

**OPINION SUMMARY**

**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

MARY L. LEHMANN, et al.,	)	No. ED99782
	)	
Respondents,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
vs.	)	
	)	Honorable Philip Heagney
BANK OF AMERICA, N.A., d/b/a	)	
U.S. TRUST,	)	
	)	
Appellant.	)	FILED: April 15, 2014

Bank of America, N.A. (“Bank”) appeals from the judgment of the probate division of the Circuit Court of St. Louis City granting summary judgment in favor of Respondents Mary L. Lehmann, Kenneth L. Lehmann, and Frederick W. Lehmann, IV (“Respondents”). Respondents sought the removal of Bank as corporate trustee of a trust executed in favor of Respondents. Bank alleged that its removal as corporate trustee triggered the payment of a distribution fee set forth in the applicable fee schedule. The probate court granted summary judgment in favor of Respondents, finding that Bank was not entitled to the distribution fee provided in the fee schedule or any other additional compensation upon its removal as corporate trustee. On appeal, Bank asserts that the probate court erred in granting summary judgment in favor of Respondents because: (1) it was the clear and controlling intent of the settlor that Bank receive the distribution fee set forth in the fee schedule; and (2) whether Bank was entitled to additional, reasonable compensation pursuant to Section 456.7-708 was a factual issue inappropriate for resolution on summary judgment. Bank also appeals the probate court’s denial of its request for attorneys’ fees.

**AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.**

Division III holds: The fee schedule clearly expresses the parties’ intent that the corporate trustee be paid the distribution fee when the trust assets are distributed free of trust at the time the trust is terminated. Because Bank is not distributing the trust assets free of trust at its termination, Bank is not entitled to the distribution fee set forth in the fee schedule. Accordingly, we affirm the probate court’s judgment with respect to Bank’s claim for the distribution fee. Because no facts were presented to the probate court on the reasonableness of Bank’s compensation, the probate court acted prematurely in entering judgment against Bank on the issue of Bank’s entitlement to additional fees. We reverse the probate court’s judgment with respect to the issue of adjusting Bank’s compensation pursuant to Section 456.7-708 and remand for discovery on the issue of the reasonableness of Bank’s fee. We affirm the probate court’s judgment as to attorneys’ fees.

Opinion by: Kurt S. Odenwald, J., Mary K. Hoff, P.J., and Angela T. Quigless, J., Concur.

Attorney for Appellant: Jeffrey S. Russell, Kathleen R. Sherby and Kimberly A. Mohr

Attorney for Respondents: Steven M. Hamburg

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**