MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BROOKE E. HARRIS,	)	
	)	
Appellant,	)	**WD87791**
	)	
v.	)	**OPINION FILED:**
	)	
JOHN KILLIAN, PUBLIC ADMINISTRATOR AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF GARY TAUVAR,	)	**December 9, 2025**
	)	
Respondent.	)	

Appeal from the Circuit Court of Jackson County, Missouri
Honorable Mark Anthony Styles, Jr., Judge

Before Division One: Janet Sutton, Presiding Judge,
Gary D. Witt, Judge, and W. Douglas Thomson, Judge

Brooke E. Harris (Harris) appeals from the judgment of the Circuit Court of Jackson County, Missouri (probate court), arguing that the probate court erred in finding that the Estate of Gary Tauvar (the Estate) is not bound by a contingent fee contract; that the probate court erred in failing to award additional compensation to the attorneys in light of their labor in the underlying litigation; and that the probate court erred in determining that Harris' law firm (the firm) is not entitled to reimbursement for a real estate tax payment. We affirm.

Factual and Procedural Background

Gary Tauvar (Tauvar) died on August 9, 2021. Before his death, multiple quit claim deeds were recorded purporting to transfer a number of real estate parcels from Tauvar to S.P. After Tauvar's death, S.P. created 1324 HoldCo, LLC (the LLC), and deeded all of the properties to the LLC. Tauvar's heirs, his siblings, J.M.T. (Brother) and C.B.T. (Sister), discovered that the LLC was in the process of selling the real estate. They contacted R.H.S. (Attorney One) seeking to stop the pending sale and to set aside the deeds because they believed the deeds were forged or were the product of S.P.'s undue influence. Over the years, Tauvar had also signed quit claim deeds transferring certain properties to Brother, and would then have Brother sign them back when he thought it was beneficial. Brother, therefore, believed he might also be the rightful owner of some of the property.

On August 25, 2021, Brother and Sister executed a "contract for the employment of attorney" (the contract) with the firm, whereby they agreed to pay thirty-three and one-third percent of any and all amounts recovered through a settlement or judgment and to reimburse all expenses advanced by the firm for trial preparation. In September 2021, Attorney One filed petitions to quiet title and ejectment in three different counties for the various properties. Attorney One advised Brother and Sister that, if the lawsuit was successful and the deeds were set aside, whatever properties did not belong to Brother would go back to Tauvar so it would be necessary to open an estate and Harris, the firm's probate attorney, would handle the Estate. Harris filed an application for letters of administration and, on February 7, 2022, the probate court issued letters of supervised administration, appointing Brother as personal representative for the Estate. In July 2022, amended petitions were filed by Attorney One in the underlying civil litigation against S.P. and the LLC, and Brother was substituted as plaintiff in his capacity

as personal representative for the Estate. Harris continued to administer the Estate in probate court.

Attorney One testified that, in the underlying civil case, the parties participated in a mediation and reached a settlement agreement. In November 2022, a judgment entered in the civil division of the Jackson County Circuit Court ordered the LLC to transfer a number of properties to the Estate. No properties were found to be owned by Brother individually. The settlement also included a stipulation that all parties would be solely responsible for the 2022 taxes on their respective properties. At the end of 2022, the Estate did not have funds to pay the property taxes that were due for the multiple tracts of land and the firm advanced the taxes to avoid a delinquency.

Harris filed an application for allowance of attorney's compensation in November 2023. The application stated, in part:

> The personal representative entered into [the contract] with [the firm] on August 25, 2021 . . . wherein he agreed to 33 1/3% contingent fee to be paid to said attorneys of all amounts recovered through settlement or Judgment in litigation to be brought against [S.P.] and other defendants for [a] claim of Undue Influence. [Attorney One] filed lawsuits in three counties seeking the recovery of real estate that had been transferred from the decedent to [S.P.]. [S.P.] later transferred the properties to [the LLC]. The cases were consolidated into Jackson County case number 2116-CV20247, which ultimately resulted in the above referenced Judgment and the transfer of real estate to this Estate. The personal representative and his attorneys agreed that the contingent fee be paid directly from the gross sale price of said real estate.

Harris requested "$10,547.79 for the administration of the Estate" and "33 1/3% of the gross proceeds from the sale of any and all properties that were transferred to the Estate by [the LLC]" be paid directly to the firm. Harris' application included an itemized list of her services rendered in administering the Estate from August 2021 to August 2023, with corresponding fees, and additional expenses. The balance due for fees and expenses was $10,547.79.

Several weeks later, Brother, through different counsel, filed an objection to Harris' application for attorney compensation. In January 2024, the probate court issued an order designating the probate proceeding as adversary.

In May 2024, the probate court revoked the letters of supervised administration issued to Brother and appointed John Killian, Jackson County Public Administrator, as administrator *ad litem* for the Estate.

The probate court took up the matter in September 2024 and heard testimony from Attorney One and Harris. The probate court issued its judgment in October 2024, which allowed in part and denied in part the application for attorney compensation. The probate court concluded that Harris was entitled to $4,200.00 in fees associated with her representation of Brother in the Estate, and $751.15 in reimbursment for expenses incurred on behalf of the firm. The probate court also concluded that the firm was "entitled to reimbursement for all expenses [Attorney One] incurred during his representation of [Brother] in the civil litigation associated with the administration of [the Estate] amounting to $4,592.00."

The probate court concluded that "[Attorney One] is not entitled to any fees under [the contract] outlining the contingent fee agreement. The [c]ontract was signed by [Brother] individually, not in his capacity as Personal Representative for [the Estate]; therefore, [the Estate] is not bound by the [c]ontract." It also found that:

> Harris is not entitled to reimbursement of costs incurred for the payment of the Jackson County real estate taxes in the amount of $5,596.64, because [Brother], as Personal Representative for [the Estate], never took charge of the real property as required by the Missouri Probate Code. Therefore, the [E]state is not responsible for the payment of the real estate taxes.

Harris filed a motion to amend the judgment, or alternatively, for a new trial which the probate court denied.

Harris appeals.

Standard of Review

"A court-tried probate case is reviewed under the standard of *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)." *Clark v. Smith*, 644 S.W.3d 835, 839 (Mo. App. W.D. 2022) (citation omitted). "Under that standard, the probate court judgment will be sustained unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law." *Id.* at 840. (internal citation and quotation marks omitted). Questions of law are reviewed *de novo*. *Id.*

Analysis

Harris raises three points on appeal.[1] First, that the probate court erred in determining that the Estate is not bound by the contract because the contract was ratified by the personal representative in that Brother continued to direct and agreed to settle the underlying litigation on behalf of the Estate after the petitions were amended naming Brother as plaintiff in his capacity as personal representative for the Estate. Second, that the probate court erred in failing to award the attorneys additional compensation because the fee awarded was not reasonable and adequate in that all of the assets in the Estate resulted from the labor and expertise of the attorneys in the underlying litigation. Third, that the probate court erred in determining that the firm is not

[1] Missouri Supreme Court Rule 84.04(e) (2025) requires that each claim of error shall include the applicable standard of review. Although Harris correctly identifies *Murphy v. Carron* as the applicable standard of review, she fails to identify which one of the *Murphy v. Carron* grounds supports her claims of reversible error. The failure to identify which one of the *Murphy v. Carron* grounds supports a claim of reversible error violates Rule 84.04(d)-(e) and warrants dismissal. *Ebert v. Ebert*, 627 S.W.3d 571, 580 (Mo. App. E.D. 2021). Harris' first brief was struck partly because she failed to include *any* applicable standard of review for her claims of error. Her amended brief still does not comply with Rule 84.04(d)-(e). We, however, prefer to address an appeal on the merits when possible. *Alagha v. Cottle Automative Repair, Inc.*, 715 S.W.3d 580, 586 (Mo. App. W.D. 2025); *Ramirez v. Div. of Emp. Sec.*, 697 S.W.3d 132, 139 (Mo. App. W.D. 2024). As best as we can discern, Harris makes a misapplication of the law argument in her three points on appeal and we will review the points as such.

entitled to reimbursement for the real estate tax payment that was advanced because the payment was an expense of the underlying litigation in that the settlement required the grantee of the property to pay the 2022 taxes.

Point One

A personal representative serves in a fiduciary capacity, and it is their duty to look after the estate's interests and to act for and on behalf of all persons with an interest in the estate. *Estate of Keen*, 488 S.W.3d 73, 92 (Mo. App. S.D. 2016) (citation omitted). "Proceeding in a representative capacity is different than proceeding as an individual." *Meyer v. Carson and Coil*, 614 S.W.3d 618, 627 (Mo. App. W.D. 2020) (citation omitted). In *Meyer*, we explained that when an attorney-client relationship was formed with a client in his capacity as personal representative for an estate, any legal duty owed to the personal representative did not also extend to him in his individual capacity "as th[o]se capacities are distinct parties in the eyes of the law." *Id.*

Attorney One testified that Brother signed the contract in his individual capacity. Attorney One further testified that he "never asked [Brother] to sign a new document after he was appointed Personal Representative." Brother served as personal representative for the Estate under a supervised administration. Because personal representative and individual capacities are distinct parties, Brother, as personal representative for the Estate, did not enter into a contract with the firm. *See id.* As a result, the Estate was not bound by the contingent fee agreement.

However, Harris argues that Brother, in his representative capacity, is bound by the contract under the doctrine of ratification because Brother "expressly or impliedly 'confirm[ed] or adopt[ed] the agreement with knowledge of its contents.'" *Murphy v. Jackson Nat. Life Ins. Co.*, 83 S.W.3d 663, 668 (Mo. App. S.D. 2002) (quoting *Clear v. Mo. Coordinating Bd. for*

Higher Educ., 23 S.W.3d 896, 901 (Mo. App. E.D. 2000)). Harris argues that when Brother entered into the settlement agreement on behalf of the Estate, "the personal representative formally and finally accepted the fruits of the contract with full knowledge of the material facts of the transaction." Harris additionally argues that the personal representative was fully aware of the litigation filed pursuant to the contract, the services the firm performed before Brother's appointment as personal representative, and the continuation of the services after Brother's appointment, all demonstrating the personal representative ratified[2] the contingent fee agreement.

Harris ignores the fact that Brother was appointed personal representative for the Estate under a supervised administration. "The hallmark of a supervised administration is direct court supervision over many of the personal representative's actions." *In re Gardner*, 565 S.W.3d 670, 676 n.5 (Mo. banc 2019); *In re Kayira*, 614 S.W.3d 530, 534 (Mo. banc 2021) (explaning attorney responsible for administration of estate was required to seek probate division's approval for settlements, attorney fee payments, and "numerous other matters directly affecting the estate" because the estate was subject to a supervised administration).

Because the Estate was under a supervised administration, Brother could not have impliedly ratified the contract—signed in his individual capacity—simply by accepting the

[2] "Ratify" may be used in two different contexts within this case. Harris' point on appeal is that the probate court erred in not determining the Estate was bound by the contingent fee contract because the *personal representative* ratified said contract. A different type of ratification could have occurred after the fact. Section 472.330 provides that "upon a finding that an act or transaction was or is in the best interest of the estate, the court may approve, *ratify*, confirm and validate any act or transaction performed by the personal representative of the estate, without court authorization which the court would have had power under [Chapters 472, 473, and 474] to authorize the personal representative to conduct." Here, Harris did not seek the probate court's ratification of the contingent fee contract the parties had entered into previously pursuant to this statute. Thus, the contract was not binding upon the Estate.

"fruits of the contract" with full knowledge of the transaction's material facts while in his capacity as personal representative, as Harris suggests. *See Murphy*, 83 S.W.3d at 669. Instead, Brother was required to obtain the probate court's approval of the contract, for additional attorney fees from separate civil litigation to be paid from the Estate, and for settlement of the underlying litigation, but Brother did not do so. Thus, the probate court did not err in determining that the Estate is not bound by the contract. The personal representative could not impliedly ratify the contract by continuing to direct and agreeing to settle the underlying civil litigation on behalf of the Estate after the petitions were amended where Brother was substituted as plaintiff in his capacity as personal representative for the Estate.

Point one is denied.

Point Two

Section 473.155.1[3] states:

> In all counties of the first class and St. Louis City, other provisions of law notwithstanding, attorneys performing services for the estate at the instance of the personal representative shall be allowed out of the estate as the minimum compensation for their services sums equal to the percentages set forth in the schedule contained in subsection 1 of section 473.153. In any case where reasonable compensation to the attorneys is in excess of the minimum provided in the schedule the court shall allow such additional compensation as will make the compensation of the attorneys reasonable and adequate. Performance by the attorneys of extraordinary service is not necessary to entitle them to such additional compensation.

Section 473.153.3, and thus section 473.155, "establishes the method by which attorneys may obtain compensation for rendering estate administration services." *Campbell v. Campbell*, 929 S.W.2d 757, 760 (Mo. App. W.D. 1996). Determining a fee request "is within the sound

[3] All statutory references are to the Revised Statutes of Missouri (2016) as currently updated. While Harris cites to 473.153 for purposes of attorney compensation from an estate, 473.155 is the applicable provision because Jackson County is a first class county. This does not affect our analysis of the issue as the compensation allowed is otherwise the same.

discretion of the [probate] court," and we will not reverse the probate court's decision on a request for attorney's fees unless it is "so arbitrary or unreasonable that it indicates indifference and lack of proper judicial consideration." *Estate of Shippert*, 718 S.W.3d 103, 109-10 (Mo. App. W.D. 2025) (internal citations and quotation marks omitted).

We first note that section 473.155.1 only applies to attorneys "performing services for the estate at the instance of the personal representative[.]" Harris represented Brother in his capacity as personal representative for the Estate and performed services for the Estate from August 2021 through October 2023. The probate court received an itemized list of Harris' hourly billing and work completed during her administration of the Estate which totaled $4,200.00. The probate court's judgment accordingly found that Harris was entitled to $4,200.00 in fees and $751.15 in costs for her representation of the Estate.

