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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JACOB HELLER, Plaintiff and Appellant, v. CARMEL PARTNERS, INC., Defendant and Respondent.	B253512 (Los Angeles County Super. Ct. No. BC440195)

APPEAL from an order of the Superior Court of Los Angeles County. Barbara M. Scheper, Judge. Reversed and remanded.

R. Rex Parris Law Firm, R. Rex Parris, Alexander R. Wheeler, Kitty Szeto, John M. Bickford; Lawyers for Justice, Edwin Aiwazian for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hamilton, Jennifer G. Redmond, Jonathan P. Barker for Defendant and Respondent.

Jacob Heller's former employer violated the Labor Code. As a result, Heller obtained judgment after trial for $2,158.89. He asked the trial court for statutory attorney fees of $387,750. (Lab. Code, § 1194.) The court denied fees because it found Heller's request "so unreasonable and excessive as to shock the conscience." Despite the court's understandable shock at the size of Heller's request, an award of "reasonable" attorney fees is mandated by statute. We reverse the order denying attorney fees and remand the cause to the trial court to determine a reasonable fee.

FACTS

Heller sued Carmel Partners, where he worked as a property manager for eight months in 2008-2009. He alleged that defendant misclassified him as an "exempt" managerial employee for purposes of overtime compensation; failed to provide required rest and meal periods; and did not give complete and accurate wage statements. The complaint asserted that defendant violated eight Labor Code provisions and engaged in unfair or unlawful business practices.

Heller's lawsuit was brought as a proposed class action, comprised of current and former property managers who worked for Carmel Partners during the past four years. The trial court denied "without prejudice" Heller's motion for class certification, in January 2012. Heller appealed the order, then abandoned the appeal. In March 2012, the trial court denied class certification "with prejudice." Heller filed a second appeal. This Court dismissed Heller's appeal, finding that the trial court ruled on the merits of Heller's motion in January 2012, and the March 2012 order was not appealable.

Heller's individual claims went to trial in March 2013. A jury awarded him unpaid overtime wages of $1,363.15 (including interest); $1,000 for rest periods; and $541.80 in unreimbursed business expenses. Carmel Partners recovered from Heller $746.06 for its costs on appeal. Heller's net recovery was $2,158.89.

Heller sought statutory attorney fees and costs as the prevailing party, requesting $387,750 in attorney fees plus $50,180.58 in costs. Heller claimed that this sum was incurred "trying his *individual claims only*." He argued that an award of fees and costs is mandatory when the prevailing party is entitled to them by statute.

Carmel Partners opposed Heller's motion. Heller's expert calculated that defendant owed Heller $25,056. Plaintiff recovered about $2,000. Given Heller's nonexpectation of achieving a substantial award, it was unreasonable to incur over $437,000 in attorney fees and costs. Because this action could have been brought as a limited civil proceeding—or even in small claims court—and plaintiff did not make a good faith assessment of the value of his case, the court should deny, in whole or in part, plaintiff's recovery of litigation costs. To reach the court's $25,000 jurisdictional minimum, a jury would have had to find that Heller worked 90 minutes of overtime every single weekday plus five hours of overtime every weekend, and never received a single meal or rest break during his entire tenure. Heller presented no evidence at trial to support such findings. Instead, the jury found that Heller worked less than 60 minutes of overtime per week. Heller's claim that his attorneys spent 775 hours litigating this case is unreasonable: the time was incurred on class claims that were rejected.

THE TRIAL COURT'S RULING

The court wrote that the case proceeded to trial on Heller's individual claims, after class certification was denied. Heller called five witnesses (including himself) and asked the jury to award him $18,519.04 to $23,019.04. His recovery was closer to $2,000: of that amount, Heller can only obtain attorney fees on the $973.68 award for unpaid overtime, and not for defendant's failure to provide meal or rest periods.

