

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOSEPH BOODAIE,

Plaintiff and Appellant,

v.

KOUROSH VOSOGHI et al.,

Defendants and Appellants.

B280032

(Los Angeles County
Super. Ct. No. LC103455)

APPEAL from orders of the Superior Court of Los Angeles
County, Rick S. Brown, Judge. Affirmed.

Joseph Boodaie, in pro. per., for Plaintiff and Appellant.

Jankielewicz & Sons and Lenny Janner for Defendants and
Appellants.

* * * * *

These are cross-appeals from the court's orders granting and denying motions for attorney fees after the court dismissed the complaint pursuant to Code of Civil Procedure section 425.16 (hereafter the anti-SLAPP statute).

Plaintiff Joseph Boodaie did not oppose the anti-SLAPP motion, and he does not appeal the grant of the motion. He contends he should not have to pay defendants' attorney fees because he brought his lawsuit in reliance on the advice of two lawyers. He says the amount of the fee award is substantial and violates due process. He cites no authority and does not tell us anything about the amount of the fee award.

Defendants Kourosh Vosoghi, 26 Moorpark LLC, Shalem Shem-Tov, Raviv Netzah, Netzah & Shem-Tov, Inc., and Adam Harari appeal the award of \$14,000 in attorney fees against plaintiff on the ground the court erred in not awarding the full \$20,475 requested. They also appeal the denial of their motion to recover the same amount of attorney fees (\$20,475) against Joseph Nourmand, one of plaintiff's attorneys, pursuant to Code of Civil Procedure section 128.5.

We affirm the orders.

1. Plaintiff's Appeal

The court's minute order states the motion for attorney fees against plaintiff and coplaintiff AAA Tax Consultants, Inc., doing business as Nationwide Tax "is GRANTED in the amount of \$14,000 plus costs in the amount of \$2,810. This award is joint and several."

"We review an anti-SLAPP attorney fee award under the deferential abuse of discretion standard. [Citations.] The trial court's fee determination ' " 'will not be disturbed unless the appellate court is convinced that it is clearly wrong.' " ' [Citation.]" (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322 (*Christian Research*)). As our Supreme

Court has explained, “under . . . section 425.16, subdivision (c), any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131; see also § 425.16, subd. (c)(1) [“a prevailing defendant on a special motion to strike *shall* be entitled to recover his or her attorney’s fees and costs” (italics added)].) The purpose of the statute’s mandatory fee language is to discourage SLAPP suits by imposing the litigation costs on the party bringing the SLAPP action. (*Ketchum*, at p. 1131.)

Trial courts are vested with broad discretion in setting a reasonable fee “because they are in the best position to assess the value of the professional services rendered in their courts.” (*Christian Research, supra*, 165 Cal.App.4th at p. 1321.) Plaintiff has failed to show error in the trial court. Plaintiff’s opening brief does not comply with California Rules of Court, rule 8.204. Plaintiff did not provide any summary of the material facts, not even telling us the amount of the attorney fee award he seeks to overturn on appeal. He presented a two-sentence “argument” making two points, that he should not have to pay attorney fees because he relied on the advice of counsel, and the amount awarded was “substantial” and violated his due process rights under the Fifth and Fourteenth Amendments. Plaintiff cited no legal authorities in support of either claim of error.

Plaintiff did not provide a reporter’s transcript or settled statement of the hearing on the motion for attorney fees, and there is nothing else in the record to explain the basis for the court’s exercise of discretion. “Appealed judgments and orders are presumed correct, and error must be affirmatively shown. [Citation.] Consequently, appellant has the burden of providing an adequate record. [Citations.] Failure to provide an adequate record on an issue requires that the issue be resolved against appellant. [Citation.] Without a record, either by transcript or

settled statement, a reviewing court must make all presumptions in favor of the validity of the judgment.” (*Randall v. Mousseau* (2016) 2 Cal.App.5th 929, 935.) Particularly when our review is for abuse of discretion, “a reporter’s transcript or an agreed or settled statement of proceedings will be indispensable.” (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483.)

Without some basis to review the trial court’s discretionary award of attorney fees, we must conclude the court’s decision was proper.

2. Defendants’ Cross-appeal

a. The reduction of the fee award against plaintiff

The absence of a reporter’s transcript or settled statement of the hearing on the motion for attorney fees also bars our review of defendants’ claim in the cross-appeal that the court erred in reducing the fee award plaintiff was obligated to pay under the anti-SLAPP statute from the requested amount of \$20,475 to \$14,000. Not only do we have no record of the hearing, defendants tell us nothing in their briefs on appeal about the basis for the court’s award of \$14,000 rather than the full amount requested. The only bases for the claim of error are that plaintiff did not oppose the motion for attorney fees, and the court should not have considered the opposition filed by plaintiff’s former attorney, Mr. Nourmand, because he was no longer counsel of record when he filed the opposition, lacked standing, and there were defects in service of the opposition.

Without a reporter’s transcript or settled statement, we do not know how the court weighed the absence of an opposition by plaintiff in ruling on the attorney fee motion, and we do not know to what extent, if any, the court relied on Mr. Nourmand’s opposition in making the fee award. As is the case with plaintiff’s appeal, without some basis to review the trial court’s

discretionary award of attorney fees, we must conclude the court's decision was proper.¹

**b. The denial of attorney fees against
Mr. Nourmand**

The court's minute order denying defendants' motion for attorney fees against Mr. Nourmand states: "Attorney fees pursuant to Code of Civil Procedure section 128.5/128.7 are DENIED for two separate reasons: (1) A formal notice per section 128.7 of the Code of Civil Procedure regarding 21 days safe harbor provision was not served on plaintiff's attorney, Joseph Nourmand. (2) There was no direct evidence that Joseph Nourmand intentionally filed a [frivolous] lawsuit or intended to harass the defendants. Further, Nourmand was relieved as attorney for plaintiff Boodaie long before the SLAPP motion was heard by the Court."

Defendants contend the court erred in refusing to award fees against Mr. Nourmand under Code of Civil Procedure section 128.5. Defendants say plaintiff admitted in his deposition that he filed the lawsuit only to improve his negotiating position to settle efforts by defendants to collect on a \$6 million-plus judgment against him. Defendants also say the court "adopted the wrong code provision, and subsequently applied the incorrect standard," referring to the court's citation of both sections 128.5 and 128.7.

Defendants have not demonstrated error. First, defendants' belief that plaintiff's deposition testimony shows *plaintiff* knew his lawsuit was frivolous does not prove

¹ Defendants tell us the standard of review is de novo. They are mistaken. The standard of review of an award of attorney fees under the anti-SLAPP statute is abuse of discretion, as cited above.

Mr. Nourmand intentionally filed a frivolous lawsuit or intended to harass defendants. Second, the court did not apply the wrong legal standard. Code of Civil Procedure section 128.5, subdivision (a) grants discretion to award attorney fees incurred “as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay.” Subdivision (b)(2) defines “frivolous” to mean “totally and completely without merit or for the sole purpose of harassing an opposing party.” The trial court applied this standard in finding *Mr. Nourmand* did not intentionally file a frivolous lawsuit or intend to harass defendants.

Defendants are correct that their motion to recover attorney fees from *Mr. Nourmand* was not brought pursuant to Code of Civil Procedure section 128.7, and the safe harbor provisions of that statute do not apply to motions brought under section 128.5. (*San Diegans for Open Government v. City of San Diego* (2016) 247 Cal.App.4th 1306, 1316-1317.) Therefore, the first reason cited by the court for denying attorney fees against *Mr. Nourmand* was not correct. But defendants have not demonstrated error in the court’s second reason for denying the motion, which rested on the correct legal standard under section 128.5, that there was no evidence *Mr. Nourmand* engaged in frivolous tactics.

Defendants have not cited in their briefs any evidence that *Mr. Nourmand* rather than plaintiff engaged in frivolous tactics. And, without any reporter’s transcript or settled statement of the hearing at which the court denied the motion to recover fees from *Mr. Nourmand*, we have no basis on which to review the trial court’s discretionary decision, and we must conclude the court’s decision was proper. (See *Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167 [abuse of discretion standard applies to

motions for sanctions for filing papers that are frivolous or interposed for improper purpose].)

DISPOSITION

The orders are affirmed. Each side to bear their own costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

ROGAN, J.*

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