
IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**Estate of Christopher P. Bastien, deceased,
by Elizabeth A. Bastien, Administratrix,**

Plaintiff-Appellee,

v.

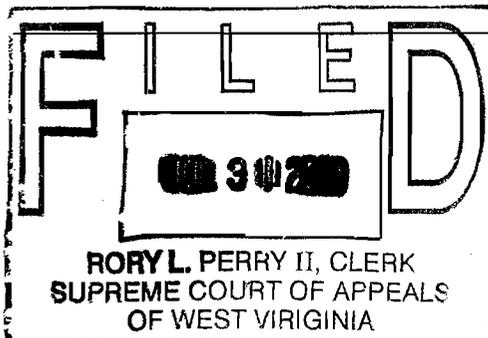
**Elizabeth A. Bastien, an individual; Maxwell H. Bastien, an individual;
Tammy R. Huffman, an individual; Bastien & Lacy, LC, a West
Virginia Corporation; and Gerald R. Lacy, an individual, Defendants
Below,**

Maxwell H. Bastien,

Defendant-Appellant.

**Appeal from the Circuit Court of Kanawha County, West Virginia,
Case No. 05-C-1877, Special Judge John L. Cummings**

**REPLY-BRIEF FOR DEFENDANT-APPELLANT, MAXWELL H.
BASTIEN**



GORDON C. LANE
Lane & Young
1538 Kanawha Boulevard, East
Charleston, WV 25311
Telephone: (304) 345-6000
Attorney for Appellant

July 31, 2009

As there was no Brief filed in response to the Brief for Defendant-Appellant, Maxwell H. Bastien, Appellant requests that this Honorable Court reverse the decision of Special Judge John L. Cummings, rather than remand the case for further proceedings.

There was a hearing held on September 18, 2008 on the Petition for Fees filed by Counsel for Appellant, Maxwell Bastien (transcript attached as Exhibit A). At that hearing, Appellant introduced the testimony of their expert, Bruce Stout, and an affidavit signed by Tammy Huffman, Maxwell Bastien's mother, supporting the Petition for Fees. Further, at the hearing no evidence was introduced or any assertion made that the fee was not reasonable or that the fee agreement was not binding, by either the Guardian Ad Litem or the Attorney for the Estate.

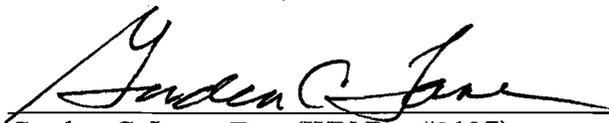
Neither the Guardian Ad Litem nor the Attorney for the Estate filed a brief in this appeal before the West Virginia Supreme Court opposing Appellant's brief. Therefore, it is unlikely that either would participate in a remand on the attorney fee issue. In addition, the Circuit Court Judge who issued the decision has retired, and a new Judge would have to be appointed to hear this matter if it was remanded. There is no dispute that (1) the legal work was completed by Lane and Young; (2) a good result was obtained for Maxwell Bastien (See Transcript of Hearing wherein Judge Cummings states "(a)nd I do think you did very well in obtaining or clarifying whatever the assets were and the evaluation," at Page 8); (3) the fee was reasonable (See Transcript of Hearing wherein Judge Cummings states that the question of the reasonableness of the fee is not an issue, at Page 9); and (4) that there was a valid fee agreement in place. Additionally, Mr. Stout, the expert witness, opined that the result obtained was excellent, that Lane & Young took

financial risk, and that the fee was only 21% of the amount recovered. (Transcript, 13 and 14)

Since all evidence of the Appellant has been introduced and no evidence submitted in opposition, Appellant requests that the decision of the Honorable John Cummings be reversed and that an Order be entered requiring payment of Appellant's legal fees in this matter.

RESPECTFULLY SUBMITTED,

MAXWELL H. BASTIEN,
By Counsel



Gordon C. Lane, Esq. (WV Bar #2137)

Kelly M. Young, Esq. (WV Bar #7938)

Lane and Young

1538 Kanawha Blvd. East

Charleston, WV 25311

Phone: (304) 345-6000

Fax: (304) 345-6011

Counsel for Maxwell H. Bastien, a minor

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

ESTATE OF CHRISTOPHER P. BASTIEN, DECEASED, by
ELIZABETH A. BASTIEN, Administratrix

Petitioner,

v. Case No. 34886

ELIZABETH A. BASTIEN, an individual; MAXWELL H.
BASTIEN, an individual; TAMMY R. HUFFMAN, an individual;
BASTIEN & LACY, LC, a West Virginia Corporation; and
GERALD R. LACY, an individual,

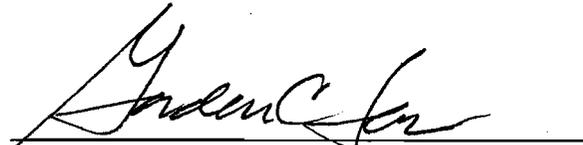
Respondents.

CERTIFICATE OF SERVICE

I, Gordon C. Lane, Sr., of Lane & Young, counsel for Maxwell H. Bastien, a minor, do hereby certify that I have this 31st day of July, 2009, served a copy of the foregoing "*Reply Brief for Defendant-Appellant, Maxwell H. Bastien*" upon all parties of record by mailing a true copy thereof, by First Class United States Mail, postage prepaid, as follows:

Craig M. Kay, Esq.
Kay Casto & Chaney PLLC
PO Box 2031
Charleston, WV 25327-2031
*Counsel for Estate of Christopher
P. Bastien*

Mark L. French, Esq.
Criswell & French, PLLC
405 Capitol Street, Ste. 1007
Charleston, WV 25301
*Guardian ad Litem for Maxwell H.
Bastien*


Gordon C. Lane

EXHIBITS

ON

FILE IN THE

CLERK'S OFFICE