

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0014**

In re the Estate of James J. Fiorentino, Deceased.

**Filed July 25, 2022
Affirmed; motion denied
Ross, Judge**

Ramsey County District Court
File No. 62-PR-18-29

William H. Henney, Henney Law, Minnetonka, Minnesota; and

Sally M. Silk, Hvistendahl, Moersch, Dorsey & Hahn, P.A., Northfield, Minnesota (for
appellant Hvistendahl, Moersch, Dorsey & Hahn, P.A.)

Thomas E. McEllistrem, Robert E. McGarry, Collins, Buckley, Sauntry & Haugh,
P.L.L.P., St. Paul, Minnesota (for respondent James J. Fiorentino Foundation)

Alan I. Silver, Mark R. Bradford, Casey D. Marshall, Bassford Remele, P.A., Minneapolis,
Minnesota (for respondent Security Bank & Trust Company)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Smith,
John, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

This case arises from a dispute between the beneficiary of a trust funded by a
decedent's will and a law firm seeking to recover attorney fees it claims to have generated

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

representing the decedent's guardian and personal representative. After the law firm filed a \$272,834 attorney lien as the estate's creditor, and the beneficiary challenged the reasonableness of the attorney fees sought through the lien, the district court awarded the firm only \$12,890. In this appeal in which the law firm challenges the fee-award procedure employed by the district court, we hold that the district court appropriately treated the beneficiary as an interested person with a statutory right to challenge the amount of fees stated in the attorney lien and that the law firm failed to provide an adequate record in support of its due-process argument arising from the lack of an allegedly promised hearing. We therefore affirm.

FACTS

This attorney-fee dispute began with a guardianship and probate arrangement concerning James J. Fiorentino and his great nephew, Gregg Fiorentino. Gregg served as James's guardian and conservator during the year preceding James's death in September 2017 and then afterwards as the personal representative of James's estate. The law firm of Hvistendahl, Moersch, Dorsey & Hahn began representing Gregg in January 2018 related to both his roles, the representation lasting for about four years, until late November 2021. This lawsuit concerns the firm's attempt to recover attorney fees it says it incurred providing that representation.

Gregg has been at the center of various threads of litigation related to his roles as guardian and personal representative and focused on wealth left by James. James bequeathed his entire estate—valued at more than \$10 million—to a trust for which respondent Security Bank and Trust Company serves as trustee. The trust instrument

named two beneficiaries. The first is James's daughter, to whom the trust instrument directed \$1.5 million and a residence. The second is the respondent foundation (The James J. Fiorentino Foundation), to which the trust instrument directed the remainder of James's wealth. The trust instrument also named four charitable organizations, each of which would receive an equal share of any trust property not effectively distributed to the two primary beneficiaries.

Gregg was serving as a foundation board member when James died, but Gregg's relationship with the foundation soured. The foundation removed Gregg from the board in December 2018 and then sued him for breaching his fiduciary duty to the board. The foundation also urged the district court to remove Gregg as the estate's personal representative, asserting that he was moving too slowly to administer the estate and transfer estate funds to the trust. After litigation related to the guardianship and conservatorship ended in October 2020, the district court recognized that the law firm had already recovered \$169,940 for attorney fees generated in its representing Gregg. It issued an order for a final accounting, cautioning that it had then "capped" the firm's recovery, permitting no more in attorney fees for "legal work since [James's] death." The firm withdrew as Gregg's attorney.

The primary focus of this appeal concerns the district court's treatment of the law firm's later effort to recover more in legal fees. About four months after it withdrew from representing Gregg, the firm filed a "Notice of Attorney Lien" seeking to recover an additional \$272,834 in attorney fees. According to the firm, this was the sum of the amounts incurred representing Gregg in the guardianship and conservatorship dispute (\$137,563),

incurred representing Gregg in the estate dispute (\$107,791), and generated in its effort to recover attorney fees after withdrawing (\$27,479). The foundation opposed the law firm's lien at first by moving the district court to sanction the firm for improperly filing the lien and then, after withdrawing that motion, by moving to dismiss the lien on the pleadings or, alternatively, for summary judgment dismissing it.

The district court issued an order awarding the law firm only a fraction of its attorney-fee request. It concluded that the foundation, a named trust beneficiary, had standing to challenge the firm's attorney lien as an interested person as defined by Minnesota Statutes section 524.1-201(33) (2020). And on the same premise it determined that the foundation could object to the lien under Minnesota Statutes section 524.3-806 (2020) despite not being the personal representative. The district court awarded the law firm \$12,890 of its \$272,834 request, consisting of \$10,500 for representing Gregg as guardian and conservator, \$790 for representing Gregg as personal representative, and \$1,600 for representing Gregg in the breach-of-fiduciary-duty litigation.

The law firm appealed the district court's order and, after receiving the foundation's responsive brief and addendum, moved this court to strike some of the foundation's submissions. We now decide the motion to strike and the merits of the appeal.

DECISION

The law firm offers two procedural arguments urging us to reverse the district court's attorney-fee award and remand the case to the district court with instructions to dismiss the foundation's objections and to issue an order granting all the firm's requested fees. It argues first that the district court errantly treated the foundation as having standing

to object to the attorney lien. It argues second that the district court violated its right to due process by issuing the attorney-fee order without first conducting an evidentiary hearing. Before addressing those arguments, we will resolve the law firm's motion to strike elements of the foundation's appeal submission.

