

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 1647

IN THE MATTER OF THE SUCCESSION OF NANCY PANARO

WBF
MM
DATE OF JUDGMENT: AUG 09 2018

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 100569, SECTION 25, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILSON E. FIELDS, JUDGE

* * * * *

Jeffrey L. Sanford
Baton Rouge, Louisiana

Counsel for Plaintiff-Appellant
Sue Anne Spychala

Elizabeth J. Wilson
New Orleans, Louisiana

H. Brenner Sadler
Joseph J. Bailey
Alexandria, Louisiana

Counsel for Defendant-Appellee
Cameron Marshall Kirkendoll

Stephen F. Butterfield
Baton Rouge, Louisiana

* * * * *

BEFORE: WHIPPLE, C.J., McDONALD, AND CHUTZ, JJ.

**Disposition: JANUARY 24, 2017 JUDGMENT AFFIRMED; AUGUST 25, 2017 JUDGMENT
AFFIRMED IN PART AND AMENDED IN PART; ANSWER TO APPEAL DENIED.**

CHUTZ, J.

In this action for declaratory judgment, plaintiff-appellant, Sue Anne Spychala, appeals two judgments declaring that a provision in a will is a valid bequest, fixing the value of the bequest at \$99,510.00, and awarding expert witness fees. For the following reasons, we affirm the judgment declaring the bequest is valid and affirm in part and amend in part the judgment fixing the value of the bequest and awarding expert witness fees. We also deny the answer to the appeal filed by defendant-appellee, Cameron Marshall Kirkendoll.

PROCEDURAL AND FACTUAL BACKGROUND

The testator, Nancy Panaro, died on November 2, 2015, leaving a “last will and testament,” in olographic form. Ms. Spychala, the testator’s closest friend, was named as universal legatee in the will. The will also contained a provision, referenced by the parties as the Educational Provision, which states the advanced education of Mr. Kirkendoll, the testator’s great-nephew, will be paid for by the testator. Mr. Kirkendoll was in high school when the testator wrote her will on July 22, 2011. The testator was supportive of Mr. Kirkendoll’s desire to pursue an advanced education. At the time of the testator’s death in 2015, Mr. Kirkendoll was an undergraduate student pursuing a bachelor’s degree in kinesiology at Southeastern Louisiana University (SLU). Mr. Kirkendoll was projected to obtain his bachelor’s degree in the spring of 2018. He planned to then attend the nursing program at SLU before obtaining a master’s degree in divinity and a doctorate degree in philosophy.

The testator’s will was probated, and Ms. Spychala was appointed independent executrix of the estate. On June 30, 2016, Ms. Spychala filed a petition for declaratory judgment naming Mr. Kirkendoll as defendant. She sought a declaration that the Educational Provision did not constitute a bequest, but was merely a non-binding precatory suggestion. In the event the court found it did

constitute a bequest, she requested alternatively that the court render declaratory judgment determining the value of the bequest and the manner of its distribution.

The trial court bifurcated the two issues raised by Ms. Spsychala's petition. Following a hearing on the issue of the Educational Provision's validity, the trial court signed a judgment on January 24, 2017, declaring the provision to be a valid bequest in favor of Mr. Kirkendoll. Following a second hearing on the issue of the amount of and manner of satisfying the Educational Provision, the district court signed a judgment on August 25, 2017, ruling the testator's estate was to pay Mr. Kirkendoll's advanced education expenses in the total amount of \$99,510.00. The estate was ordered to pay Mr. Kirkendoll \$12,361.00, representing his tuition expenses since the date of the testator's death, and to deposit \$87,149.00¹ into the court registry as the "Kirkendoll Tuition Fund." The latter sum was the amount the court determined Mr. Kirkendoll would require "for the completion of his undergraduate degree, nursing degree, master's degree, and doctorate degree." The judgment provides Mr. Kirkendoll will be allowed to withdraw funds from the Kirkendoll Tuition Fund upon filing a motion to withdraw and providing sufficient evidence that he has paid tuition or tuition is due. The judgment further provides the Kirkendoll Tuition Fund will terminate and any remaining funds will be paid to Ms. Spsychala if Mr. Kirkendoll failed to enroll in an institution of higher learning for two semesters (excluding summer semesters). Finally, the judgment ordered the estate to pay court costs and \$10,006.00 in expert witness fees.

