

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-272

SUCCESSION OF EDNA WILLIAMS RHEA, WIFE OF/AND SAMUEL PETER RHEA, SR.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 831-712, DIVISION "J"
HONORABLE STEPHEN C. GREFER, JUDGE PRESIDING

September 21, 2026

STEPHEN J. WINDHORST
JUDGE

Panel composed of Judges Stephen J. Windhorst,
Michael P. Mentz, Pro Tempore, and Timothy S. Marcel

WRIT GRANTED; ORDER VACATED IN PART; REMANDED

SJW
MPM
TSM



PLAINTIFF/RELATOR,
DERISHA RHEA, IN HER CAPACITY AS ADMINISTRATRIX OF
THE ESTATE OF ALBERT RHEA
In Proper Person

COUNSEL FOR PLAINTIFF/RESPONDENT,
DONNA PHILLIPS AS EXECUTOR, SUCCESSION OF EDNA
WILLIAMS RHEA AND SAMUEL PETER RHEA, SR.
Steven J. Koehler
Carrie H. Pailet

WINDHORST, J.

Relator, Derisha Rhea, in her capacity as administratrix of the estate of Albert Rhea, Sr., seeks review of the trial court's March 22, 2026 *ex parte* order authorizing in pertinent part, the payment of attorney's fees in the amount of \$45,138.47 as an urgent debt pursuant to La. C.C.P. art. 3302 and the April 6, 2026 denial of her motion for new trial. For the following reasons, we grant this writ application, vacate the March 22, 2026 order as it relates to the payment of attorney's fees, and remand for further proceedings consistent with this disposition.

PROCEDURAL HISTORY

This writ application concerns the administration of the Succession of Edna Williams Rhea, wife of/and Samuel Peter Rhea, Sr., case number 831-712, wherein respondent, Donna Phillips, is the administratrix for the succession. Relator, Derisha Rhea, is the daughter of Albert Rhea, Sr., an heir of the decedents, and is the administratrix of the Estate of Albert Rhea, Sr. and Carolyn Rhea, and an interested party in this succession.

Prior to his death, Albert Rhea, Sr. objected to the administratrix/respondent, Donna Phillips' petition for authority to sell immovable property at private sale, which included the home Albert resided, located at 2918 Clermont Street. Albert also filed into the record a request for written notice. Albert Rhea, Sr. passed away on November 19, 2023.

The official record shows that respondent/administratrix, Ms. Phillips, filed the first petition for authority to pay urgent debts on February 8, 2024, after Albert's death. In that petition, respondent sought to pay: (1) legal fees and costs advanced by administratrix in the amount of \$2,500.00; (2) legal fees and costs in the amount of \$9,777.19; and (3) property taxes due of the Independence Street real property in

the amount of \$2,951.98 (total urgent debts in the amount of \$15,229.17). The petition also stated the following:

Albert Elton Rhea, Sr., *who has requested written notice in this matter*, passed away on November 19, 2023. A copy of this petition will be forwarded to his estate prior to filing with this Honorable Court, as his succession is not yet open. In addition, a copy of this petition will be forwarded to Mr. Steven Scandurro prior to filing with this Honorable Court. Mr. Steven Scandurro *has not formally enrolled in this matter*, but has had informal discussions with undersigned counsel on behalf of Albert Elton Rhea, Jr.'s children. [Emphasis added.]

The certificate of service also indicates that respondent's counsel served all parties that requested notice.

In her second petition for authority to pay urgent debts filed on March 28, 2024, respondent sought to pay: (1) federal income taxes due for Edna Williams Rhea in the amount of \$10,044.00; (2) state income taxes due for Edna Williams Rhea; (3) federal income taxes due for Samuel Peter Rhea, Sr. in the amount of \$10,146.00; (4) state income taxes for Samuel Peter Rhea, Sr. in the amount of \$1,515.00; (5) income tax return preparation fees for two fiduciary returns in the amount of \$2,840.00; and (6) legal fees and costs accrued in the amount of \$1,854.50 (total urgent debts in the amount of \$27,899.50). The certificate of service indicates the second petition for authority to pay urgent debts was sent to "Gloria Parker (through Aquilina Parker, her daughter) and on *Derisha Rhea (daughter of deceased Albert E Rhea, Sr.)*, who are the only parties who have contacted the Administratrix concerning this succession."¹ [Emphasis added.]

