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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

WALTER TYRELL SHATFORD IV,

Plaintiff and Appellant,

v.

MICHELLE APRIL KNIGHT,

Defendant and Respondent.

B269337

(Los Angeles County
Super. Ct. No. BC553596)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed in part, reversed in part, modified, and remanded.

Walter Tyrell Shatford IV, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Plaintiff and appellant Walter Tyrell Shatford appeals from a default judgment entered in his favor. Plaintiff contends the trial court erred by: (a) denying his request to recover his costs for making telephonic appearances; and (b) declining to honor his demand for a statement of decision. We hold plaintiff was entitled to recover his costs for making telephonic appearances, but a statement of decision was not required.

PROCEDURAL BACKGROUND

Plaintiff filed a complaint¹ and served it on defendant and respondent Michelle April Knight. Defendant did not respond to the complaint. Defendant's default was entered pursuant to plaintiff's request, and plaintiff filed a statement of damages.

On October 21, 2015, plaintiff filed a "request for court judgment" based on defendant's default (request for default judgment) and sought an award of \$158,219.23, including \$833 in costs. Although the costs included \$258 for three telephonic appearances, plaintiff actually made four telephonic appearances between the filing dates of the complaint and the request for default judgment.

The same day plaintiff filed his request for default judgment, the trial court entered judgment by default in favor of plaintiff in the sum of \$4,157.96, including \$575 in costs.

¹ The complaint is not contained in the record. In his opening brief, plaintiff states he filed the "14 cause of action" complaint based on "events relating to an illegal eviction by [d]efendant against [plaintiff]."

According to plaintiff, no hearing was held on plaintiff's request and the matter was submitted on the papers.²

Plaintiff claimed in a filing with the trial court, as he does on appeal, that the judgment was sent to him by mail on October 22, 2015.³ On November 2, 2015, twelve days after the judgment was entered, plaintiff filed a request for a statement of decision. It does not appear from the record that the trial court ever prepared a statement of decision.

DISCUSSION⁴

A. Telephonic Appearances

1. *Standard of Review*

"[T]he standard of review applicable when a plaintiff appeals from his or her award . . . after defendant defaulted" is whether "the award, or lack thereof, is totally unconscionable and

² "[T]he court in its discretion may permit the use of affidavits, in lieu of personal testimony, as to all or any part of the evidence or proof required" (Code Civ. Proc., § 585, subd. (d).)

³ Plaintiff's claim is unsupported by a proof of service or other declaration. The record does not disclose when plaintiff discovered the terms of the judgment.

⁴ The record does not contain a reporter's transcript of a hearing on plaintiff's request for default judgment. We therefore inquired of the parties whether the absence of a reporter's transcript or a suitable substitute renders the record inadequate to grant appellate relief. No hearing was held; the record therefore is adequate for our review.

without justification” (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.)

2. *Analysis*

Code of Civil Procedure section 367.6, subdivision (c)⁵ provides that telephonic appearance fees are recoverable costs. Plaintiff requested the trial court award it \$258 in costs for three telephonic appearances.

The trial court entered judgment by default in favor of plaintiff in a certain sum, including \$575 in costs, the exact sum of all requested costs except the telephonic appearance costs of \$258. It is clear, therefore, the trial court denied plaintiff’s request for his telephonic appearance costs.

If a claimed cost is allowable on its face, the burden is on the objecting party to show the cost is unnecessary or unreasonable. (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) Plaintiff’s claimed expense for telephonic appearances was allowable on its face. Defendant did not oppose plaintiff’s request for judgment by default and did not object to plaintiff’s claimed costs for telephonic appearances. Plaintiff was therefore entitled to be awarded these costs.

B. Statement of Decision

Section 632 provides in part: “In superior courts, *upon the trial of a question of fact* by the court, . . . [t]he court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of *the principal controverted issues* at trial upon the request of any party appearing at the trial. . . . The request for a statement of decision shall specify those

⁵ All statutory citations are to the Code of Civil Procedure.

controverted issues as to which the party is requesting a statement of decision.” (Italics added.)

“In general . . . section 632 applies when there has been a trial followed by a judgment. [Citation.] [For example,] [i]t does not apply to an order on a motion . . . even if the motion involves an evidentiary hearing and the order is appealable. [Citation.]” (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040.) A default judgment does not concern a trial of a question of fact, nor does it stem from a resolution of controverted issues. Rather, “by a default a defendant admits the allegations in the complaint” (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1156.)⁶ Thus, under the general rule, the trial court was not required to issue a statement of decision. (See *Nicholson v. Nicholson* (1917) 174 Cal. 391, 394 [findings not required where judgment entered on default].)

We recognize there are exceptions to the rule for “special proceedings” which, because of the significance of the issues at stake and the particular need to have express findings for effective appellate review, militate in favor of applying section 632. (*In re Marriage of Askmo, supra*, 85 Cal.App.4th at p. 1040.) For example, “[c]ourts have created an exception for proceedings involving custody of children. [Citations.]” (*Maria P. v. Riles*

⁶ Indeed, in response to our inquiry about whether the absence of a reporter’s transcript renders the record inadequate to grant appellate relief, plaintiff conceded “a request for a statement of decision per [section] 632 is not necessary at all in a written submission for a court judgment without any hearing. [Section] 632 refers to a ‘trial’, and also states that a statement of decision shall be issued on request of a ‘party appearing at the trial’. Here . . . there was never any hearing, nor any appearance, nor any ‘trial’.”

(1987) 43 Cal.3d 1281, 1294.) It has been said that, “[d]ue process and basic fairness may well require the judgment to be supported by articulated reasons before a parent is made to suffer the ultimate penalty of losing a child . . .” (*Guardianship of Baby Boy M.* (1977) 66 Cal.App.3d 254, 265.)

But, plaintiff cites no authority, and we have found none, that places a default judgment into the special proceedings category. In fact, it appears there is nothing significant about the issues at stake in a default judgment, especially in this case. The record does not indicate plaintiff requested a hearing or that the trial court was unwilling to provide one.⁷ Rather this was a straightforward case where the issue of an appropriate default judgment was submitted on the papers. We are not inclined to extend the special proceedings exception to the default judgment in this case, i.e., a proceeding in which the factual issues in the complaint were no longer in controversy and the default judgment issue was submitted on the papers.⁸

There is one other point worth mentioning—it is on the issue of timeliness. Section 632 provides a request for the statement of decision “must be made within 10 days after the

⁷ Plaintiff requested the trial clerk include all minute orders be made part of the record on appeal. None of the minute orders in the record indicate a hearing was held, or that a request for a hearing was denied.

⁸ Plaintiff claims he could not appeal the award of damages without a statement of decision. This is not the case. Because there is no record of any oral proceedings concerning the default judgment, plaintiff could have appealed the trial court’s assessment of damages and that appeal would have been on the clerk’s transcript. (See *Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082-1083.)

court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day in which event the request must be made prior to the submission of the matter for decision.” Even if a statement of decision applies to default judgments, plaintiff did not make a timely request for one. Plaintiff’s request for default judgment was filed the same day the trial court entered the judgment by default. Therefore, if the default judgment were the equivalent of a “trial,” it concluded within one calendar day and plaintiff’s request for a statement of damages, filed 12 days later, was untimely.

DISPOSITION

We reverse the portion of the judgment concerning plaintiff's costs for making telephonic appearances. The matter is remanded for the trial court to modify the judgment to reflect that plaintiff is entitled to \$833 in costs. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal.

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KUMAR, J.*

We concur:

TURNER, P. J.

KRIEGLER, J.

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