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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **IN THE MATTER OF THE ESTATE**
3 **OF SALLY C. SANCHEZ, Deceased.**

Court of Appeals of New Mexico

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Mark Reynolds

4 **CAROL CRANDALL,**

5 Petitioner/Plaintiff-Appellee,

6 v. **No. A-1-CA-41751**

7 **BRUCE C. SANCHEZ, ELIZABETH**
8 **SANCHEZ, and REBECCA SANCHEZ,**

9 Respondents/Defendants-Appellants,

10 and

11 **NORA SANCHEZ,**

12 Respondent/Defendant.

13 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**
14 **Joshua A. Allison, District Court Judge**

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5 **MEMORANDUM OPINION**

6 **IVES, Judge.**

7 {1} In this probate case, Respondents Bruce, Nora, Elizabeth, and Rebecca
8 Sanchez appeal the district court's discovery and contempt sanctions against Bruce
9 and its grant of attorney fees to Petitioner Carol Crandall to be paid out of the Estate
10 of Decedent Sally Sanchez. Specifically, Respondents argue that the district court
11 erred by (1) sanctioning Nora, Elizabeth, and Rebecca for the actions of Bruce and
12 (2) relying on the common fund doctrine to award attorney fees to be paid out of the
13 Estate. We affirm.

14 **DISCUSSION**

15 **I. The District Court Did Not Sanction Respondents Nora, Elizabeth, and**
16 **Rebecca**

17 {2} Before discussing Respondents' claim of error, we briefly provide some
18 factual context. The parties are relatives. Bruce and Petitioner are siblings and
19 Decedent's children; Nora is Bruce's wife; and Elizabeth and Rebecca are Bruce's
20 children. Before Decedent passed away, she gave Bruce power of attorney, which
21 he exercised to transfer real property owned by Decedent—the "Quincy Property"—
22 to Elizabeth and Rebecca. Bruce and Elizabeth also helped Decedent execute a will

1 several months before her death. When Decedent died, Bruce submitted that will for
2 informal probate. Petitioner contested the validity of both the Quincy Property
3 transfer and the will, arguing that Bruce and Elizabeth unduly influenced Decedent.
4 Petitioner also alleged that Bruce battered her.

5 {3} During discovery, the district court sanctioned Bruce for discovery violations
6 and contempt because he failed to comply with various orders. Importantly, the court
7 did not expressly sanction Nora, Elizabeth, or Rebecca. In the court's order granting
8 Petitioner's motion to show cause, it found facts exclusively related to Bruce's
9 conduct. Based on those findings, it concluded that “[a]s a result of Bruce Sanchez's
10 willful, repeated, and hostile violations of” several court orders, “severe sanctions
11 *against him* are warranted.” It imposed the following sanctions on Bruce: it entered
12 default “against Bruce Sanchez and all of Bruce Sanchez's defenses” to Petitioner's
13 undue influence claim; it declined to probate the will that Bruce submitted; it found
14 that Decedent died intestate; it invalidated the Quincy Property deed; it ordered the
15 Quincy Property to be transferred to the Estate; and it awarded Petitioner “attorney
16 fees, gross receipts tax, and costs as a discovery and contempt sanction against Bruce
17 Sanchez.” These sanctions against Bruce are not challenged by Respondents on
18 appeal.

19 {4} Respondents instead contend that the district court “effectively” sanctioned
20 Nora, Elizabeth, and Rebecca because it “conclud[ed] that the default sanction

1 imposed on Bruce” resolved Petitioner’s undue influence claim. Respondents appear
2 to rely on the pretrial order to substantiate their interpretation of the district court’s
3 actions. Respondents acknowledge that they did not preserve their argument, but
4 they ask us to apply exceptions to the preservation rule. *See* Rule 12-321(B) NMRA.
5 But, critically, the record does not support Respondents’ assertion that Nora,
6 Elizabeth, and Rebecca were sanctioned; instead, the district court gave them
7 multiple opportunities to defend against the undue influence claim.

8 {5} We do not read the pretrial order as barring Nora, Elizabeth, or Rebecca from
9 litigating the undue influence claim. Rather, the pretrial order indicates that Nora,
10 Elizabeth, and Rebecca chose not to litigate that claim. The court asked for a pretrial
11 order in which each party was to submit their own portion of it to the court. Petitioner
12 submitted her portion with her theory of the case. In pertinent part, she argued that
13 the undue influence claim was “effectively decided” by the court’s orders
14 sanctioning Bruce and her battery claim was all that remained. But none of the
15 Respondents submitted a portion to include in the order. With only Petitioner’s
16 theory before it, the district court noted that “[b]ased upon the representations of
17 [Petitioner]’s counsel, the only remaining claim to be tried is [Petitioner]’s claim for
18 battery.” Although a pretrial order “narrows the issues for trial, reveals the parties’
19 real contentions, and eliminates unfair surprise,” *Fahrbach v. Diamond Shamrock,*
20 *Inc.*, 1996-NMSC-063, ¶ 24, 122 N.M. 543, 928 P.2d 269, here the district court

