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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

JOE RASEKNIA,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES et al.,

Defendants and Respondents.

B271912

(Los Angeles County
Super. Ct. No. BC457999)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elizabeth White, Judge. Affirmed.

Law Offices of Gloria Dredd Haney and Gloria Dredd Haney for Plaintiff and Appellant.

Peterson • Bradford • Burkwitz, Avi Burkwitz and Gil Burkwitz for Defendants and Respondents.

Plaintiff and appellant Joe Raseknia (plaintiff) appeals from the judgment entered in favor of defendants and respondents the County of Los Angeles (the County) and Francine Jimenez (Jimenez)¹ awarding them \$100,000 in attorney fees as the prevailing parties in an action brought by plaintiff under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12940 et seq.). We affirm the judgment.

BACKGROUND

The FEHA action

The instant lawsuit is the fourth action plaintiff has filed against the County for alleged FEHA violations.² In his operative first amended complaint, plaintiff asserted against the County causes of action for retaliation; discrimination based on age, disability, and race or ethnic origin; failure to accommodate; failure to prevent workplace discrimination; and harassment. He asserted against Jimenez a single cause of action for harassment.

Defendants filed their first motion for summary judgment in September 2012, which the trial court granted. Plaintiff appealed, and in September 2014, this court reversed the judgment and remanded the matter to the trial court with

¹ Jimenez and the County are referred to collectively as defendants.

² Plaintiff's previous actions include a 2008 lawsuit against the County for discrimination and retaliation that the parties settled in 2010; a 2010 complaint filed with the Department of Fair Employment and Housing for failure to accommodate; a 2013 lawsuit against defendants for harassment, discrimination, retaliation, and failure to prevent discrimination, in which judgment was entered in defendants' favor and Jimenez was awarded her attorney fees on the ground that the action against her was unreasonable, frivolous, meritless, or vexatious. (See *Raseknia v. County of Los Angeles* (Apr. 26, 2017, B250783) [nonpub. opn.])

direction to allow plaintiff additional time to conduct discovery in order to oppose the motion for summary judgment. A remittitur was issued on December 22, 2014.

On March 2, 2015, defendants renewed their summary judgment motion, arguing that plaintiff had failed to establish any adverse employment action, that there was no causal connection between the alleged wrongdoing and any protected characteristic or conduct, that there was no severe or pervasive conduct to support a claim of harassment, and that there were legitimate business reasons underlying the purported acts of wrongdoing.

The trial court granted the motion for summary judgment in its entirety, and plaintiff again appealed. We affirmed the judgment in a nonpublished opinion, *Raseknia v. County of Los Angeles* (Apr. 26, 2017, B250783).

Attorney fees motion

On September 28, 2015, defendants filed a motion for \$325,584 in attorney fees pursuant to Government Code section 12965 and Code of Civil Procedure sections 1032 and 1033.5. On November 17, 2015, plaintiff filed a two-sentence opposition that stated in relevant part: “[P]laintiff, Joe Raseknia, opposes the defendants’ requests for attorneys’ fees and costs. The issue of attorneys’ fees and costs is on appeal.” No appeal of attorney fees and costs in this action was pending at the time.

On November 25, 2015, the trial court continued the hearing on defendants’ motion and ordered the parties to submit supplemental briefs with supporting evidence as to plaintiff’s ability to pay attorney fees. The court further ordered defendants to submit a billing matrix showing the hours spent and tasks performed to support the amount of requested fees.

After the parties submitted their respective supplemental briefs, the trial court issued a written ruling in which it found

that all of plaintiff's causes of action were frivolous, unreasonable, or without foundation. The trial court further found that the billing records submitted by defendants' counsel did not support a fee award in the amount of \$325,584. Based on its experience in the case, the trial court concluded that the reasonable amount of fees incurred was \$125,000.

In determining plaintiff's ability to pay attorney fees, the trial court reviewed a declaration submitted by plaintiff in which he stated that he has been on disability leave since February 2015 and receives a monthly salary of \$4,095.65; that his wife is unemployed; that title to two homes is held in his name but that other family members live in one of the homes; that he received a \$20,000 settlement in a previous lawsuit against the County, most of which went to pay his legal fees; and that he received a twice monthly worker's compensation payment of \$460.00, all of which went to pay his family's living expenses. The court noted that plaintiff had some assets in his name but had failed to identify any liquid assets that could be used to pay attorney fees, "even though he had an opportunity to do so." After weighing the evidence, the trial court concluded that a \$100,000 attorney fee award was appropriate. A judgment in that amount was subsequently entered in defendants' favor, and this appeal followed.