Ms. Spsychala now appeals both judgments of the trial court. She argues in four assignments of error that the trial court erred: (1) in finding the Educational Provision constituted a valid bequest; (2) in considering Mr. Kirkendoll's religious leanings and intentions in interpreting the testator's will; (3) in calculating the

¹ John Theriot, Mr. Kirkendoll's expert witness in forensic accounting and the computation of future expenses, estimated \$87,149.00 was the amount required to pay Mr. Kirkendoll's tuition for the various degrees he planned to pursue.

value of the Educational Provision; and (4) in taxing the testator's estate with Mr. Kirkendoll's expert witness fees and court costs. Mr. Kirkendoll filed an answer to the appeal in which he raised three assignments of error, which we will consider after Ms. Spychala's assignments of error are addressed.

VALIDITY OF EDUCATIONAL PROVISION

(Spychala Assignment of Error Number 1)

Ms. Spychala argues the Educational Provision does not constitute a valid bequest. She asserts the language of the provision does not dispose of any property and contains no words actually conferring title to the testator's property on Mr. Kirkendoll. Thus, Ms. Spychala maintains the Educational Provision does not contain the requisite testamentary intent and is precatory in nature. She further alleges the Educational Provision was defective in form because it lacked a recipient and a description of the intended gift.

The intent of the testator is the paramount consideration in interpreting the provisions of a will. La. C.C. art. 1611(A). The function of the court is to determine and carry out the intention of the testator if it can be ascertained from the language of the will. *In re Succession of Templet*, 07-0067 (La. App. 1st Cir. 11/2/07), 977 So.2d 983, 986, writ denied, 07-2329 (La. 2/1/08), 976 So.2d 720. Louisiana Civil Code article 1612 provides that: “[a] disposition should be interpreted in a sense in which it can have effect, rather than in one in which it can have none.” This intention must be determined from the will as a whole, which includes all of the clauses of the will and its codicils. *In re Succession of Lovett*, 09-1402, p. 4 (La. App. 1st Cir. 2/12/10) (unpublished), writ denied, 10-0565 (La. 5/28/10), 36 So.3d 247; *Succession of Hurst v. Gremillion*, 552 So.2d 799, 801 (La. App. 1st 1989). The first and natural impression conveyed to the mind on reading the will as a whole is entitled to great weight. The testator is assumed to be conveying his ideas to the best of his ability so as to be correctly understood at

first view. *In re Succession of Cannata*, 14-1546 (La. App. 1st Cir. 7/10/15), 180 So.3d 355, 369-70, writ denied, 15-1686 (La. 10/30/15), 180 So.3d 303. Interpretation of a will is a question of law that this court reviews on appeal to determine whether the trial court was legally correct. *In re Succession of White*, 11-2183, p. 2 (La. App. 1st Cir. 6/8/12) (unpublished).

Precatory expressions are words requesting or praying that a thing be done. The law is clear that a testator's mere wishes and requests are viewed as precatory suggestions that are not binding in law. *Succession of Acheé*, 16-0716 (La. App. 1st Cir. 8/16/17), 229 So.3d 5, 9; *Succession of Diaz*, 617 So.2d 34, 36 (La. App. 4th Cir. 1993). In determining whether a provision is precatory, the entire context of the will must be taken into consideration and, from the whole document, it must be determined whether the words utilized by the testator were intended to be merely precatory or were intended to actually dispose of the property. See *Succession of Barry*, 250 La. 435, 196 So.2d 265, 268 (1967); *Succession of Acheé*, 229 So.3d at 9.

In the instant case, the testator's will states, in pertinent part:

This is my [olographical] last will and testament. I wish to designate my dear friend, Sue Anne Sychala, as sole executor Unless designated and delegated by supporting documents signed by me, Everything – EVERYTHING! goes to [Ms. Sychala] and she holds instructions of my wishes for [its] disposition. There is no need to expedite delivery or even notification of impending [disbursement] to recipients. ... *No relatives, by blood are [sic] indirectly, will receive anything unless I expressly stated they would.*

Cameron Marshall Kirkendoll will have his advanced education paid for by me. Advanced education is any accredited institution of higher learning.

Judy L. Drtina ... Menendez is to [receive] \$30,000[.]

(Emphasis added.)