The court concluded, "Plaintiff's request for fees is so unreasonable and excessive as to shock the conscience. It strains credulity to accept plaintiff's representation that none of the fees claimed relate to the unsuccessful effort to obtain class certification." Counsel could not have spent 775 hours on a case that was worth so little. Plaintiff made no effort to adjust the fee to reflect his limited success at trial, or the fact that only one of his claims entitles him to an award of fees. The court believed that it could not only adjust the fee downward but deny an unreasonably inflated fee altogether. The court stated that it had no way to figure out how each of the charges relate solely to Heller's individual claims. The court denied plaintiff's motion for attorney fees in its entirety. It ordered defendant to pay Heller's costs in the amount of $40,145.77.

DISCUSSION

Heller appeals the postjudgment order denying attorney fees. An order denying statutory attorney fees is final and appealable because nothing remains for future consideration. (Code Civ. Proc., § 904.1, subd. (a)(2); *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1388-1389.) As a rule, an award of attorney fees is reviewed for an abuse of discretion; however, review is de novo when the appeal presents an issue of statutory construction or a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1212-1213.)

The question presented is whether the trial court may deny all attorney fees if a prevailing employee's demand is so overinflated that it shocks the court's conscience, overriding a statute mandating an award of fees to the employee.

An employee "is entitled to recover in a civil action the unpaid balance of the full amount of . . . overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." (Lab. Code, § 1194, subd. (a).) An employee who recovers unpaid overtime is entitled to attorney fees "as a matter of right." (*Harrington v. Payroll Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589, 593-594 (*Harrington*).) The attorney fees are an item of costs. (Code Civ. Proc., § 1033.5, subd. (c)(5).)

In some cases, attorney fees may be denied to prevailing parties. In *Serrano v. Unruh* (1982) 32 Cal.3d 621 (*Serrano*), the Supreme Court addressed a fee award under the private attorney general statute.[1] The court wrote, "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether. 'If . . . the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have

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[1] In an action vindicating an important right affecting the public interest, "a court may award attorneys' fees to a successful party . . . ." (Code Civ. Proc., § 1021.5.)

asked in the first place. To discourage such greed, a severer reaction is needful . . . .'" (*Id.* at p. 635, fn. omitted.)

The Supreme Court more recently reiterated that an unreasonably inflated fee request is a special circumstance permitting the trial court to reduce or deny an award. (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990.) *Chavez* involved a discretionary attorney fee statute under the Fair Employment and Housing Act. (Gov. Code, § 12965, subd. (b).) The trial court did not abuse its discretion by denying fees altogether: the plaintiff's fee request of $870,935.50 was "grossly inflated" given plaintiff's "minimal success" in recovering $11,500 in damages. (*Chavez*, *supra*, 47 Cal.4th at pp. 976, 991.)

The trial court relied upon *Serrano* in denying any attorney fees to Heller. However, the attorney fee statute applied in *Serrano* is discretionary. (See fn. 1, *ante*.) By contrast, the attorney fee provision in Labor Code section 1194 is mandatory.

A case from this District is instructive. In *Harrington*, *supra*, 160 Cal.App.4th 589, an off-duty police officer who provided services on a movie set was shorted $44.63 in overtime compensation. The officer attempted to bring a class action. When a class was not certified, he settled his individual claim for $10,500, then sought an award of attorney fees of $46,277, under the mandatory fee clause of Labor Code section 1194. The trial court found the request "'unreasonable and excessive'" and even "'confiscatory and unfair,'" given that the lawsuit was not certified as a class action and the value of the plaintiff's claim was $44. (*Harrington*, at pp. 591-593.) Division One of this District agreed that the fee request was absurd; nevertheless, Labor Code section 1194 mandates a fee award as a matter of right. The appeals court determined that a "reasonable fee" could not be more than $500. It directed the trial court to enter a new order awarding the prevailing employee attorney fees of $500. (*Harrington*, at pp. 594-595.)

Labor Code section 1194 embodies a clear public policy "specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers"; the one-way attorney fees clause encourages employees to seek redress in situations where it would otherwise not be economical to sue. (*Earley v. Superior Court*

(2000) 79 Cal.App.4th 1420, 1429-1431.) Given the statutory mandate to award a "reasonable" attorney fee, it was an abuse of discretion to deny fees altogether.

