

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA12-566

NAYLA FOSTER

APPELLANT

V.

RICHARD HATFIELD

APPELLEE

Opinion Delivered: March 6, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
NINTH DIVISION
[NO. PR-10-1443]

HONORABLE MARY SPENCER
MCGOWAN, JUDGE

REVERSED AND REMANDED

RHONDA K. WOOD, Judge

Appellant Nayla Foster, personal representative of the estate of Winifred Foster, appeals from the decision of the Pulaski County Circuit Court ordering the estate to pay a claim against the estate without a hearing. Foster argues that a hearing on the claim is required under the Arkansas Probate Code. We agree and reverse and remand for a hearing.

Our standard of review in probate cases is well settled. This court reviews probate proceedings de novo on the record, but it will not reverse the decision of the circuit court unless it is clearly erroneous. *Hetman v. Schwade*, 2009 Ark. 302, 317 S.W.3d 559. In conducting our review, we give due regard to the opportunity and superior position of the trial judge to determine the credibility of the witnesses. *Id.* Furthermore, while we will not overturn the probate judge's factual determinations unless they are clearly

erroneous, we are free in a de novo review to reach a different result required by the law.
Id.

Winifred Foster died on November 20, 2010. The circuit court entered an order appointing Nayla Foster as personal representative of Winifred Foster's estate on November 24, 2010. At that time, Richard Hatfield was counsel for Nayla Foster in her capacity as personal representative of the estate. A notice to creditors was published on December 31, 2010, and January 7, 2011. On July 18, 2011, Richard Donovan and Garland Garrett filed an entry of appearance on behalf of Nayla Foster as personal representatives of the estate. On July 19, 2011, Hatfield filed a motion to withdraw as counsel, which the court granted by order filed August 8, 2011.

On October 26, 2011, Hatfield filed an affidavit of claim against the estate seeking \$14,543.52 in legal fees for two matters he handled for Winifred Foster prior to her death. Attached to the claim were two invoices. One invoice was for \$10,684.60 in legal fees for a past legal action and the other invoice was to Winifred Foster for \$3,858.92 for "Foster Real Estate." The court set a hearing on two claims filed by other individuals against the estate for December 5, 2011. Hatfield sent a letter requesting that his affidavit of claim be heard at the December 5 hearing as well. Nayla Foster filed an objection contending that the hearing length would be insufficient to hear Hatfield's claim and that his claim was still under review by the estate. At the December 5, 2011 hearing, Hatfield did not appear, and the court stated that it would only hear the other two claims that were previously scheduled. The Hatfield claim, therefore, was not heard.

On December 6, 2011, Hatfield again requested a hearing on his claim against the estate. Foster did not object to the request and she had not approved the claim. Without scheduling or holding a hearing on Hatfield's claim against the estate, the circuit court entered an order requiring the estate to pay Hatfield's \$14,543.52 claim because no objections to the claim had been filed or made at the December 5, 2011 hearing on the other claims against the estate.

Arkansas Code Annotated section 28-50-105(a)(3) (Repl. 2012) states that "[a] claim which has been disapproved or not acted upon by the personal representative shall be set by rule or order of the court for a hearing on a day certain." The circuit court did not follow the statutory process for approving claims when it failed to hold a hearing on Hatfield's claim against the estate. The court also erred in stating that it approved the claim because no objections to the claim were filed. The statute clearly states that a personal representative's failure to object or act upon the claim is the same as disapproving the claim. *Id.* Further, Nayla Foster was unable to object to Hatfield's claim at a hearing because the court failed to hold a hearing. We find that the circuit court erred as a matter of law in not following the procedures set by the Arkansas Probate Code. Accordingly, we reverse and remand for a hearing on Hatfield's claim.

Reversed and remanded.

HARRISON and VAUGHT, JJ., agree.

Harry McDermott, for appellant.

No response.