¹ Thereafter, respondent filed a petition for authority to sell immovable property, including the property located at 2918 Clermont, Street, in which Albert resided and had previously opposed a prior petition for authority to sell immovable property. The petition sought to sell all immovable property to Gloria Parker, a daughter of decedents Edna Williams Rhea and Samuel Peter Rhea, Sr., and the sister to deceased, Albert Rhea, Sr. Relator, on behalf of Albert's estate, filed an opposition. The opposition also stated that relator, on behalf of Albert's estate, had filed a separate petitory action and temporary restraining order prohibiting the sale. Relator's petitory action filed in case number 854-130 was against "Donna Phillips, *individually and as executor* of the Estates of Edna Williams Rhea and Samuel Peter Rhea, Sr." In the instant case (succession proceeding), the record shows that respondent filed a pleading captioned "Motion for Contempt and to Evict," wherein respondent stated the pleading was filed "*individually and in her capacity as the duly appointed Administratrix* for the Succession of Edna Williams Rhea wife of/and Samuel Peter Rhea, Sr."

Subsequently, after several contested hearings involving relator, respondent filed the third petition for authority to pay urgent debts (the pleading at issue in this writ application) on March 17, 2026, wherein respondent sought to pay: (1) penalties and interest on 2023 federal taxes for Samuel Peter Rhea, Sr. in the amount of \$843.45; (2) penalties and interest on 2023 state taxes for Samuel Peter Rhea, Sr. in the amount of \$546.66; and (3) legal fees and costs accrued through February 18, 2026, in the amount of \$45,138.47 (total urgent debts in the amount of \$46,528.58). Respondent attached an *in globo* invoice and interim account of administratrix. The certificate of service indicates in pertinent part, that the petition was served on relator, “*Derisha Rhea, through Thomas Donelon, her attorney in the related proceedings at Docket #854-130 to avoid ex parte communications.*” [Emphasis added.] On March 22, 2026, the trial court granted the petition. There is no indication in the record that the March 22, 2026 order authorizing the payment of urgent debts was served on relator.

On March 30, 2026, Thomas Donelon, relator’s counsel in the separate related proceeding filed in case number 854-130 (a petitory action), filed a motion to enroll as counsel for relator in the instant proceeding, which the trial court granted. On March 30, 2026, Mr. Donelon also filed a motion for new trial on behalf of relator, alleging that the order granting the petition for authority to pay urgent debts was rendered without proper notice to relator and without an opportunity to be heard. On April 6, 2026, the trial court denied relator’s motion for new trial.

This application for a supervisory writ followed.

LAW and ANALYSIS

In this writ application,² relator alleged that the trial court erred (1) in authorizing the payment of \$45,138.47 in attorney’s fees as urgent debts of the

² Considering the unique facts of this case, we find this writ application is timely. Under the provisions of La. C.C.P. arts. 1914 and 2201, and La. U.R.C.A. Rule 4-3, notice of judgment is the triggering event for filing for supervisory review. We find that because relator never received formal notice of the March 22,

succession pursuant to La. C.C.P. art. 3302 B; (2) in granting the petition *ex parte*, where the fees are disputed and the administratrix was not clearly entitled to the relief requested and the matter was required to be tried contradictorily under La. C.C.P. art. 963; (3) in granting the petition where relator was not afforded legally sufficient notice and service was directed to an attorney who was not counsel of record in this proceeding at the time, but rather to counsel in a separate proceeding; and (4) in denying relator's motion for new trial, which raised these defects.

