

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-0110

FAYE TOWNSEND,

Appellant,

v.

MARTHA MANSFIELD, JENNIFER
GLASS, NOLAN TOWNSEND, &
LARRY JOE TOWNSEND,

Appellees.

On appeal from the Circuit Court for Lafayette County.
Jennifer Johnson, Acting Circuit Judge.

October 6, 2021

PER CURIAM.

Appellant has failed to raise any cognizable issues on appeal. Accordingly, we affirm the trial court's supplemental judgment and order granting the assessment of attorney's fees against Appellant's share of the estate. *See Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019) (en banc) ("For an appellant to raise an issue properly on appeal, he must raise it in the initial brief. Otherwise, issues not raised in the initial brief are considered waived or abandoned.").

We write to address Appellees' motion for attorney's fees for services rendered in this appeal. Attorney's fees in probate cases

are governed by the Florida Probate Code's fees and costs provisions. § 733.106, Fla. Stat. (2012).^{*} The probate court is a court of equity. § 733.106(1), Fla. Stat. The probate court has authority to award fees to “[a]ny attorney who has rendered services to an estate.” § 733.106(3), Fla. Stat.

As a court of equity, the probate court is also expressly permitted to make discretionary allocations for fee awards. “When costs and attorney’s fees are to be paid from the estate, the court may direct from what part of the estate they shall be paid.” § 733.106(4), Fla. Stat. This discretionary allocation of costs and fees is part of the probate court’s exclusive jurisdiction over the settling of estates. And this Court is without authority to award attorney’s fees in probate matters, even for appellate services performed, where the basis of the claim is provision of a benefit to the estate. This remains true where, as here, the benefit to the estate is defense against another beneficiary’s frivolous action.

The supreme court held “the award of attorney’s fees against a decedent’s estate for services to the estate in an appellate court is part of the settlement of estates of decedents as to which probate courts have exclusive jurisdiction.” *Garvey v. Garvey*, 219 So. 2d 685, 686 (Fla. 1969) (internal quotation marks omitted). Fees arising from disputes between heirs and devisees, where all the relevant litigants claim to act on behalf of the estate, generally fall within this class. *See In re Est. of Udell*, 501 So. 2d 1286, 1288 (Fla. 4th DCA 1986) (distinguishing between fees based on claims *against* an estate and those *for the benefit of* an estate, and holding that the latter is in the exclusive jurisdiction of the probate court).

Notwithstanding our *obiter dictum* in *Carrithers v. Cornett’s Spirit of Suwannee, Inc.*, 93 So. 3d 1240, 1241–42 (Fla. 1st DCA 2012), Florida courts have followed the plain language of the statute and supreme court precedent in holding such fees are exclusively in the jurisdiction of the probate court. *See In re Estate of Gray*, 626 So. 2d 971, 974 (Fla. 1st DCA 1993) (holding the

^{*} The statutes in effect at the time of the decedent’s death control. The relevant provisions have been amended since 2012, but not in a way that affects today’s outcome.

appellate court was “without jurisdiction to award” attorney’s fees for appellate legal services rendered and denying the motion without prejudice to petition the probate court for the same relief); *Bissmeyer v. Southeast Bank, N.A.*, 596 So. 2d 678, 679 (Fla. 2d DCA 1991) (holding that the allocation of appellate attorney’s fees for services rendered to an estate “rests within the exclusive province” of the probate court); *Udell*, 501 So. 2d at 1288 (holding “the authority to award attorney’s fees from the estate for services rendered on appeal vests in the lower tribunal, rather than the appellate court.”); *In re Estate of Garvey*, 212 So 2d 790, 791 (Fla. 3d DCA 1968) (holding that the power to award fees for appellate services rendered to an estate belongs exclusively to the probate court).

We therefore deny Appellees’ motion without prejudice to their right to move the probate court to award attorney’s fees for defending this appeal and a corresponding assessment against Appellant’s portion of the estate.

B.L. THOMAS, ROBERTS, and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Faye Townsend, pro se, Appellant.

Bonnie S. Green of Darby, Peele & Green, Lake City, and Robert Jordan of the Jordan Law Firm, PLLC, Lake City, for Appellees.