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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CARLOS GARAU, et al.,

Plaintiffs and Appellants,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT,

Defendant and Respondent.

B268172 & B268884

(Los Angeles County
Super. Ct. No. BC313368)

APPEALS from orders of the Superior Court of Los Angeles, Steven Kleifield, Judge. Affirmed.

Olga H. Garau, for Plaintiffs and Defendants.

Burke, Williams & Sorensen and Amy E. Hoyt for
Defendant and Respondent.

In two related appeals, Carlos, Liliana, and Odalys Garau challenge the trial court's award of attorney's fees on remand from this Court. Appellants having failed to establish any grounds for the relief they seek, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The underlying litigation in this case began in 2004, and has resulted in motion practice at the trial court, a three-week bench trial on the remaining three causes of action in the case, and multiple appellate proceedings.¹ Carlos Garau sued the Torrance Unified School District (District) on behalf of himself and his daughters, Liliana and Odalys (collectively the Garaus), who were students in the District, claiming that improper education related costs were being imposed on them. After trial, the court entered judgment for the District and awarded attorney's fees and costs. The Garaus appealed; we affirmed the judgment in part, and reversed an award of sanctions and the attorney's fees award; we remanded the case, ordering the trial court to reconsider the amount of attorney's fees to be awarded to the District because, in the original award, the court failed to consider all relevant causes of action.² We also ordered the trial court to consider the Garaus' financial circumstances in making that determination.

¹ Prior proceedings in this Court under case numbers B180683, B231114, B232442, and B238798.

² *Garau v. Torrance Unified School District*, Nos. B231114, B232442, and B238798 (Sept. 25, 2013).

On remand, the District filed a motion for additional attorney's fees. The Garaus filed a motion under Code of Civil Procedure, section 170.6 to disqualify the original trial judge and the case was reassigned. The District filed an amended motion for fees, to which the Garaus filed opposition.

After briefing and oral argument, the trial court determined that the District was entitled to fees on all three causes of action at issue, and that both the hourly rates and number of hours the District sought were reasonable. With respect to the Garaus' financial circumstances, the court initially acceded to their informal request that the financial information be submitted under seal. The court later reconsidered that order on its own motion, found it not to be compliant with California Rules of Court, rule 2.551, and returned the documents that had been filed under seal. The Garaus filed no further information concerning financial circumstances. Accordingly, the trial court did not adjust the lodestar amount and, on September 2, 2015, awarded the District \$644,037 in attorney's fees.

The Garaus filed motions under Code of Civil Procedure sections 657 (seeking a new trial) and 663 (to vacate judgment) on October 6, 2015. In those motions, the Garaus not only challenged the attorney's fees award, but also raised issues related to their right to recover under the operative complaint, and the District's legal entitlement to attorney's fees, issues that had been resolved in the prior appeal to this court. The trial court denied both motions on November 17, 2015.

The Garaus filed two appeals. B268172 challenges the award of attorney's fees. B268884 challenges the denial of the motions for new trial and to vacate the judgment. In their briefs

in both appeals, they make a significant number of arguments related to issues determined by this court in 2013.

DISCUSSION

I. The Trial Court Properly Denied the Motions for New Trial and To Vacate The Judgment

The Garaus raised two categories of issues in the challenges to the post-remand orders of the trial court.³ First, the Garaus renewed challenges to a number of issues determined in the underlying trial, and appealed to and resolved by this Court. Second, the Garaus challenged the award of attorney's fees after remand.

A. The Scope of the Trial Court's Authority Was Limited

As to the first category of challenges, a new trial motion does not lie, where, as here, the matters addressed in the motion have been resolved in an appeal that has become final. In such circumstances, the legal determinations made by the appellate court, necessary to its decision, are determinative of the rights of the parties to that case. This law of the case doctrine prevents the relitigation of issues that have already been decided. (See, e.g., *Sargon Enterprises Inc. v. University of Southern California*

³ Respondent challenges the appealability of both post-remittitur orders. An order denying a motion for new trial is not separately appealable, but may be reviewed on appeal from the underlying judgment. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.) The denial of a motion to vacate is also appealable. (*Ryan v. Rosenfeld* (2017) 3 Cal.5th 124, 127, 135.)

(2013) 215 Cal.App.4th 1495, 1505-1507; *Santa Clarita Organization For Planning The Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 156; *Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 312 [“Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court”].)

For this reason, a new trial motion does not lie after appeal if the new trial motion challenges determinations made by the appellate court. Code of Civil Procedure section 657, which governs motions for new trial, allows such motions only on the grounds enumerated in that statute; the trial court does not have jurisdiction to grant a motion on other grounds. The trial court may not reexamine issues determined by the Court of Appeal. (*Sargon Enterprises, supra*, 215 Cal.App.4th at pp. 1506-1507.)

Moreover, as to the issues we decided in 2013, our remittitur bound the trial court, leaving it without authority to revisit the issues we resolved to reach a different determination. To rule as the Garaus requested, the trial court would have had to disobey the limited scope of our remittitur; this it could not do. (*People v. Dutra* (2006) 145 Cal.App.4th 1359, 1366 [“the trial court is revested with jurisdiction of the case, *but only to carry out the judgment as ordered by the appellate court*”].) Had the trial court failed to limit its review, and thus failed to follow our directions, it would have acted in excess of its jurisdiction, rendering those rulings void. (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 774.)

B. The Trial Court Properly Denied The Motion To Vacate

The motion to vacate primarily concerned issues other than the amounts awarded as attorney’s fees. As described in the

motion, the Garaus sought “a new trial and new judgment in their favor for damages, and other relief, including attorneys’ fees and costs to their counsel, not TUSD’s.” The Garaus asked the trial court to vacate the judgment that had been the subject of the prior appeal. In their briefs in this appeal, the Garaus again primarily address the merits of the underlying case, with only brief reference to the issues the trial court was empowered to consider on remand. As discussed above with respect to the motion for a new trial, the Garaus sought below, and seek here, primarily to relitigate the issues we determined in 2013. To the extent the Garaus sought to vacate that underlying judgment, their motion was without legal basis.

Moreover, because the remittitur limited the trial court to a reconsideration of the amount of attorney’s fees to be awarded, and did not permit it to conduct a new trial, Code of Civil Procedure section 663 does not appear to apply. The Garaus have cited no authority supporting the position that it does. An appellant has the obligation to support its position by relevant legal authority. (*Okorie v. Los Angeles Unified School District* (2017) 14 Cal.App.5th 574, 599-600 [appellant has burden to present legal authority for all arguments made]); this the Garaus have failed to do.

Nonetheless, even if the ruling after the remittitur were properly subject to a motion to vacate, the only issues that remain relate to the award of attorney’s fees. The Garaus have separately appealed that ruling. We resolve that issue on the merits.

II. The Trial Court Did Not Abuse Its Discretion In Determining The Attorney's Fees Award

A. We Review For Abuse of Discretion

“Any challenge based on the amount of the fee awarded is reviewed for an abuse of discretion. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, 95 Cal.Rptr.2d 198, 997 P.2d 511 (*PLCM Group*) [‘the trial court has broad authority to determine the amount of a reasonable fee’].) An appellate court will interfere with the trial court’s determination of the amount of reasonable attorney fees only where there has been a manifest abuse of discretion. (*Fed-Mart Corp. v. Pell Enterprises, Inc.* (1980) 111 Cal.App.3d 215, 228, 168 Cal.Rptr. 525.) “‘The ‘experienced trial judge is the best judge of the value of professional services rendered in [the] court, and while [the judge’s] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong’—meaning that [the trial judge] abused [his or her] discretion.’ (*PLCM Group*, at p. 1095, 95 Cal.Rptr.2d 198, 997 P.2d 511.)” (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal. App.4th 972, 1004 (*Heritage Pacific*).)

“‘[T]he fee setting inquiry in California ordinarily begins with the “lodestar,” i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. “California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.” [Citation.] The reasonable hourly rate is that prevailing in the community for similar work. [Citations.] The lodestar figure may then be adjusted, based on consideration of factors specific to

the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary. [Citation.]" (*Heritage Pacific, supra*, 215 Cal.App.4th at p. 1004.)

B. The Garaus Challenge The Legal Basis For Attorney's Fees Rather Than The Lodestar Determination

In the trial court, the Garaus opposed the motion for attorney's fees on three grounds. First, they argued the fee award should be zero, as there was no interdependence between the causes of action, and there was no legal basis for the award. Second, they asserted there was no valid attorney-client relationship established between the District and the lawyers seeking fees. Finally, they posited that an attorney's fees award would be in the nature of a sanction against them. They failed to challenge either the calculation of the hourly rates charged or the specific hours detailed in the motion.