1 gave Nora, Elizabeth, and Rebecca a second opportunity to contest the undue
2 influence claim at the time of trial. During the bench trial, with counsel for each
3 party present, the court directly asked the parties whether the undue influence claim
4 was an issue for trial. Because none of the Respondents spoke up, the court
5 proceeded to trial only on the battery claim. In sum, the record does not reflect that
6 the court concluded that the sanctions against Bruce prevented Nora, Elizabeth, and
7 Rebecca from litigating the undue influence claim. Instead, the record shows that
8 Nora, Elizabeth, and Rebecca declined to litigate the undue influence claim.

9 **II. The District Court Did Not Err by Allowing Attorney Fees to Be Paid Out
10 of the Estate**

11 {6} The district court, applying *In re Estate of Foster (Foster)*, 1985-NMCA-038,
12 102 N.M. 707, 699 P.2d 638, granted attorney fees to Petitioner to be paid out of the
13 Estate pursuant to the common fund doctrine. The court limited the fees to a thirty-
14 three percent contingency of “all assets that [Petitioner] would not have received or
15 that Bruce would have not received but for this litigation.” It specified that this was
16 to be calculated as “[thirty-three percent] of the gross value of the assets to be
17 distributed to [Petitioner]” plus thirty-three percent of the net proceeds from selling
18 the Quincy Property. Respondents do not challenge the fee amount. Nor do they
19 argue that the award was based on services unrelated to the probate of the Estate.

20 {7} Respondents argue only that the district court abused its discretion by
21 awarding attorney fees to be paid by the Estate because, according to Respondents,

1 the common fund doctrine does not apply. *See In re Estate of Gardner*, 1992-
2 NMCA-122, ¶ 46, 114 N.M. 793, 845 P.2d 1247 (awards of attorney fees are
3 reviewed for abuse of discretion); *Freeman v. Fairchild*, 2018-NMSC-023, ¶ 33, 416
4 P.3d 264 (“The application of incorrect substantive law constitute[s] an abuse of
5 discretion.”). Respondents attempt to distinguish the instant case from *Foster*, and
6 they urge us to apply an out-of-state precedent, *In re Estate of Weatherbee*
7 (*Weatherbee*), 2014 ME 73, 93 A.3d 248.¹ For reasons we will explain, we hold that
8 the district court correctly concluded that New Mexico’s common fund doctrine, as
9 described in *Foster*, applies to the facts of this case. We therefore affirm based on
10 *Foster* and decline to apply *Weatherbee*. *See In re Estate of Kuchan*, 2024-NMCA-
11 032, ¶ 16, 545 P.3d 1199 (“We decline to look at th[e] out-of-state authorit[y] for
12 guidance because our own authority squarely answers the issue presented.”).

13 {8} As a general rule, in probate proceedings, fees are not allowed to be paid “out
14 of an estate to an attorney whose services were rendered on behalf of an interested
15 individual or group of individuals without employment by the personal

¹ Respondents further argue that awarding attorney fees was premature because “[t]he validity of the [c]ontested [w]ill and Quincy Property [d]eed have not been determined in a manner that binds Elizabeth, Rebecca, and Nora.” Respondents did not preserve this argument by presenting it to the district court. We note that they were given an opportunity to do so in writing in response to the motion for attorney fees and another opportunity to do so at the hearing on that motion. Because the argument is not preserved and because Respondents have not asked us to apply any exception to the preservation rule, we decline to discuss the argument further. *See* Rule 12-321.

1 representative of the estate” or “for services rendered in personal suits between the
2 heirs.” *Foster*, 1985-NMCA-038, ¶¶ 34-35 (text only) (citation omitted). However,
3 the law recognizes an exception: Under the common fund doctrine, a court may order
4 an estate to pay attorney fees “for services rendered which confer a benefit upon the
5 estate,” so long as “the entire estate be benefited.” *Id.* ¶¶ 40-41.

6 {9} Respondents argue that the common fund doctrine, as described in *Foster*,
7 does not apply here because the entire Estate did not benefit—only Petitioner
8 benefitted. Petitioner counters that the Estate benefitted in two ways: The litigation
9 added assets into the Estate and it prevented the Estate from being unlawfully
10 distributed. We agree with Petitioner on both points.

11 {10} First, litigation that increases the assets of an estate benefits that estate. *See*
12 *id.* ¶ 37 (“Although no sums have been brought into the estate in this case, the
13 reference to this result [in several other New Mexico precedents concerning the
14 construction of a will] involves benefits to the estate.”). In this case, the litigation
15 increased the Estate’s assets by, for example, causing the Quincy Property, property
16 that was not in the Estate before the litigation, to be added to the Estate.