Based on our reading of the will as a whole, we agree with the trial court's conclusion that the Educational Provision stating, "Cameron Marshall Kirkendoll

will have his advanced education paid for by me” constitutes a valid bequest expressing testamentary intent. Specifically, we conclude that the most logical and reasonable view of the inclusion and meaning of this provision is that the testator intended, by expressly including this bequest, to leave Mr. Kirkendoll a particular legacy to pay for his “advanced education” at “any accredited institution of higher learning.” This conclusion is supported by the fact that the provision is included in a document the testator designated as her “[olographical] last will and testament.” Moreover, the testator unequivocally stated the advanced education of Mr. Kirkendoll (a family member) “will be paid for by me” immediately after stating no relative would receive anything unless she expressly stated they would. By so stating, she obviously intended for Mr. Kirkendoll to receive a bequest from her estate. Additionally, in her will, the testator refers to Ms. Sychala, as executrix, giving notifications and making disbursements to “recipients.” Since other than Ms. Sychala, there was only one other legatee named in the will, Mr. Kirkendoll clearly was intended to be one of the “recipients” to whom the testator referred. Considering the entire context of the will, the testator’s statement that Mr. Kirkendoll “will have his advanced education paid for by me” is a directive that disposed of a portion of the testator’s property rather than merely being the expression of a wish or request.

Additionally, we find no merit in Ms. Sychala’s contention that the Educational Provision was defective in form because it lacked a recipient and a description of the gift intended by the testator. As previously noted, the first and natural impression conveyed by a reading of the will is that Mr. Kirkendoll is the intended recipient of the bequest provided by the Educational Provision. The testator’s intent in that respect is clear and unambiguous. Moreover, while the amount of the bequest provided by the Educational Provision was not identified by the testator, La. C.C. art. 1613 provides a disposition is nonetheless effective if the

object the testator intended to give is ascertainable. In this case, the object of the Educational Provision, *i.e.*, to pay for Mr. Kirkendoll's advanced education, is unambiguous, even though the amount necessary to carry out the bequest may not be identified.

In *Succession of Allen*, 48 La. Ann. 1036, 20 So. 193, 194 (1896), the Louisiana Supreme Court dealt with a provision in a codicil similar in many respects to the language at issue herein. Specifically, the provision stated, "I will that Mrs[.] Cragin's two small boys shal[l] be given an English Education at Expense of the Estate." The Supreme Court found there was "no doubt as to the intention of the testator or to the subject-matter of the bequest." The disposition was upheld because the testator had identified his object with reasonable certainty and the amount necessary to effectuate his intention could be ascertained from evidence presented to the court. *Succession of Allen*, 20 So. at 199. Likewise, evidence was presented in this case from which the trial court could ascertain the value of the Educational Provision, making it possible to give effect to the Educational Provision as intended by the testator.

This assignment of error lacks merit.

CONSIDERATION OF LEGATEE'S INTENT
(Spsychala Assignment of Error Number 2)

In this assignment of error, Ms. Spsychala contends the trial court erred in considering Mr. Kirkendoll's faith and intention to pursue a religious vocation in interpreting the testator's will and in concluding that the estate should pay for him to obtain four advanced degrees. She asserts the trial court should have only considered the testator's intentions and wishes in interpreting the Educational Provision.

Ms. Spsychala's contentions are based on the following remarks made by the trial court during its oral reasons for judgment:

[A]ll the testimony that I received on the stand, it affirmed [Mr. Kirkendoll's] belief and his faith. [The] court was first inclined only to have the estate pay for Mr. Kirkendoll's bachelor's degree and his nursing degree, but once we went on with the testimony and the court heard the testimony of his faith and how long he has been -- um -- wanting to do something religious, the court finds that him going to divinity school, and then getting his doctorate of philosophy after nursing school is in order and the estate should pay for it.

According to Mr. Kirkendoll, Ms. Spsychala misinterpreted these remarks.

He contends the remarks do not indicate the trial court had any question as to the testator's intent to pay for Mr. Kirkendoll's advanced education, but rather that the court initially questioned the extent of advanced education Mr. Kirkendoll was likely to actually pursue. Thus, he argues the remarks merely reflect the trial court's conclusion that, due to the strength of Mr. Kirkendoll's faith and resolve, he was likely to complete his plan to obtain a master's degree in divinity and a doctorate degree in philosophy, in addition to undergraduate and nursing degrees.