DISCUSSION

I. Applicable legal principles and standard of review

FEHA authorizes courts to award prevailing parties their "reasonable attorney's fees and costs." (§ 12965, subd. (b).) A prevailing defendant in a FEHA action may only recover attorney fees, however, if "the action was objectively without foundation when brought, or the plaintiff continued to litigate after it clearly became so. [Citation.]" (*Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 115 (*Williams*)). A plaintiff's lack

of success alone does not justify an award of fees to the defendant, but the prevailing defendant need not show the plaintiff initiated the suit in bad faith to recover fees. (*Christiansburg Garment Co. v. Equal Employment Opportunity Comm’n* (1978) 434 U.S. 412, 421.)

When awarding attorney fees to a prevailing defendant under FEHA, the trial court “must make ‘express written findings’ demonstrating that it has applied the proper standards. [Citation.]” (*Robert v. Stanford University* (2014) 224 Cal.App.4th 67, 70.) We review an award of attorney fees to a prevailing defendant in a FEHA action for abuse of discretion. (*Id.* at p. 73.)

II. Waiver

Defendants argue that plaintiff waived the right to challenge the fee award because he filed only a two-sentence opposition to the motion for attorney fees, and the opposition was untimely, factually inaccurate, and failed to address the merits of the motion. Despite plaintiff’s cursory opposition, the trial court addressed the merits of the attorney fees motion. We do so as well.

III. No Abuse of discretion

The trial court’s detailed written ruling sets forth the applicable legal standard and sufficiently demonstrates why it concluded that plaintiff’s claims were objectively without merit or foundation. The trial court explained that plaintiff’s causes of action for retaliation and for discrimination based on race or ethnic origin, age, disability, and religion were without foundation because plaintiff did not suffer an adverse employment action, a necessary element in a cause of action under FEHA for discrimination or retaliation. An adverse employment action is one that affects the terms, conditions, or

privileges of employment. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1051-1052 (*Yanowitz*).)

Plaintiff alleged that he suffered retaliation and discrimination because of previous actions he had filed against the County; however, he alleged no facts that establish any adverse employment action. Plaintiff alleged in his first amended complaint that he accepted a position in the County Probation Department's Central Adult Investigation (CAI) unit as an accommodation for certain medical restrictions imposed by an agreed medical examiner. He further alleged that there were several unsuccessful attempts to transfer him out of the CAI unit and that he was threatened with discipline following a March 2011 interactive meeting. He did not allege, however, that any transfer, demotion, discipline, or other action was ever imposed on him or taken against him, and the evidence presented in the summary judgment proceeding showed that plaintiff remained at CAI continuously since April 2009. The attempted transfers and alleged threats did not materially affect the terms, conditions, or privileges or plaintiff's employment. (*Yanowitz, supra*, 36 Cal.App.4th at pp. 1051-1052.) The trial court accordingly did not abuse its discretion by concluding that plaintiff's claims for discrimination and for failure to prevent discrimination were objectively without merit or foundation.

The trial court explained in its written ruling that plaintiff's cause of action for harassment was without foundation or merit because plaintiff alleged only attempted or threatened official actions in the form of transfers or comments made to plaintiff during meetings related to his employment. Harassment is conduct that is outside the scope of necessary job performance, presumably engaged in because of meanness, bigotry, or other personal motives. (*Reno v. Baird* (1998) 18 Cal.4th 640, 645-646.) Commonly necessary personnel

management actions including job, office or work station assignments, the provision of support, and deciding who will and who will not attend meetings, do not constitute harassment. (*Id.* at pp. 646-647.) The attempted transfers and discussions with plaintiff regarding his work restrictions and accommodation of his disabilities do not constitute harassment as a matter of law. (*Id.* at p. 646.) The trial court did not abuse its discretion by concluding that plaintiff's claims for harassment were objectively without merit or foundation.

The trial court demonstrated that plaintiff's cause of action for failure to provide reasonable accommodation was without foundation or merit because plaintiff's disability was accommodated by his transfer to the CAI unit, where he continued to work at the time he commenced the instant action. An essential element of a failure to accommodate claim under FEHA is the employer's failure to accommodate the plaintiff's disability. (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1021.) Plaintiff admitted that his transfer to the CAI unit was an accommodation, that his assignment at CAI accommodated his work restrictions, and that he had no complaints with that assignment. The trial court did not abuse its discretion by concluding that plaintiff's failure to accommodate claim was without merit or foundation.

Plaintiff does not challenge the amount of the fee award, but argues that the trial court should not have awarded defendants their costs in addition to their attorney fees. Both arguments lack merit. The trial court gave consideration to plaintiff's ability to pay the attorney fee award, which it thereafter reduced. Plaintiff has not demonstrated why the trial court abused its discretion in not further reducing the fee award. Plaintiff's sole basis for challenging the cost award is that his action against defendants was not objectively without merit or

foundation. For reasons discussed, the trial court did not abuse its discretion by awarding defendants their costs.

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT