

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2017-0288, In re Alice Stedman 1989 Trust 2013 Restatement, the court on August 15, 2018, issued the following order:**

The respondent, Claire Donahue, appeals orders of the Circuit Court (Cassavechia, Referee, approved by Ashley, Foley, and King, JJ.) ordering her to pay attorney's fees incurred by the petitioners, Stanley Stedman and his daughter, Tammy Soper, in litigation to invalidate the 2013 restatement to the Alice Stedman 1989 Trust. The respondent argues that the trial court erred in: (1) denying her request for an evidentiary hearing; (2) accepting the petitioners' late-filed pleading; (3) awarding attorney's fees without finding that she acted in bad faith or engaged in oppressive conduct; (4) imposing a "loser pays" rule for an award of attorney's fees in an undue influence case; and (5) awarding attorney's fees for the related "Cota" litigation. We affirm.

The record shows that in 1989 Alice Stedman, the settlor, created the Alice Stedman 1989 Trust, which provided that upon Alice's death, her two children, Claire and Stanley, would serve as co-trustees, and that each of them would receive one of two equal shares of the trust. The trust's primary asset consists of lakefront real estate and a business known as Robie's RV park. The trust later was amended to provide that upon Alice's death, Claire would continue to manage Robie's until she was no longer willing or able to do so, at which time the park would be sold and the proceeds split equally between Claire and Stanley. Under the 2013 restatement to the trust, which Alice executed at age 93 while in failing health, 19 days before she died, Claire became the sole trustee, and the real estate and business were left entirely to her, with provisions for Stanley's use of a cottage on the property. The petitioners challenged the validity of the 2013 restatement, and following a seven-day trial, the trial court issued a 42-page order invalidating the restatement based upon its finding that it was the product of Claire's undue influence upon her ailing mother. The trial court deferred ruling on the petitioners' request for attorney's fees pending the results of Claire's appeal.

Following our order affirming the trial court's decision, see In re Alice Stedman 1989 Trust 2013 Restatement, No. 2015-0717 (N.H. Nov. 10, 2016), the respondent requested an evidentiary hearing on the petitioners' request for attorney's fees. She sought an opportunity to testify concerning the reasonableness of her decision to defend the petitioners' challenge to the 2013 restatement. The trial court denied the request, noting that it had presided over the seven-day trial and had been involved in nearly all substantive

proceedings since the start of the litigation in 2014. See In re Estate of King, 920 N.E.2d 820, 828 (Mass. 2010) (“A ‘hearing’ on an award that shifts fees under [the statute] is necessary, but an evidentiary hearing may not be required, particularly where the award of fees is being considered by the judge who presided over the trial.” (citation omitted)). Following a non-evidentiary hearing, the court ordered the respondent to pay the petitioners’ attorney’s fees and directed the petitioners to submit itemized invoices to the court within ten days of the notice of its order.

The petitioners filed their invoices, together with a request that Claire reimburse them \$215,846.35 in attorney’s fees and costs. The respondent objected, asserting, among other things, that the respondents’ reasonable attorney’s fees and costs amounted to no more than \$128,932.26. The respondent also asserted that the petitioners’ fee request should be denied in its entirety because the pleading was filed one day late. The court ruled that, in the exercise of its discretion, it would “not impose such a draconian sanction.” However, the court agreed with the respondent that the petitioners’ reasonable fees and costs incurred in the litigation were no more than \$128,932.26 and ordered the respondent to pay them that amount.

The court also ordered the respondent to pay the petitioners \$5,798.50 for fees and costs incurred in the Cota litigation. The Cota litigation involved the respondent’s attempted eviction of certain long-tenured campers from Robie’s. The court, with the same referee presiding, found that the respondent’s actions were motivated by a bad faith intent to retaliate against Stanley for seeking to invalidate the 2013 restatement. This appeal followed.

“We review a trial court’s award of attorney’s fees under our unsustainable exercise of discretion standard, giving deference to the trial court’s decision.” Shelton v. Tamposi, 164 N.H. 490, 501 (2013). “If there is some support in the record for the trial court’s determination, we will affirm it.” Id. The parties agree that the trial court’s authority to award attorney’s fees in this case is governed by RSA 654-B:10-1004 (2007), which provides: “In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.” In Shelton, we noted that “[t]he language of this statute provides an exception to the American Rule that generally each party is responsible for his or her own fees.” Id. at 502.

We first address the respondent’s argument that “New Hampshire principles of common law established in Harkeem and its progeny must govern the [court’s] exercise of discretion” in determining whether to award attorney’s fees in this case. In Harkeem, we held that an award of attorney’s fees may be justified when a party has acted in bad faith or engaged in oppressive conduct. See Harkeem v. Adams, 117 N.H. 687, 690-91 (1977). However, in Shelton, we

agreed with the Supreme Judicial Court of Massachusetts in Estate of King, 920 N.E.2d at 827, that the words “as justice and equity may require . . . establish a broad standard, one that certainly reaches beyond bad faith or wrongful conduct.” Shelton, 164 N.H. at 502 (emphasis added). Given our holding in Shelton that the statutory standard reaches beyond bad faith and wrongful conduct, we conclude that the trial court did not err in awarding attorney’s fees — even in the absence of a finding that Claire acted in bad faith or that she engaged in oppressive conduct.

We next address the respondent’s argument that the trial court, by focusing primarily upon her pre-litigation conduct in a “close” case, in essence adopted a “loser pays” rule in undue influence cases. She argues that the trial court should have focused instead upon the reasonableness of her decision to defend the petitioners’ challenge to the 2013 restatement. At the outset, we note that although the trial court described its decision to invalidate the 2013 restatement as a “close one,” the court later clarified that its use of the term “close” was not meant to suggest that it did not “confidently determine that the settlor had been unlawfully influenced.” The court stated that its use of the term “was merely intended as acknowledgement that . . . undue influence may result from more subtle conduct” and from events and occurrences “largely shroud[ed] in nuance and/or contradiction.” (Quotation omitted.)

The record shows that, in awarding fees, the trial court considered, among other factors, the respondent’s pre-litigation conduct. For example, the court considered the fact that the respondent “isolated and unduly influenced” her 93-year old, ailing mother; that as a result of her conduct, she “significantly redistributed asset grants away from Stanley to her own favor”; that she “hid the severity of Alice’s illness from Stanley”; and that she “failed to promptly inform him of her passing.” The record also shows that the court considered the respondent’s conduct during the litigation. The court found that the respondent “forced [the petitioners] . . . to engage in lengthy and costly litigation,” and that her conduct during the litigation “was far less than commendable.” The court found that she gave “inconsistent and evasive” testimony that “greatly hindered the Court’s ability to discern the relevant events that occurred,” and that “overall [her] testimony lacked certain indicia of consistent truthfulness.” The court found that the respondent “testified in a manner that gave the Court significant pause regarding her credibility.” On occasion, her testimony was “incredible” and “stretch[ed] credulity.” Thus, the record shows that the court did not focus only upon the respondent’s pre-litigation conduct; rather, it based its decision to award fees upon the respondent’s behavior both before and during the litigation. Accordingly, we reject the respondent’s argument that the court employed a “loser pays” rule, and we conclude that the record supports the trial court’s discretionary decision to award attorney’s fees in this case. See Shelton, 164 N.H. 501.

The respondent's remaining arguments concern the court's decisions to resolve the issue of attorney's fees without an evidentiary hearing, to accept the petitioners' pleading one day late, and to award attorney's fees and costs in the Cota litigation. As the appealing party, the respondent has the burden of demonstrating reversible error. Gallo v. Traina, 166 N.H. 737, 740 (2014). Based upon our review of the trial court's well-reasoned orders, the respondent's challenges to them, the relevant law, and the record submitted on appeal, we conclude that the respondent has not demonstrated reversible error. See id.

Affirmed.

HICKS, BASSETT, and HANTZ MARCONI, JJ., concurred.

**Eileen Fox,  
Clerk**