Estate or succession debts are debts of the decedent and administration expenses. La. C.C. art. 1415. Debts of the decedent are obligations of the decedent or those that arise as a result of his death, for example, funeral and burial costs. *Id.* Administration expenses are defined as obligations incurred in the collection, preservation, management, and distribution of the estate of the decedent. *Id.*

Under Louisiana law, an executor of a succession may obtain an attorney to assist in the carrying out of the executor's duties and to defend the succession against adverse claims made against it. Succession of Mollere, 19-414 (La. App. 5 Cir. 3/26/20), 296 So.3d 642, 646, writ denied, 20-573 (La. 9/23/20), 301 So.3d 1184. Louisiana courts have also recognized that the costs of such legal representation may be charged to the succession. *Id.*; In re Succession of Brazan, 07-566 (La. App. 5 Cir. 12/27/07), 975 So.2d 53, 57; In Succession of Reno, 15-854 (La. App. 1 Cir. 9/12/16), 202 So.3d 1147, 1154, writ denied, 16-2106 (La. 2/10/17), 215 So.3d 701. However, where the legal representation is primarily for the personal benefit of the executor and not the estate, those fees may not be paid from the assets of the succession. Succession of Mollere, 296 So.3d at 646-647; In Succession of Reno, 202 So.3d at 1154. The issue of whether an attorney's work was for the benefit of

2026 *ex parte* order to which respondent was not clearly entitled under La. C.C.P. art. 963, the delay for seeking supervisory review did not commence. Consequently, this writ application is timely. We further find that pursuant to Rule 9-1 of the Local Rules of the Louisiana Fifth Circuit Court of Appeal, and La. U.R.C.A, Rule 4-5, relator was not prohibited from supplementing and amending her deficient writ application.

the succession estate is a question of fact that cannot be set aside absent manifest error. Succession of Mollere, 296 So.3d at 647.

Attorney fees are subject to the review and control by the courts. Id. Regardless of the language of the statutory authorization for an award of attorney's fees or the method utilized by a trial court in making an award of attorney's fees, courts may inquire as to the reasonableness of attorney's fees as part of their prevailing, inherent authority to regulate the practice of law. Id. In determining the reasonableness of attorney's fees, courts should consider the following factors: (1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) the amount of money involved; (5) the extent and character of the work performed; (6) the legal knowledge, attainment, and skill of the attorneys; (7) the number of appearances involved; (8) the intricacies of the facts involved; (9) the diligence and skill of counsel; and (10) the court's own knowledge. Id., citing Rivet v. State, Dept. of Transp. and Development, 96-145 (La. 9/5/96), 680 So.2d 1154, 1161.

The reasonableness of an attorney's fee is fact specific to each case. Succession of Grieshaber, 22-480 (La. App. 5 Cir. 5/24/23), 366 So.3d 780, 783. The trial court is vested with great discretion in determining an award of attorney's fees, and its discretion will not be interfered with except in a case of clear abuse. Richardson v. Parish of Jefferson, 98-625 (La. App. 5 Cir. 2/10/99), 727 So.2d 705, 707, writ denied, 99-864 (La. 5/7/99), 740 So.2d 1289.

La. C.C.P. art. 3301 provides that a succession representative must obtain court authorization to pay an estate or succession debt, "except as provided by Articles 3224 and 3302."³ La. C.C.P. art. 3302, which provides for the time of the payment of estate debts and an exception for payment of urgent debts, states:

³ The exception provided in La. C.C.P. art. 3224 regarding the continuation of business is not an issue in this writ application.

A. Upon the expiration of three months from the death of the decedent, the succession representative shall proceed to pay the estate debts as provided in this Chapter.

B. At any time and *without publication* the court may authorize the payment of estate debts the payment of *which should not be delayed*. [Emphasis added.]

The procedure for the payment of La. C.C.P. art. 3301 estate debts is provided in La. C.C.P. art. 3303. Specifically, a petition for authority and a tableau of distribution listing the estate debts to be paid are required to be filed when a succession representative desires to pay estate debts. La. C.C.P. art. 3303. If the funds are insufficient to pay all of the estate debts in full, the tableau of distribution must show the total funds available and list the proposed payments pursuant to the rank of the privileges and mortgages of the creditors. La. C.C.P. art. 3304 mandates that notice of the filing of a petition for authority to pay estate debts shall be published once in the parish where the succession proceeding is pending as required by law. The notice must state that the petition for authority to pay estate debts can be homologated after the expiration of seven days from the date of publication and that any opposition must be filed prior to homologation. Id. La. C.C.P. art. 3305 provides the procedure for an interested person to petition the court for notice of the filing of a tableau of distribution, and La. C.C.P. art. 3306 mandates the succession representative to mail notice to the interested person's designated attorney. If notice is required under La. C.C.P. art. 3306, but not provided, a judgment homologating the tableau of distribution will have no effect against the person requesting such notice. La. C.C.P. art. 3307 further provides that an opposition may be filed at any time before homologation and it must be tried as a summary proceeding. If no opposition is filed, the tableau of distribution may be homologated and the court may grant the authority requested at any time after the expiration of seven days from the publication date, or from the date notice is mailed under La. C.C.P. art. 3306, whichever is later. Id.