The law firm asks us to strike from the foundation's addendum any documents (and references to those documents) that were filed only in the foundation's breach-of-fiduciary-duty suit against Gregg. It bases this request on its observation that this material is not part of the record on appeal. The law firm's observation is correct, and its motion incidentally calls our attention to additional material similarly outside the record.

In addition to the estate case now on appeal, which is designated district court case number 62-PR-18-29, material from three other district court files were the subject of discussion in the district court: (1) case number 62-PR-16-703, which was the guardianship and conservatorship matter; (2) case number 62-CV-TR-16-40, which was the trust matter; and (3) case number 62-CV-19-1492, which was the breach-of-fiduciary-duty matter. The law firm accurately asserts that the foundation's addendum and brief cites or refers to documents filed only in the breach-of-fiduciary-duty matter. We have noticed too that both parties cite documents filed only in the guardianship-and-conservatorship matter, and the law firm cites documents filed only in the trust matter. We infer that both parties assumed that the record on appeal included those documents.

This assumption was mistaken. Only "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings" constitute the record on appeal. Minn. R. Civ. App. P. 110.01. We have considered documents outside the district court file as part

of the record on appeal if the document is publicly available and the district court took judicial notice of it. *MacDonald v. Brodkorb*, 939 N.W.2d 468, 474 (Minn. App. 2020). But the district court did not take judicial notice of any documents submitted in the other files. We need not grant the firm’s motion to strike, because we will base our decision only on records properly before us regardless of whether we formally “strike” documents or references. We will not consider the documents outside the appellate record in this case or references to those documents, and this applies to both parties’ submissions.

As to the merits of the appeal, we first consider the law firm’s argument that the district court wrongly recognized the foundation’s standing to challenge its lien. Whether a party has standing is a question of law that we review de novo. *In re Horton*, 668 N.W.2d 208, 212 (Minn. App. 2003). Our de novo review leads us to reject the law firm’s argument.

The law firm maintains that because it filed its attorney-fee request as a creditor claim against the estate under Minnesota Statutes sections 481.13 and 524.3-804 (2020), only the estate’s personal representative may object under the limits included in section 524.3-806 (2020). It is true that section 524.3-806 establishes the process for a personal representative to challenge a creditor’s claim made against a decedent’s estate. But the law firm identifies no provision of the statute and cites no other authority supporting its premise that section 524.3-806 affords the only process through which an interested person can challenge a request for attorney fees. In contrast to section 524.3-806, which focuses on potential challenges to claims (generally) that are made by personal representatives (specifically), section 524.3-721 (2020) focuses on challenges to the reasonableness of attorney fees incurred by the personal representative (specifically, among other things) that

are made by any interested person (generally). It provides a means for “all interested persons” to raise for the district court’s review “the propriety of employment of any person by a personal representative including any attorney, . . . [or] the reasonableness of the compensation of any person so employed.” Minn. Stat. § 524.3-721. And section 524.3-721 does not express or imply that an interested person may not raise—or that the district court may not consider—the reasonableness of attorney fees that are sought through a creditor’s claim against the estate. We are confident that the legislature did not provide section 524.3-806 as a means for attorneys to evade judicial review of their fees under a different statute that directly authorizes the review.

The remaining question, easily answered, is whether the foundation is an “interested person” under section 524.3-721. It is. The category of “interested person” is broad, including any individual or entity “having a property right in or claim against the estate of a decedent.” Minn. Stat. § 524.1-201(33). And its definition is flexible, “vary[ing] from time to time . . . according to the particular purposes of, and matter involved in, any proceeding.” *Id.* The category specifically includes “heirs, devisees, children, spouses, creditors, [and] *beneficiaries*.” *Id.* (emphasis added); Minn. Stat. § 524.1-201(4) (defining “beneficiary” to include trust beneficiaries). James’s will directed all his property to the trust he created, and his trust instrument directed much of that property to the foundation. Given the trust instrument’s requirement that the trustee convey to the foundation all trust money remaining after providing \$1.5 million to James’s daughter, every nickel the personal representative pays the law firm in unreasonable fees is a nickel to which the foundation is entitled. We hold that the district court did not err by considering the

foundation's challenge as one raised by an interested person under section 524.3-721. The district court's assessment of reasonableness not being before us, we turn to the law firm's other procedural challenge.

The law firm argues that the district court did not provide it with due process because the court issued its order determining the law firm's attorney fees without holding a hearing after it allegedly promised one. Whether the district court afforded a party due process is a question of law subject to our de novo review. *Gams v. Houghton*, 884 N.W.2d 611, 618 (Minn. 2016). The law firm asserts that the district court asked the parties to "get together to come up with a scheduling order" so it could conduct a hearing on the question of attorney fees and that the district court issued its order awarding fees without holding a hearing. But the appellant bears the burden of providing an adequate record on appeal. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). And the firm bases its factual assertion on a transcript that, as highlighted by its challenge to extraneous material outside the record on appeal, is not properly before us.

We add that we doubt that the law firm would prevail on its due-process theory even if we considered it on the merits. The Minnesota and United States Constitutions prohibit the state from depriving a person of property without due process of law. Minn. Const. art. 1, § 7; U.S. Const. amend. XIV, § 1. Adequate process includes notice and an opportunity to be heard. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Our review of the record informs us that the law firm was on notice of the foundation's challenge and that the district court provided adequate written and oral process to the parties on the issue. The law firm also offers no

convincing argument that it would have provided the district court any additional information at a hearing or that a hearing would have affected the district court's substantive bases for its fee award.

Affirmed; motion denied.