

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 12, 2012

512478

In the Matter of the Estate
of SAMUEL A. GARRASI,
Deceased, and the SAMUEL A.
GARRASI and MARY H.
GARRASI FAMILY TRUST
U/D/T dated
September 7, 1991.

ROBERT GARRASI, as Trustee of
the SAMUEL A. GARRASI and
MARY H. GARRASI FAMILY
TRUST U/D/T dated
September 7, 1991,
Appellant;

MEMORANDUM AND ORDER

MARTIN FINN, as Guardian ad
Litem,
Respondent.

Calendar Date: November 18, 2011

Before: Mercure, Acting P.J., Lahtinen, Spain, Malone Jr. and
Kavanagh, JJ.

Robert Garrasi, Glenville, appellant pro se.

Kavanagh, J.

Appeal from an order of the Surrogate's Court of
Schenectady County (Versaci, S.), entered January 14, 2011,
which, in a proceeding pursuant to SCPA article 22, among other

things, awarded respondent compensation for his services as guardian ad litem.

Petitioner's parents, Samuel A. Garrasi and Mary H. Garrasi, created the Garrasi Family Trust U/D/T dated September 7, 1991 for which petitioner and his sister, Gail Aggen, were designated as co-beneficiaries and co-trustees. In September 2005, after the parents died, Aggen assigned her right, title and beneficial interest in the trust to petitioner. However, a short time later, Aggen executed a renunciation of any "right, title, or interest to any assets which would otherwise have passed to [her], pursuant to the terms of [the trust]," which would transfer her interest in the trust to her children, who were remainder beneficiaries of the trust (see EPTL 2-1.11).

In February 2010, an accounting was performed on the trust and, in connection with that proceeding, respondent was appointed guardian ad litem for Aggen's minor son. In that capacity, respondent submitted a report that concluded that Aggen's assignment of her interest in the trust to petitioner was invalid, and the renunciation she later executed, which served to transfer her interest in the trust to her children, was valid. Among other things, petitioner argued that Aggen's assignment of her trust interest to him was valid, and she had no interest to transfer to her children when she filed her renunciation. As a result, petitioner contended that Aggen's son had no interest in the trust that would have required the appointment of a guardian ad litem. Supreme Court agreed and discharged respondent, but found that he was entitled to \$3,152.75 as compensation for services rendered, and held the trust responsible for the payment of those fees. This appeal ensued.

As for petitioner's contention that it was an abuse of discretion for Surrogate's Court to appoint a guardian ad litem, SCPA 403 (2) provides that the court may, on its own initiative, appoint a guardian ad litem for a person under disability, which includes an infant (see SCPA 103 [40]), "whenever such person is a necessary party or for other reason the court deems it necessary . . . to protect the interests of such party." Here, Aggen's execution of what purported to be a valid renunciation of her interest in the trust served to give her son a potential

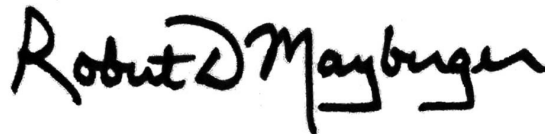
interest in the trust, and a guardian ad litem was appointed to insure that this interest was represented and protected in this proceeding. While the court later concluded that Aggen's renunciation was a nullity because she had previously assigned her interest in the trust to petitioner, a guardian ad litem was needed to protect the child's potential interest in the trust until that determination was made.

Petitioner also takes issue with the amount of counsel fees that Surrogate's Court directed the trust to pay to respondent. A guardian ad litem appointed by the court to represent an infant that has a potential interest in a trust is entitled to reasonable compensation for services rendered (see SCPA 405 [1]; Matter of Jonathan EE. [Barreiro-Alan EE.], 86 AD3d 696, 697 [2011]), and this compensation will be paid by the estate, "the interest of the person under the disability," or "for good cause shown, any other party" (SCPA 405 [1]). In determining what constitutes reasonable compensation, the relevant factors to be considered are the nature and extent of the services, the actual time spent, the necessity therefor, the nature of the issues involved, the professional standing of counsel and the results achieved (see Matter of Freeman, 34 NY2d 1, 9 [1974]; Matter of Potts, 213 App Div 59 [1925], affd 241 NY 593 [1925]; see also Matter of Morris, 57 AD3d 674, 375 [2008]; Matter of Gutches, 117 AD2d 852, 854 [1986], lv denied 68 NY2d 609 [1986]). Upon our examination of the record, including respondent's report submitted to Surrogate's Court and the invoices of services rendered, we cannot conclude that the amount the trust was directed to pay for counsel fees rendered by the guardian ad litem represented an abuse of the court's discretion. Petitioner's remaining claims, to the extent they are properly before us, have been reviewed and found to be without merit.

Mercure, Acting P.J., Lahtinen, Spain and Malone Jr., JJ.,
concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court