A review of Louisiana jurisprudence indicates that the payment of attorney's fees is generally followed after application of the notice requirements set forth in La. C.C.P. arts. 3303 through 3307. See *e.g.*, In Succession of Reno, *supra*; Succession of Mollere, *supra*; Succession of Mouton, 20-7 (La. App. 3 Cir. 6/17/20), 300 So.3d 430; Succession of Randazzo, 23-715 (La. App. 4 Cir. 9/6/24), 400 So.3d 197; Succession of McLean, 26,566 (La. App. 2 Cir. 3/1/95), 651 So.2d 290. This does not conclusively mean that a trial court in its discretion may not award attorney's fees as an "urgent debt" and without the requirement of publication, under the exception set forth in La. C.C.P. art. 3302. See *e.g.*, In re Whalen, 10-2124 (La. 3/15/11), 59 So.3d 392. Our review here indicates only that there are no cases that have specifically concluded that attorney's fees qualify as urgent debts. Thus, because La. C.C.P. art. 3302 gives the trial court discretion to award urgent debts without publication, we find that there may be circumstances that attorney's fees could be considered urgent debts that are not subject to the notice and publication requirements.

In analyzing the trial court's discretionary authority to grant *ex parte* orders to pay urgent debts of the succession pursuant to La. C.C.P. art. 3302, La. C.C.P. arts. 1312 and 963 are instructive. La. C.C.P. art. 1312 provides:

Except as otherwise provided in the second paragraph hereof, every pleading subsequent to the original petition shall be served on the adverse party as provided by Article 1313 or 1314, whichever is applicable.

No service on the adverse party need be made of a motion or petition for an appeal, of a petition for the examination of a judgment debtor, of a petition for the issuance of garnishment, interrogatories in the execution of a final judgment, or of any pleading not required by law to be in writing.

Moreover, *ex parte* orders and judgments in civil cases in general are governed and expressly limited by La. C.C.P. art. 963 A and B, which provide:

A. If the order applied for by written motion is one to which the mover is ***clearly entitled without supporting proof***, the court may grant the order *ex parte* and without hearing the adverse party.

B. If the order applied for by written motion is one to which the mover is not clearly entitled, *or* which requires supporting proof, the motion ***shall be served on and tried contradictorily*** with the adverse party. [Emphasis added.]

Thus, La. C.C.P. art. 963 provides that an *ex parte* motion may only be issued when the mover is clearly entitled to the relief sought, ***and*** that clear entitlement to the *ex parte* order must be self-evident, with no need for supporting documents or evidence. The need for “supporting proof” generally requires assessment of the sufficiency of that proof, which is not permitted by La. C.C.P. art. 963 A and B. When the mover is not clearly entitled to the requested order, *or* when the motion necessitates supporting proof, La. C.C.P. art. 963 B mandates that the motion “shall be served on and tried contradictorily with the adverse party.” Thus, to properly grant an *ex parte* motion, the trial judge must find that the mover is clearly entitled to the requested order, ***and*** that no supporting proof or evidence is needed to show that the mover is clearly entitled to the relief sought.