The trial court cited *Ketchum v. Moses* (2001) 24 Cal.4th 1122, involving a mandatory attorney fee statute (Code Civ. Proc., § 425.16, the "anti-SLAPP" statute), which states that a prevailing defendant "shall be entitled to recover his or her attorney's fees and costs." The Supreme Court wrote that if "a trial court is concerned that a particular award is excessive, it has broad discretion to adjust the fee downward or deny an unreasonable fee altogether." (*Ketchum*, at p. 1138.)

The Supreme Court in *Ketchum* did not deny attorney fees altogether; at most, the court suggested that an "unreasonable fee" may be denied. We interpret that to mean that only the "unreasonable" portion of a fee request may be denied. "Reasonable attorney's fees" must be awarded under Labor Code section 1194—even if the court assesses a "reasonable" amount to be far less than what is requested.[2] (See *Harrington*, *supra*, 160 Cal.App.4th at p. 594 ["there is no way on earth this case justified the hours purportedly billed by Harrington's lawyers"].)

Carmel Partner argues that the trial court had discretion to deny recovery entirely if it found that the amount recovered could have been obtained in a limited civil action. (Code Civ. Proc., § 1033.) Defense counsel told the trial court, "This case could have been brought in front of the Labor Commissioner. It could have been moved to limited jurisdiction." The court chimed in, "Or even small claims court." However, the court expressly rejected making such a finding, saying, "Well, I'm not ruling based on your argument, counsel": it did *not* refuse a fee award because the case should have been filed in an inferior court.

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[2] Interpreting similar language in Labor Code section 1197.5, subdivision (g) that an employee who receives less than the correct wage due to gender discrimination "is entitled [to] recover in a civil action the balance of the wages . . . together with the costs of the suit and reasonable attorney's fees," the Supreme Court held an award of fees is mandated, and the trial court lacked discretion to disallow attorneys fees to the appellant. (*Jones v. Tracy School Dist.* (1980) 27 Cal.3d 99, 109-111.)

Because Heller's case went to trial, the trial court is best situated to assess the value of the services rendered by Heller's attorneys. (*Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 427.) The trial court determines a "'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) It decides "the amount of time an attorney *might reasonably expect to spend* in litigating [Heller's] claim." (*Chavez v. City of Los Angeles*, *supra*, 47 Cal.4th at p. 991, italics added. Accord: *Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133 [a statutory award ordinarily includes compensation for hours "*reasonably spent*"].)

The trial court "has discretion to make upward or downward adjustments" to the lodestar. (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 58.) It may disregard counsel's time records if they are "padded and vague and therefore noncredible" and include "entries inflated with noncompensable hours [that] destroy an attorney's credibility with the trial court." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1324-1326.) In short, "[t]he trial court is not bound by an attorney's evidence in support of his requested fee." (*Vella v. Hudgins* (1984) 151 Cal.App.3d 515, 524.)

Notably, the trial court is not required to calculate an attorney fee based on actual time purportedly expended on the case. Labor Code section 1194 does not mandate a fee based on actual time, instead giving the court discretion to determine a "*reasonable*" attorney fee. (See *Harrington*, *supra*, 160 Cal.App.4th at p. 594. Compare *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 997 [the Song-Beverly Consumer Warranty Act requires an award of attorney fees "'based on actual time expended,'" as stated in Civ. Code, § 1794, subd. (d)].)

We decline to award Heller his attorney fees on appeal. (*Harrington*, *supra*, 160 Cal.App.4th at p. 595 [reversing the denial of attorney fees under Lab. Code, § 1194, the appeals court ordered the parties to bear their own costs on appeal, including fees].)

DISPOSITION

The order denying Heller's motion for fees is reversed, and the cause is remanded to the trial court to exercise its discretion and determine a "reasonable" fee for Heller's attorneys pursuant to Labor Code section 1194. The parties are to pay their own costs on appeal, including their own attorney fees.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.