17 {11} Second, litigation that ensures an estate is properly distributed according to
18 the law benefits the entire estate. This occurred in *Foster*. There, the petitioner
19 submitted an alleged will that distributed all of the decedent’s property to the
20 petitioner. *Id.* ¶¶ 1, 4. The respondents successfully challenged the validity of the

1 will. *Id.* ¶¶ 2, 5, 21. The district court held that the decedent died intestate and thus
2 it distributed the property via intestate succession—a distribution that included the
3 petitioner and the respondents. *Id.* ¶¶ 1, 42, 45. The court then granted attorney fees
4 to the respondents to be paid out of the estate for the services related to opposing the
5 alleged will, pursuant to the common fund doctrine. *Id.* ¶¶ 31, 38, 45. On appeal, the
6 petitioner argued that the fees should not be paid by the estate because “no
7 substantial benefit was provided to the estate.” *Id.* ¶ 31. Unpersuaded, this Court
8 concluded that the respondents provided a substantial benefit to the estate because
9 they “prevent[ed] the estate from being distributed unlawfully” through the false
10 will. *Id.* ¶ 42. The Court highlighted that the petitioner benefitted irrespective of the
11 fact that she experienced “a detriment . . . as the sole devisee under the false will”
12 because “[a]ll of those who will share in [the] distribution have been benefited” by
13 the litigation. *Id.* ¶¶ 44-45 (internal quotation marks and citation omitted).

14 {12} Similarly, here, Petitioner contested the validity of Decedent’s will and the
15 district court determined that the will was invalid. That determination prevented the
16 Estate from being distributed unlawfully through the will that Bruce submitted,
17 yielding a benefit to the entire Estate. *See id.* ¶ 42. We also highlight, as the *Foster*
18 Court did, that all of the heirs of the Estate also benefit because now they will
19 properly share in its distribution through intestacy. *See id.* ¶¶ 44-45. We recognize
20 that not all of the Respondents individually obtained a net financial benefit.

1 Elizabeth and Rebecca no longer own the Quincy Property, and the beneficiaries
2 outlined in the will that Bruce submitted—which include Respondents—did not
3 benefit financially from the invalidation of the will. But, as *Foster* demonstrates, the
4 common fund doctrine applies even if the litigation resulted in a financial detriment
5 to one or more individuals, so long as the entire estate benefitted from the litigation.
6 *See id.* ¶¶ 40-41.

7 {13} Lastly, Respondents argue that the common fund doctrine does not apply
8 because this case is a personal suit between heirs. We disagree. In *Foster*, the
9 petitioner and the respondents were heirs of the estate. *Id.* ¶¶ 1-2, 4-5. Critically,
10 despite this, the *Foster* Court concluded the case before it was not a personal suit
11 between heirs because the case was “concerned with the propriety of an award of
12 attorney fees for services rendered in opposing an alleged will.” *Id.* ¶ 34. Similarly,
13 this case involves parties who are heirs of the Estate, and, as in *Foster*, the case
14 concerns the propriety of fees awarded for services rendered in opposing a will and
15 determining which assets were properly within the Estate. Here, the district court
16 expressly limited fees to be based on “all assets that [Petitioner] would not have
17 received or that Bruce would have not received but for this litigation.” And it
18 outlined the proper calculus to be “[thirty-three percent] of the gross value of the
19 assets to be distributed to [Petitioner]” plus thirty-three percent of the net proceeds
20 from selling the Quincy Property.

1 {14} Our conclusion that this case is not a suit between heirs is also supported by
2 *In re Hamilton (Hamilton)*, 1981-NMSC-120, 97 N.M. 111, 637 P.2d 542, the
3 precedent cited by this Court in *Foster*. *Hamilton* involved attorney fees from
4 various lawsuits—to which the estate was not a party—regarding an executor’s
5 improper distribution of estate funds as well as personal torts between the parties,
6 all of which it deemed were personal suits between heirs. *Id.* ¶ 23. By contrast, in
7 the present case, as we have explained, the attorney fees were awarded for work
8 done in litigating whether the will executed by Decedent was valid and whether
9 assets had been improperly removed from the Estate before Decedent’s death, not
10 for litigating the mismanagement or improper dispersal of the Estate. And although
11 the litigation in this case did involve a battery claim between Petitioner and Bruce,
12 the district court did not grant attorney fees based on litigating that claim. Therefore,
13 we do not believe that the fees were for expenses incurred in a personal suit between
14 heirs.

15 {15} For these reasons, we conclude that the district court correctly applied *Foster*
16 and that it therefore did not abuse its discretion by awarding attorney fees to be paid
17 out of the Estate under the common fund doctrine.

18 **CONCLUSION**

19 {16} We affirm.

1 {17} IT IS SO ORDERED.



2
3 ZACHARY A. IVES, Judge

4 WE CONCUR:

5 
6 JENNIFER L. ATTREP, Judge

7 
8 GERALD E. BACA, Judge