

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

A. RUBEN LOPEZ, BENEFICIARY AND
FORMER PERSONAL REPRESENTATIVE
OF THE ESTATE OF ANGEL LOPEZ
MALDONADO,

Appellant/Cross-Appellee,

v.

Case No. 5D18-2773

ANGEL RAUL LOPEZ HERNANDEZ,
BENEFICIARY AND ADMINISTRATOR
AD LITEM OF THE ESTATE OF ANGEL
LOPEZ MALDONADO, STAR INSURANCE
COMPANY, AND JULIUS L. WILLIAMS, ESQUIRE,

Appellees/Cross-Appellants.

Opinion filed February 28, 2020

Appeal from the Circuit Court
for Osceola County,
Mike Murphy, Judge.

A. Ruben Lopez, Dublin, OH, Pro Se,
Appellant/Cross-Appellant.

Angel Raul Lopez Hernandez, Miramar, Pro
Se, Appellee/Cross-Appellant.

No Appearance for other Appellees/Cross-
Appellants.

PER CURIAM.

This appeal marks the tenth time brothers, attorneys, and co-beneficiaries Angel Ruben Lopez Hernandez (“Ruben”) and Angel Raul Lopez Hernandez (“Raul”) have come to our Court to fight over their dead father’s now-fifteen-year-old estate.¹ This time, Ruben and Raul both challenge a probate court order addressing attorney’s fees and costs sought by Julius Williams. Williams served as Ruben’s attorney when he was the estate’s personal representative.² The order awarded Williams fees and costs, and it imposed a charging lien on Ruben’s portion of the estate. It divided responsibility for the attorney’s fees between the estate and Ruben, personally, concluding that Ruben directed Williams to engage in frivolous litigation on the estate’s behalf. We affirm without further comment the trial court’s finding that Williams acted in this manner, as well as Raul’s cross-appeal challenging the reasonableness of Williams’s award. We are compelled to reverse in part, however, because the probate code does not allow for the personal imposition of attorney’s fees and Williams is not entitled to a charging lien.

Florida’s Probate Code delineates how attorneys may recover reasonable compensation for services to an estate. § 733.106, Fla. Stat. (2018). We review the probate court’s interpretation of a statute de novo. See *Brindise v. U.S. Bank Nat’l Ass’n*, 183 So. 3d 1215, 1217 (Fla. 2d DCA 2016) (citing *W. Fla. Reg’l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 8 (Fla. 2012)). While section 733.106(4) allows probate courts to direct the

¹ The estate initially held a money market account containing \$106,905.86 and a St. Cloud condominium initially valued at \$80,000. The condo is now worth \$43,000. Unsurprisingly, the money market account has been fully depleted.

² The probate court found Ruben in indirect civil contempt for failing to deed the St. Cloud condominium to himself and Raul, and then close the estate. It later entered a six-figure monetary judgment against Ruben and a writ of bodily attachment that remains outstanding. He is no longer the estate’s personal representative.

payment of attorney's fees out of a beneficiary's portion of an estate, it does not permit probate courts to impose personal liability for the estate's attorney's fees and costs. § 733.106(4), Fla. Stat. (2018); *Bennett v. Berges*, 50 So. 3d 1154, 1158 (Fla. 4th DCA 2010) (citing *Snyder v. Bell*, 746 So. 2d 1100, 1104 (Fla. 2d DCA 1999)); *Dourado v. Chousa*, 604 So. 2d 864, 866 (Fla. 5th DCA 1992) (citing *Dayton v. Conger*, 448 So. 2d 609, 611 (Fla. 3d DCA 1984)); *Parker v. Fla. First Nat'l Bank of Jacksonville*, 419 So. 2d 730, 732 (Fla. 1st DCA 1982). Accordingly, the probate court could not direct Ruben to pay the estate's attorney's fees himself.

Additionally, Williams was not entitled to a charging lien under these circumstances. A charging lien "is an equitable right to have costs and fees due an attorney for services in the suit secured to him in the judgment or recovery in that particular suit." *Sinclair, Louis, Siegel, Heath, Nussbaum & Zavertnik, P.A. v. Baucom*, 428 So. 2d 1383, 1384 (Fla. 1983). We review a trial court's decision to award a charging lien to an attorney for abuse of discretion. See *Dyer v. Dyer*, 438 So. 2d 954, 955–56 (Fla. 4th DCA 1983). Here, Williams was not entitled to a charging lien because "[t]he personal representative . . . received no fund or positive judgment or settlement out of [his] efforts." See *Correa v. Christensen*, 780 So. 2d 220, 220–21 (Fla. 5th DCA 2001) (citing *Sinclair*, 428 So. 2d at 1383). Indeed, he merely administered the estate and produced no tangible return for the estate or the personal representative. See *id.*

AFFIRMED in part and REVERSED in part.

COHEN, LAMBERT, and TRAVER, JJ., concur.