It clearly would have constituted legal error for the trial court to have considered Mr. Kirkendoll's intentions in interpreting the Educational Provision. The testator's intent, rather than that of the legatee, is the relevant consideration in interpreting the provisions of a will. La. C.C. art. 1611(A). Nevertheless, we need not decide which interpretation of the trial court's remarks is correct. Even if the trial court did improperly consider Mr. Kirkendoll's intent, we find no error in the trial court's conclusion that the estate should pay for the four advanced degrees Mr. Kirkendoll plans to obtain. The trial court reached the result mandated by the language of the testator's will, even if it was for the wrong reason.

Ms. Spsychala argues the testator would never have paid for Mr. Kirkendoll to obtain the two advanced degrees in religious studies when her religious beliefs did not align with his and the institution he plans to attend considers the lifestyle lived by the testator to be sinful. Nevertheless, the clear intent expressed in the Educational Provision is that the testator's estate pay for Mr. Kirkendoll's

advanced education at any accredited institution of higher learning. When the language of a will is clear, its letter is not to be disregarded under the pretext of pursuing its spirit. La. C.C. art. 1611(A).

This assignment of error lacks merit.

VALUE OF THE EDUCATIONAL PROVISION

(Spychala Assignment of Error Number 3)

In this assignment of error, Ms. Spychala contends the trial court legally erred in calculating the value of the Educational Provision. Specifically, she contends the trial court erred in: (1) basing its award for future tuition on completely speculative information that Mr. Kirkendoll will pursue four advanced degrees; (2) concluding the testator intended to pay for any advanced education of Mr. Kirkendoll beyond a nursing degree; and (3) failing to deduct the value of scholarships and grants received by Mr. Kirkendoll from the awards made for past and future tuition.

In arguing the trial court's award was speculative, Ms. Spychala notes there is no guarantee that Mr. Kirkendoll will be accepted into nursing school or that he will complete each of the degrees described to the trial court. She argues that since tuition costs for future semesters is unascertainable until Mr. Kirkendoll actually enrolls, the trial court erred in awarding money for future tuition that may never be incurred.

We disagree. While any award for future events is inherently speculative, the record sufficiently supports the award made by the trial court. The trial court obviously accepted Mr. Kirkendoll's testimony regarding his resolve to obtain a theological education and his intention to pursue the degrees described to the court. Mr. Kirkendoll also presented expert testimony from Mr. Theriot as to the probable cost of his future education. Moreover, the trial court fashioned the award for future tuition in such a way that Mr. Kirkendoll will receive the funds awarded

only if he actually enrolls in an accredited institution of higher learning and presents the court with sufficient evidence that he has paid tuition for the semester or that such tuition is due.

Ms. Spsychala argues the trial court also erred in awarding funds for Mr. Kirkendoll to complete four degrees. In brief, she asserts that, based on her conversations with the testator, the testator's "definition of advanced education included schooling necessary to achieve a bachelor's degree, so that one could get a job and perform as a productive member of society." Moreover, she argues that because the identification of the object of the Educational Provision was unclear, the trial court should have applied La. C.C. art. 1613. Under this article, if it cannot be ascertained whether the testator intended a greater or lesser quantity, the lesser quantity must be chosen.

Initially, we note the definition of "advanced education" urged by Ms. Spsychala conflicts with the definition that the testator set forth in her will. The Educational Provision states that "[a]dvanced education is any accredited institution of higher learning." This definition in no way limits "advanced education" to a bachelor's degree or nursing degree. By its clear terms, the Educational Provision applies to *any* advanced education obtained at an accredited institution of higher learning. When a provision in a will is free from ambiguity, the will must be carried out according to its written terms, without reference to information outside of the will. See *Succession of Mydland*, 94-0501 (La. App. 1st Cir. 3/3/95), 653 So.2d 8, 12. Since the language of the Educational Provision is clear on this point, Ms. Spsychala's testimony that she did not believe the testator intended to pay for an advanced education beyond a nursing degree is immaterial. The trial court did not err in interpreting the Educational Provision to apply to all four of the degrees included in Mr. Kirkendoll's educational plan.

Finally, Ms. Spychala contends the trial court erred in failing to deduct the amount of scholarships and grants Mr. Kirkendoll received or will be eligible to receive from the amounts of past and future tuition awarded to him. She contends the testator's estate should be responsible only for any tuition owed after all scholarships and grants Mr. Kirkendoll receives are deducted.

The record shows that Mr. Kirkendoll has received substantial scholarships and grants during his undergraduate studies, sometimes exceeding the tuition owed. Additionally, Mr. Kirkendoll is potentially eligible to receive further funds from the Osage Nation scholarship program during his graduate studies. Nevertheless, we find the trial court correctly refused to deduct the scholarships and grants Mr. Kirkendoll received or will receive from the awards the court made for past and future tuition. The clear language of the Educational Provision states that Mr. Kirkendoll's advanced education will be paid for by the testator, which she obviously intended to be through her estate. In this case, there is nothing in the bequest making it contingent upon financial necessity or there being no other funds available to Mr. Kirkendoll for his advanced education. When the words of a testament are plain and unambiguous, the testator's intent should be ascertained from the language used in the testament itself. *Derouen v. Derouen*, 03-623 (La. App. 3d Cir. 1/28/04), 865 So.2d 940, 942, writ denied, 04-0506 (La. 4/8/04), 870 So.2d 276.

This assignment of error lacks merit.

EXPERT WITNESS FEES AND COURT COSTS
(Spychala Assignment of Error Number 4)

In her final assignment of error, Ms. Spychala contends the trial court erred in casting the estate with Mr. Kirkendoll's court costs and expert witness fees since such costs are not expenses due to the administration of the succession.

Alternatively, she argues that the award of expert witness fees for Mr. Kirkendoll's expert, Mr. Theriot, was excessive and not supported by sufficient evidence.

The trial court has great discretion in awarding court costs, including expert witness fees. Generally, the party cast in judgment is assessed with all costs of the litigation, including its own and those of the prevailing party. La. C.C.P. art.1920; ***Reynolds v. Louisiana Department of Transportation***, 15-1304 (La. App. 1st Cir. 4/13/16), 194 So.3d 56, 59. Ms. Sychala asserts there was no prevailing party in this case since she only sought a necessary interpretation of the testator's will. We find this assertion unfounded.

Ms. Sychala, acting in her capacity as executrix of the estate, did not merely seek an interpretation of the will from the trial court. She filed a petition for declaratory judgment naming Mr. Kirkendoll as defendant and seeking to have the Educational Provision, which purported to benefit him, declared invalid. The trial court not only rejected this request, finding the Educational Provision to be a valid bequest, but also ordered the estate to reimburse Mr. Kirkendoll for his past tuition expenses and to deposit a sum of money into the court registry to pay for his future tuition expenses. Mr. Kirkendoll clearly prevailed in the proceedings. Louisiana Code of Civil Procedure article 2825 provides that in "all contradictory succession proceedings, the court costs are to be paid by the party cast, unless the court directs otherwise." Accordingly, the trial court did not abuse its discretion in assessing the estate with all court costs and expert witness fees.

Nevertheless, we agree with Ms. Sychala's contention that the invoice submitted by Mr. Theriot was an insufficient basis to establish the value of his out-of-court work as an expert. Mr. Theriot did not testify at the rule to fix costs. Over the objection of Ms. Sychala's counsel that she had had no opportunity to cross-examine him regarding the invoice, the trial court set Mr. Theriot's expert witness fees in the exact amount billed in the invoice, *i.e.*, \$10,006.00.

The trial court may award the full amount charged by an expert witness if the amount is reasonable in light of the many factors considered in fixing expert witness fees, such as the time spent in preparatory work for trial, the extent and nature of the work performed, the knowledge, attainments, and the skill of the expert, and the helpfulness of the expert's report and opinion to the district court. Generally, the amount and fixing of expert fees lies within the sound discretion of the trial court and will not be disturbed in the absence of an abuse of discretion. La. R.S. 13:3666; *Reynolds*, 194 So.3d at 61.

A trial court may determine the value of the time the expert witness was before the court on the basis of its observation of and experience with the expert witness at trial, without further proof. However, if a party seeks to recover for the total time employed by the expert, such as time gathering facts necessary for his testimony or time spent away from regular duties while waiting to testify, then the plaintiff-in-rule must prove by competent evidence what services and expertise the expert rendered in addition to that observed by the trial court. *Dakmak v. Baton Rouge City Police Department*, 12-1850 (La. App. 1st Cir. 9/4/14), 153 So.3d 511, 514-15. This court has long held that the mere assertions of an attorney and the expert via a submitted invoice are insufficient to support a trial court's award for the total time of an expert witness, both in court and outside of the court. *Dakmak*, 153 So.3d at 515. Rather, the expert must testify at the trial of the contradictory rule to tax costs and be subject to cross-examination, unless the parties stipulate to the value of the expert's time outside of court, which did not occur in this case. See *Reynolds*, 194 So.3d at 61.

Considering the relatively brief duration of Mr. Theriot's trial testimony, it is obvious that a large portion of the services billed in his \$10,006.00 invoice was for work he performed outside of court. As the party seeking expert witness fees, Mr. Kirkendoll bore the burden of proving the reasonable value of the work Mr.

Theriot performed outside of court. We note that, although both parties referred to Mr. Theriot's invoice, and the trial court apparently relied upon it, the invoice was not actually entered into evidence at the rule to fix costs and the record contains no verified copy of the invoice. Regardless, even assuming it had been introduced, the invoice alone was insufficient to establish the value of the work Mr. Theriot performed outside of court when he was unavailable for cross-examination at the rule to fix costs. See *Reynolds*, 194 So.3d at 61; *Dakmak*, 153 So.3d at 515. Accordingly, because the record lacks competent evidence establishing the value of Mr. Theriot's work outside of court, the trial court manifestly erred and/or abused its discretion in including compensation for such work in the expert witness fee awarded.

Under these circumstances, the \$10,006.00 award for Mr. Theriot's expert witness fee will be amended to exclude any compensation for the work Mr. Theriot performed outside of court. From the record before us, it is impossible to determine what portion of the \$10,006.00 award was for the time Mr. Theriot spent before the court and what portion was for his time outside of court. Nevertheless, because we have the entire record before us, this court will determine *de novo* an appropriate expert witness fee for Mr. Theriot's time and the services he rendered before the court. See *St. James Behavioral Health Hospital, Inc. v. Gopalam*, 16-0170 (La. App. 1st Cir. 7/28/16), 199 So.3d 639, 644-45, writ denied, 16-1696 (La. 1/9/17), 214 So.3d 864.

At trial, Mr. Theriot testified regarding the projected future costs of the four degrees Mr. Kirkendoll plans to pursue, as well as the amount of past tuition he had incurred since the testator's death. Mr. Theriot contacted the various institutions Mr. Kirkendoll plans to attend to obtain information regarding their costs, and then he compiled those figures into a report summarizing the costs. Mr. Theriot's testimony and the report he prepared detailing these costs were the only

evidence presented to the trial court regarding the future costs of Mr. Kirkendoll's educational plan. While informative, the information Mr. Theriot provided was not based on any complex calculations requiring special expertise or experience other than several calculations provided in the report of the discounted present-day value of Mr. Kirkendoll's projected future educational costs.

It appears the trial court did not utilize Mr. Theriot's discounted value calculations. The trial court did, however, rely on the other information provided in Mr. Theriot's testimony and report in rendering the August 25, 2017 judgment fixing the value of the Educational Provision. Considering the time Mr. Theriot spent in court, together with the helpfulness of his testimony and report, we find \$3,000.00 is an appropriate award for Mr. Theriot's expert witness fee.

ANSWER TO APPEAL

In his answer to Ms. Sychala's appeal, Mr. Kirkendoll raises three assignments of error in which he contends the trial court erred: (1) in concluding the Educational Provision covered only tuition expenses; (2) in ordering the funds for his tuition to be deposited in the court registry account rather than paid directly to him; and (3) in not requiring the estate to directly pay him a portion of the funds awarded so that he can pay his attorney fees.

SCOPE OF EDUCATIONAL PROVISION (Kirkendoll Assignment of Error Number 1)

Mr. Kirkendoll argues the testator's use of the broad term "advanced education" instead of "tuition" indicates she contemplated the payment of all expenses necessary for him to complete his advanced education, including room and board and general living expenses. He contends the trial court was manifestly erroneous in arbitrarily limiting the expenses covered by the Educational Provision to tuition.

