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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BRIAN JOSEPH BARRY,

Plaintiff and Appellant,

v.

THE LOS ANGELES COUNTY  
SHERIFF'S DEPARTMENT et al.,

Defendant and Respondent.

B275359

(Los Angeles County  
Super. Ct. No. BS146332)

APPEAL from an order of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Zhihong Xiao, for Plaintiff and Appellant.

Collins Collins Muir & Stewart, David C. Moore and  
Erin R. Dunkerly, for Defendant and Respondent.

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Plaintiff and appellant Brian Joseph Barry appeals the trial court's denial of his motion for attorney fees under Code of Civil Procedure section 1021.5.<sup>1</sup> The trial court denied the attorney fees request on the basis that Barry's suit did not enforce an important right protecting the public interest, or confer a significant benefit to the public or to a large class of persons. We conclude the court did not abuse its discretion and affirm.

## **FACTS & PROCEDURAL HISTORY**

### ***Factual Background***

On January 6, 1994, Barry was arrested by an officer from the Los Angeles County Sheriff's Department's (LASD) West Hollywood Station for felony hit and run. He was released on bail later that day. The Los Angeles County District Attorney's Office chose not to file a formal charge after the complainant failed to attend an office hearing on February 17, 1994. Barry was never charged in connection with the hit and run incident.

Barry's arrest was documented in the FBI's National Crime Information Center database (NCIC) and other criminal justice agency databases. No disposition showing that he was not charged with the 1994 hit and run was

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<sup>1</sup> All future statutory references are to the Code of Civil Procedure unless otherwise indicated.

included in the information. Barry was unaware of this situation until July 15, 2013, when he was detained at the Canadian border and questioned regarding his arrest record.

Barry contacted the LASD regarding the lack of disposition in the records after the incident at the Canadian border. He informed Sergeant Richard Bowman that he had been arrested for felony hit and run in January 1994 and wanted the arrest expunged from his record. Sergeant Bowman was unable to locate any record of Barry's arrest, his release, or the District Attorney's decision not to prosecute Barry. Barry later provided the LASD with a copy of the traffic collision report. Sergeant Bowman questioned personnel, including the deputy who made the report, but no one recalled Barry or his arrest. Deputy Brant Frederickson made similar inquiries, and was also unsuccessful in locating any records.

In August 2013, Barry filed a petition under Penal Code section 851.8 to seal and destroy his 1994 arrest record. His petition was denied. In October 2013, Barry sent a letter to Sheriff Leroy Baca requesting that his record be rectified to reflect that his arrest was a "detention only."<sup>2</sup> He delivered a copy of the letter to Sergeant Famble at the LASD's West Hollywood Station. Sergeant Famble advised Barry that his request would be denied because he had been arrested and booked, not simply detained.

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<sup>2</sup> That same month, Barry's application for the U.S. Customs and Border Protection's Global Entry Program was denied because there was no disposition of his 1994 arrest.

## *Writ of Mandate*

On April 24, 2014, Barry filed the operative first amended petition for writ of mandate, requesting that the court compel the LASD to comply with Penal Code sections 849.5, 851.6, and 11115 by issuing a record of release reclassifying his arrest as a detention, deleting references to the arrest from the LASD's records, and issuing a "detention only" disposition report for his arrest. The petition alleged that LASD had originated, transmitted, and disseminated inaccurate and incomplete records of his 1994 arrest to state, federal, and foreign criminal justice agencies, including the California Department of Justice and the FBI. The County of Los Angeles opposed the petition.

At a hearing on the matter, the trial court determined that Barry was not entitled to be classified as "detained" rather than arrested. The court denied the application for peremptory writ of mandate with respect to the causes of action relating to Penal Code sections 849.5 and 851.6. With respect to the Penal Code section 11115 cause of action, the court issued a writ requiring the LASD to send a disposition report the California Department of Justice and the FBI stating that Barry had not been prosecuted.<sup>3</sup>

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<sup>3</sup> Penal Code section 11115 provides: "In any case in which a sheriff, police department or other law enforcement agency makes an arrest and transmits a report of the arrest to the Department of Justice or to the Federal Bureau of

Barry did not appeal from the substantive portion of the judgment.

### ***Section 1021.5 Attorney Fees***

On February 29, 2016, Barry moved for an award of attorney fees pursuant to section 1021.5, California's private attorney general statute. The County of Los Angeles opposed the motion.

The court issued a tentative ruling, which it adopted in full at a hearing on the motion. The court denied Barry's attorney fees motion because Barry did not enforce an important right affecting public interest or provide a significant benefit to the general public or a large class of persons. The court explained that Barry "basically, vindicated his own interests." "While the public has a strong interest in accurate and complete rap sheets, Barry overstates the public interest at stake in this case. . . . [T]he remediation of his rap sheet did not amount to enforcement of an important public right." Additionally, Barry offered no evidence to demonstrate that there was a persistent problem with respect to the LASD failing to issue disposition reports, or that Barry caused a disposition to be issued in any case

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Investigation, it shall be the duty of such law enforcement agency to furnish a disposition report to such agencies whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court."

other than his own. There was “no evidence that his lawsuit w[ould] benefit other arrestees . . . .” The court elaborated, “You have not addressed a pervasive and systematic problem. You have not caused anything to happen as a result of a pervasive and systematic problem. You have only remedied your own rap sheet.”

Barry timely appealed to this court.

