas Declaratory Judgment Act. *See Bocquet v. Herring*, 972 S.W.2d 19, 20-21 (Tex. 1998). We overrule the third issue presented by Levin and Winters.

We now turn to Harrington's cross-point. Under the Texas Declaratory Judgment Act, the granting of attorney's fees is within the discretion of the trial court. TEX. PRAC. & CIV. REM. CODE ANN. § 37.009 (Vernon 1997); *Bocquet*, 972 S.W.2d at 20-21. The Act, however, imposes four limitations on that discretion. *Bocquet*, 972 S.W.2d at 21. The attorney's fees must be (1) reasonable, (2) necessary, (3) equitable, and (4) just. *Id*. This court will reverse an award of attorney's fees under the Texas Declaratory Judgment Act only if the lower court abused its discretion by either (1) awarding fees when there was insufficient evidence that the fees were reasonable and necessary, or (2) acting arbitrarily, unreasonably, or without regard to guiding legal principles in its determination that the fees awarded were equitable and just.

[14th Dist.] 1999, no pet.).

Id. The trial court has discretion to conclude that it is not equitable or just to award the fees requested, even if they have been shown to be reasonable and necessary. *Id*.

In his cross-point, Harrington does not attack the reasonableness or necessity of the $500 in fees awarded; rather, Harrington asserts that the probate court abused its discretion when it determined that it was equitable and just to reduce the award of attorney's fees from $10,000 to $500. We hold that the probate court did not abuse its discretion in this determination. *Utley v. Marathon Oil Co.*, 31 S.W.3d 274, 281 (Tex. App.—Waco 2000, no pet. h.) (no abuse of discretion under declaratory judgment act when trial court reduced attorney's fees awarded from $750,000 to $150,000, even though $750,000 had been found to be reasonable and necessary). The probate court granted declaratory relief as to a single, simple issue—whether Winters's claim against the Estate is barred as a matter of law. Although Levin and Winters contested this issue, they did not make any reasonable argument as to why Winters's claim was not barred. All that Harrington needed to do to prove that Winters's claim was barred was to show that Winters failed to file suit within 90 days after his claim was rejected by Harrington. *See* TEX. PROB. CODE § 800. Further, although Harrington's attorney's fee affidavit was not controverted by Levin or Winters, this affidavit states that $10,000 is a reasonable fee for the legal representation of Harrington in all matters relating to Levin and Winters, including defending against their interventions. Harrington was not entitled to recover fees for any matters relating to Levin or for defending against Winters's intervention. Harrington was entitled to recover attorney's fees only as to his action for declaratory relief against Winters, and this action was a small part of the overall litigation between Harrington and the two intervenors. Harrington's evidence showed that a reasonable fee for all of the litigation between Harrington and the intervenors was $10,000. The trial court did not abuse its discretion in determining that it was equitable and just to award Harrington $500 rather than $10,000. We overrule Harrington's cross-point.

Without reaching all of the arguments raised by Harrington in response to the issues presented by Levin and Winters, we overrule all of these issues. Finding no abuse of discretion

in the probate court's reduction of its award of attorney's fees, we overrule Harrington's cross-point. Therefore, we affirm the probate court's judgment.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed April 26, 2001.

Panel consists of Justices Anderson, Fowler, and Edelman.

Do Not Publish — TEX. R. APP. P. 47.3(b).