Turning to the present case, we find the authorization of the payment of attorney’s fees in the amount of \$45,138.47 *as an urgent debt* of the succession to be uncertain, and is of such nature that respondent was not *clearly* entitled to the relief sought and required supporting proof. Respondent attached an *in globo* 30-page invoice as an exhibit in support of the amount requested in the petition. When the mover is not clearly entitled to the requested order, *or* when the motion requires supporting proof, as is the case here, La. C.C.P. art. 963 B mandates that the motion “be served on and tried contradictorily with the adverse party.” Respondent did not serve relator, the adverse party in this case, who was unrepresented at the time. Nor did relator request a contradictory hearing with relator regarding the payment of attorney’s fees. The petition’s certificate of service clearly indicates that respondent sent a copy of the petition to relator’s attorney in a different case (*i.e.*, case number

854-130, the petitory action), but that attorney was not enrolled in this case.⁴ Thus, respondent did not send a copy of this petition to relator, despite that relator was unrepresented in this proceeding at the time.

Additionally, the petition states it is seeking payment of “legal fees and costs accrued through February 18, 2026” and the invoices listed are dated “9/30/22” through “2/18/2026.” However, while the petition states that payment of the legal fees and costs is a debt that “should not be delayed,” it does not state why it is an urgent debt that must be paid by *ex parte* order, instead of after notice and publication pursuant to La. C.C.P. arts. 3303 through 3307.

Furthermore, in the petition, respondent acknowledged the contentious nature of this succession proceeding, the petitory action, and the attorney’s fees involved.⁵ A review of the petition and the attached invoice also show that the attorney’s fees requested are for work performed in this case (the succession proceeding) and for work performed in case number 854-130 (the petitory action). A cursory review of the record in this case and in case number 854-130 shows that at least some of the pleadings are *by* respondent *individually, and on behalf of the succession* (the succession proceeding) and *against* respondent *individually, and on behalf of the succession* (petition in petitory action). Thus, despite respondent’s assertion to the contrary, the petition does not assert, and invoice does not clearly provide that the work performed was performed *solely* for the benefit of the succession, not respondent individually. There is no indication in the record that the trial court made a determination that the work was performed for the benefit of the succession only,

⁴ We note that Albert Rhea, Sr., prior to his death, filed a written request for notice. It is unclear from the record before this court whether relator, in her capacity as administratrix of the estate of Albert Rhea, Sr., filed a written request for notice. However, based on the facts of this case, we need not decide as a matter of law whether the written notice filed by the deceased can be deemed to apply to relator as the administratrix of Albert’s estate.

⁵ Paragraph 2 of the petition for authority to pay urgent debts states:

Petitioner shows that almost all of the legal fees were incurred responding to pleadings filed by Albert Rhea in proper person, and pleadings filed by his daughters, and his co-administrators. They had retained seven different attorneys. There were eight separate hearings in court. Derisha Rhea, Albert’s daughter, is now continuing that practice, including appealing the well founded judgment of this court in the petitory action, Docket No. 854-130.

not respondent individually. Likewise, there is no indication that the trial court considered the required Rivet factors in determining whether the fee was reasonable in granting *ex parte* authority to pay \$45,138.47 in attorney's fees as an urgent debt of the succession.

Consequently, under the specific facts of this case, on the showing made, we find the trial court abused its discretion in authorizing the *ex parte* payment of attorney's fees in the amount of \$45,138.47 as an urgent debt of the succession under La. C.C.P. art. 3302 because respondent was not clearly entitled to the relief sought without supporting proof. The petition requesting payment of attorney's fees was therefore required to "be served on and tried contradictorily" with an opportunity for relator to be heard, after application of the notice requirements set forth in La. C.C.P. arts. 3303 through 3307.⁶

DECREE

Accordingly, we grant this writ application, vacate that portion of the trial court's March 22, 2026 *ex parte* order which authorizes payment of \$45,138.47 in attorney's fees and costs as an urgent debt of the succession, and remand for further proceedings consistent with this disposition.

WRIT GRANTED; ORDER VACATED IN PART; REMANDED

⁶ We neither express nor infer any opinion as to merits of the claim or reasonableness of the fees.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

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SUSAN S. BUCHHOLZ
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
SEPTEMBER 21, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL
PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-272

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE STEPHEN C. GREFER (DISTRICT JUDGE)
CARRIE H. PAILET (RESPONDENT) STEVEN J. KOEHLER (RESPONDENT)
DERISHA RHEA (RELATOR)

MAILED

NO ATTORNEYS WERE MAILED