## DISCUSSION

“Code of Civil Procedure, section 1021.5 provides in pertinent part: ‘Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.’” (*Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2015) 238 Cal.App.4th 513, 520 (*City of Yucaipa*.)

“The statute codifies the private attorney general doctrine the Supreme Court adopted in *Serrano v. Priest* (1977) 20 Cal.3d 25. It rests upon the recognition that privately initiated lawsuits are often essential to the

effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. [Citation.]” (*City of Yucaipa, supra*, 238 Cal.App.4th at p. 520.)

“[T]he California Supreme Court [has] stated that both constitutional and statutory rights are capable of qualifying as ‘important’ for purposes of section 1021.5, but not all statutory rights are important. The court indicated that section 1021.5 ‘directs the judiciary to exercise judgment in attempting to ascertain the “strength” or “societal importance” of the right involved.’ The strength or societal importance of a particular right generally is determined by realistically assessing the significance of that right in terms of its relationship to the achievement of fundamental legislative goals.” (*Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 393–394, quoting *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 935, 936 (*Woodland Hills*).)

In *Woodland Hills, supra*, 23 Cal.3d at pages 939–940, our Supreme Court explained: “Of course, the public always has a significant interest in seeing that legal strictures are properly enforced and thus, in a real sense, the public always derives a ‘benefit’ when illegal private or public conduct is rectified. Both the statutory language (*significant* benefit’) and prior case law, however, indicate that the Legislature did not intend to authorize an award of

attorney fees in every case involving a statutory violation. [R]ather[,] the Legislature contemplated that in adjudicating a motion for attorney fees under section 1021.5, a trial court would determine the significance of the benefit, as well as the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case.”

“We review an attorney fee award under section 1021.5 generally for abuse of discretion. Whether the statutory requirements have been satisfied so as to justify a fee award is a question committed to the discretion of the trial court, unless the question turns on statutory construction, which we review de novo. [Citations.] [¶] ‘An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court’s decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] This standard of review affords considerable deference to the trial court provided that the court acted in accordance with the governing rules of law. We presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise. [Citations.]’ [Citation.]” (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 152–153.)

Barry’s appeal presents no issue of statutory construction, but only the question of whether Barry enforced an important right protecting the public interest or conferred a significant benefit to the public or to a large class of persons on the specific facts of his case. We therefore



review the trial court's determination under the deferential abuse of discretion standard.

The trial court did not abuse its discretion in concluding that the primary objective of the lawsuit was to vindicate Barry's personal rights and not an important constitutional or statutory right, and that it did not benefit anyone other than Barry. (See, e.g., *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637 [while plaintiff's successful lawsuit alleging gender based discrimination and retaliation "was based on the important right to be free from unlawful discrimination, its primary effect was the vindication of her own personal right and economic interest"]; *City of Los Angeles v. Superior Court* (1997) 57 Cal.App.4th 1506, 1518 [officer who successfully petitioned for writ of mandate to exclude statements he made when he was unaware he was under investigation was not entitled to attorney fees under section 1021.5 because he did "not establish an important right that benefited a large class of persons. Instead, he sought to exercise a right already established for his personal benefit"].)

Defendant's reliance on *Schmidt v. California Highway Patrol* (2016) 1 Cal.App.5th 1287 (*Schmidt*), is misplaced. In *Schmidt*, the plaintiff arrestee brought a class action against the California Highway Patrol (CHP) for a writ of mandate to compel the CHP to issue a certificate describing an arrest as a detention when the arrestee is issued a notice to appear but no accusatory pleading is filed, in compliance with Penal Code sections 849.5 and 851.6. (*Id.* at p. 1290.) The CHP

construed the statutes as requiring issuance of a disposition describing an arrest as a detention only when the arrestee was “released without any obligation to appear in court.” (*Id.* at 1293.) Under the CHP’s interpretation, Schmidt had been issued a notice to appear, and was thus not entitled to a disposition stating that he had been detained only. (*Ibid.*) The trial court certified the class, granted the writ petition, and awarded Schmidt attorney fees pursuant to section 1021.5. (*Id.* at p. 1290.) The CHP appealed, and the court of appeal affirmed. (*Ibid.*) With respect to the award of attorney fees, the court stated: “The CHP overlooks that it was misinterpreting statutes designed to benefit members of the public. Society as a whole benefits when law enforcement agencies properly interpret and implement the law.” (*Id.* at p. 1299.)

In contrast to the class action brought in *Schmidt*, Barry petitioned for mandate as an individual. The writ of mandate issued by the trial court directly benefitted Barry, but no other person. In *Schmidt*, as many as 187 other people benefitted from issuance of the writ. (*Schmidt, supra*, 1 Cal.App.5th at p. 1296.) Schmidt challenged the CHP’s interpretation of sections 849.5 and 851.6, which systematically deprived the class of the benefit of having their arrests characterized as detentions. The ruling directly impacted the CHP’s policy. Barry demonstrated that LASD failed to comply with Penal Code section 11115 in a single case. He did not establish that LASD’s policies routinely violated the statute. He only demonstrated that LASD had

not complied in a single instance, and as the trial court stated, “vindicated his own interests,” by “remed[ying] [his] own rapsheet.” The trial court did not abuse its discretion in determining Barry failed to demonstrate that he enforced an important right protecting the public interest or conferred a significant benefit to the public or to a large class of persons.

### **DISPOSITION**

The judgment is affirmed. Both sides shall bear their own costs on appeal.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

LANDIN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.