As previously noted, the intent of the Educational Provision to pay for Mr. Kirkendoll's "advanced education" is clear. Nevertheless, the provision is ambiguous regarding what expenses, if any, other than tuition the testator intended the term "advanced education" to include. Where there is ambiguity in a bequest as to the legatee, the thing to be bequeathed, or the portion, or where there is doubt as to the sense in which the words were used by the testator, resort may be had to extrinsic evidence. *Succession of Merritt*, 581 So.2d 728, 730 (La. App. 1st Cir.), writ denied, 584 So.2d 1165 (La. 1991); see also *Succession of Huguet*, 96-2663 (La. App. 1st Cir. 4/8/98), 708 So.2d 1302, 1304, writ denied, 98-1243 (La. 6/19/98), 721 So.2d 472. Although both Ms. Spsychala and Mr. Kirkendoll testified at the hearings on this matter, neither provided any extrinsic evidence as to what expenses associated with Mr. Kirkendoll's "advanced education" the testator intended to be covered by the Educational Provision. From its wording, the Educational Provision could reasonably be interpreted as being limited to tuition only and could just as reasonably be interpreted as including tuition plus other expenses customarily associated with an advanced education. Under these circumstances, the provision of La. C.C. art. 1613 stating that "[i]f it cannot be ascertained whether a greater or lesser quantity was intended [by the testator], it must be decided for the lesser" is applicable. Thus, we find the trial court correctly limited the bequest for Mr. Kirkendoll's "advanced education" to tuition expenses.

This assignment of error is without merit.

DEPOSIT OF FUNDS IN COURT REGISTRY
(Kirkendoll Assignment of Error Number 2)

It is Mr. Kirkendoll's position that the trial court should have ordered the funds required for his future tuition expenses to be paid directly to him rather than deposited in the court registry. In the alternative, he argues the testator's succession should remain open so that the executrix can pay his tuition expenses as

they accrue since the actual costs may be greater than projected by his expert. He argues the trial court did not have authority to encumber Mr. Kirkendoll's bequest by ordering the tuition funds to be deposited in the court registry

We find no merit in Mr. Kirkendoll's arguments. The testator clearly did not intend to leave him a lump sum of money. Rather, the testator's will provided that his "advanced education" was to be paid for by her estate, although she did not specify how that objective was to be achieved. The terms of the trial court's judgment ensure the testator's intentions will be fulfilled by ordering that the funds for Mr. Kirkendoll's future tuition be deposited in the court registry and withdrawn by him only upon providing evidence that he has paid tuition or tuition is due.

We also find no merit in Mr. Kirkendoll's suggestion that the succession should be held open indefinitely while he is attending school so that the executrix can pay the actual amount of his tuition as it accrues. It is the duty of a succession representative to close a succession as soon as advisable. La. C.C.P. art. 3197. Moreover, during closing arguments, the trial court asked Mr. Kirkendoll's counsel what specifically she was asking of the court. She did not mention the possibility of holding the succession open. She responded, "I'm asking this court to pay, to award an amount that would be sufficient to pay the tuition" indicated by Mr. Kirkendoll's expert, as well as the projected costs of room and board. The trial court awarded Mr. Kirkendoll the exact amount projected by his expert for future tuition expenses. Mr. Kirkendoll had an opportunity at trial to present evidence as to any probable increase in tuition expenses, but failed to do so. Having been awarded the full amount of future tuition expenses he requested, he has no basis for complaint. Since the trial court was able to ascertain the amount necessary to satisfy the terms of the Educational Provision from the expert evidence presented, there was no necessity for the trial court to order the succession be held open.

This assignment of error lacks merit.

FUNDS FOR ATTORNEY FEES
(Kirkendoll Assignment of Error Number 3)

Lastly, Mr. Kirkendoll contends the trial court erred in not requiring the estate to directly pay him that portion of the judgment proceeds necessary to pay the approximately \$25,000.00 in attorney fees he incurred in this matter pursuant to a 25% contingent agreement. Mr. Kirkendoll cites absolutely no authority for his contention that the trial court erred in this respect. Nor are we aware of any authority requiring the trial court to order direct payment to Mr. Kirkendoll of a portion of the judgment proceeds so that he can pay his attorney fees. We find no error or abuse of discretion by the trial court in ordering the full amount of the Kirkendoll Tuition Fund to be deposited in the court registry.

This assignment of error lacks merit.

CONCLUSION

For the reasons assigned, we amend the portion of the August 25, 2017 judgment awarding Cameron Kirkendoll \$10,006.00 as an expert witness fee to reduce that award to \$3,000.00. The August 25, 2017 judgment is affirmed in all other respects. The January 24, 2017 judgment is affirmed in its entirety. The answer filed by Cameron Kirkendoll is hereby denied. The costs of this appeal are to be divided equally between Sue Anne Spsychala, in her capacity as the executrix of the Estate of Nancy Panaro, and Cameron Kirkendoll.

JANUARY 24, 2017 JUDGMENT AFFIRMED; AUGUST 25, 2017 JUDGMENT AFFIRMED IN PART AND AMENDED IN PART; ANSWER TO APPEAL DENIED.