The trial court found, after briefing and argument were complete, that the issues raised in the three causes of action tried were "common and so inextricably intertwined that it would be impractical or impossible to separate the attorney's time" and that "the hourly rates and the number of hours expended were reasonable." The court accordingly set the lodestar amount as \$644,037, and turned, as directed by this court, to the consideration of the Garaus' financial circumstances.

The court explained that the record contained a declaration of financial hardship filed in 2010. After the court had reversed its initial determination that the Garaus could file financial

information under seal, the Garaus did not seek leave to refile that information, or to present a motion for sealing in accordance with pertinent authority. Instead, they requested judicial notice of orders granting fee waivers in 2011; they declined to submit any other information, citing their rights of privacy. The trial court concluded that the Garaus had not met their burden to produce evidence and, as a result, the court could not consider their financial condition. The court awarded the lodestar amount.

On appeal, the Garaus again rested their arguments primarily on issues that this Court determined in the prior appeal. As to the basis for the calculation of the attorney's fees, the Garaus argued that the award of any amount of fees was unconstitutional, and that the trial court had violated their rights by "reneging" on its order sealing financial information. They further asserted that the fees were unconscionable in amount, and were incurred without the informed consent of the District. The Garaus asserted that they disputed the reasonableness of the fees, but in fact argued "[t]he rate and number of hours are not the real issue, but they should have been zero, arithmetically derived from Plaintiff's insistence that the award must be zero." They argued that the trial court abused its discretion in entering any award other than zero.

With respect to their financial condition, the Garaus referred to the court's refusal to permit them to file information under seal, arguing that the information was confidential under Government Code section 68633, subdivision (f), and therefore no motion was required. They further asserted that the motion to "unseal" was improper. In their reply brief, they also argued that submission of evidence of fee waivers was sufficient evidence to

permit the court to take their financial circumstances into consideration in setting fees.

C. The Garaus Have Waived Their Challenge to The Fee Award

1. Failure to Challenge the Calculation of the Lodestar

Without any citation to relevant legal authority or evidence in the record other than as relates to issues decided in the prior appeal, the Garaus argue the attorney's fees award is an abuse of discretion. Having failed to provide either factual or legal support for this claim either to the trial court or to this court, they have forfeited it. (See, e.g., *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [parties must make coherent argument and cite authority in support of a contention; failure to do so waives the issue on appeal]; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 ["[P]arties are required to include argument and citation to authority in their briefs, and the absence of these necessary elements allows this court to treat appellant's issue as waived"].)

2. The Garaus Failed To Present Evidence Permitting Consideration of Their Financial Condition

California Rules of Court, rules 2.550 and 2.551, govern the filing of records under seal. Under those rules, no record may be filed under seal without a court order, and a party seeking such an order must proceed by motion or application, filed with the court and served on the parties.

The Garaus did not file such a motion or application. The first reference in the record to the filing of evidence of financial circumstances is the minute order of April 17, 2015, which stated that the evidence could be filed under seal. The record does not contain a motion or application for such an order, and the hearing was not reported. On June 26, 2015, the trial court, on its own motion, reconsidered the April 17 order, and found it improper because it was not based on a noticed motion and because the court had failed to make the findings required by the Rules of Court in issuing the order. The court offered four options to the Garaus: to proceed immediately without the documents; to proceed immediately by unsealing the documents; to continue the hearing, return the documents, and allow new documents to be filed, but not under seal; or to proceed with documents subject to judicial notice. The court continued the matter, over the Garaus' objection, to July 17, 2015.

The record does not reflect that the Garaus requested leave to file a motion to seal the documents. The record does contain a supplemental opposition to the attorney's fees motion, arguing that the information at issue was information required by law to be kept confidential, and an accompanying request for judicial notice of fee waivers. The court granted the request for judicial notice.

Government Code section 68633 sets forth procedures for obtaining fee waivers, which, as the record reflects, the Garaus obtained at various points in this litigation. The statute does not, however, on its face, apply to any other proceeding, nor does it establish a blanket rule governing the treatment of any

information concerning financial status filed with the court. The Garaus have not cited any authority holding, or suggesting, that the provisions of this code section are applicable in proceedings such as this one.

The Garaus also assert that the trial court denied them the opportunity to present the documentation formally under seal in compliance with the Rules of Court. While they correctly observe that this was not one of the options presented by the trial court, it is also correct that the record does not indicate that, in response to the listed options, they requested such an opportunity. Their supplemental filing, made after the court order returning the documents previously filed under seal, does not request such relief, nor did they seek leave to file such a motion.

DISPOSITION

The orders of the trial court are affirmed. Respondent is to recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.