In contrast, Attorney One was retained by Brother and Sister, in their individual capacity, and pursued litigation in a civil matter that was distinct from the underlying case filed in the probate court. The probate court found that the firm was "entitled to reimbursement for all expenses [Attorney One] incurred during the representation of [Brother] in the civil litigation associated with the administration of [the Estate] amounting to $4,592.00." However, in arguing that the compensation awarded was inadequate in light of the "hundreds of hours spent," Harris conflates the services that were performed for the civil litigation by another attorney in her firm and the services Harris performed in the underlying probate case—which the probate court compensated her for.[4] Because Attorney One's services were limited to the separate civil matter,

[4] Harris periodically argues in her brief that Attorney One brought $700,000 worth of property into the Estate. There is no documentation in the record indicating the value of any of the property in question, other than Attorney One's assertion in his testimony before the probate court.

section 473.155.1 of the probate code is not applicable and does not mandate additional compensation, absent requesting approval of the contingency fee agreement once the Estate was opened or obtaining court ratification as described in section 472.330. The probate court did not err in failing to award additional compensation under the mandatory statutory schedule outlined in sections 473.155 and 473.153.

Point two is denied.

Point Three

As to point three, Harris testified that the Estate asked the law firm to advance payment of the real estate taxes, and she believed that the contingent fee agreement was applicable and would be a reimbursable expense under that agreement. Harris, however, argues on appeal that the probate court should have allowed this expense as part of the administration of the Estate.

Supervised personal representatives, such as Brother, cannot obtain possession of real property subject to administration by an estate absent a court order. *Estate of Shaw v. McKown*, 222 S.W.3d 289, 294 (Mo. App. W.D. 2007).[5] This is often referred to as "taking charge" of real estate. Under section 473.263.2, a court may order an "administrator to take possession of the real estate of the decedent when necessary for the payment of claims or for the preservation thereof." This section requires an administrator to pay taxes only when the probate court orders them to take possession of the real estate. *In re Estate of Vester*, 4 S.W.3d 575, 579 (Mo. App. W.D. 1999); *Myers v. Scott*, 789 S.W.2d 802, 803-04 (Mo. App. W.D. 1990) (explaining personal

[5] Under Missouri law, real property belonging to the decedent passes to the heirs of the decedent upon the decedent's death. *See* § 473.260. Accordingly, if the personal representative needs to take charge of the real estate for the benefit of the estate, probate court approval must be sought.

representative for an estate may only be reimbursed for expenses incurred on real estate after he was ordered to take possession).[6]

Here, the probate court found that Harris was not entitled to reimbursement of costs incurred for the payment of the Jackson County real estate taxes because Brother, as personal representative for the Estate, never took charge of the real property and, thus, the Estate is not responsible for paying the real estate taxes. We agree. Without a court order authorizing Brother, as personal representative, to take possession of the property, any real estate expenses were not an allowable expense of the Estate. As already discussed *supra*, the contingency contract did not bind the Estate.

Harris concedes that the personal representative never took charge of the real property and, instead, argues that she is entitled to reimbursement under section 473.297.

Under section 473.297:

> When any property of an estate is . . . in imminent danger of loss or destruction or loss in value, the . . . administrator may make such expenditures as are reasonably and prudently required to avoid such loss, destruction, or loss in value until he can obtain consideration of the matter by the court, and on approval of the court such expenditures shall be allowed as expenses of administration.

Harris testified that the real estate taxes were paid to avoid "additional penalties and interest[.]" However, Harris did not raise this argument before the probate court. "In general, where there is no pleading or argument in the record concerning the issue presented on appeal and the issue is raised for the first time on appeal, it has not been preserved for review." *Lewis v. Lewis*, 671 S.W.3d 734, 741 (Mo. App. W.D. 2023) (citation omitted). The probate court did not err in

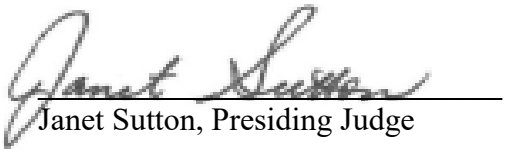
[6] We note that *Vester* and *Myers* were decided prior to the enactment of section 472.330, discussed *supra*. Here, had a proper motion been made even after the payment of said taxes, the probate court could have properly considered the request under section 472.330. No such motion was made.

determining the firm is not entitled to reimbursement for the real estate tax payment as an expense of the administration of the Estate.

Point three is denied.

Conclusion

The probate court's judgment is affirmed.



Janet Sutton, Presiding Judge

Gary D. Witt, J., and W. Douglas Thomson, J. concur.