Filed 9/26/12 Freeman v. Vista de Santa Barbara Associates CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JESSICA FREEMAN, Plaintiff and Respondent, v. VISTA DE SANTA BARBARA ASSOCIATES, Defendant and Appellant.	2d Civil No. B232845 (Super. Ct. No. 1341909) (Santa Barbara County)

Plaintiff prevailed in an action arising under the Mobilehome Residency Law (MRL). (Civ. Code, § 798 et seq.) She made a motion for attorney fees under section 798.85 of the MRL and an attorney fee provision in her lease.[1] The trial court awarded her $50,000. Defendant appeals.

FACTS

Defendant Vista de Santa Barbara Associates, a limited partnership (Vista), owns Vista de Santa Barbara Mobilehome Park (Park) in the City of Carpinteria (City). The Park is subject to the City's rent control ordinance. Jessica Freeman leases space 93 in the Park for her mobilehome.

[1] All statutory references are to the Civil Code unless otherwise stated.

On March 31, 2008, Vista sent a letter to Freeman advising her that because her mobilehome was not her principal residence, it was exempt from rent control. (§ 798.21, subd. (a).) Vista raised Freeman's rent from $604.82 to $910 per month.

Freeman disagreed with Vista that her mobilehome space was not subject to rent control. She filed a complaint for declaratory relief, injunction and damages, alleging Vista violated the MRL. In the meantime, she paid $910 per month rent under protest.

After a bench trial, the court found the Carpinteria rent control ordinance applied to Freeman's lease. The court ordered Vista to pay damages measured by the difference between the controlled rent and the amount Freeman paid; that is $12,934.

Freeman moved for an award of attorney fees under both a lease provision and section 798.85. Freeman requested $105,322.50. The fees were incurred with three law firms, Cohn Stewart, James P. Ballantine and John R. DeLoreto.

In awarding $50,000 to Freeman, the trial court stated: "Under [Civil Code section] 798.85, the prevailing party in litigation involving the MRL is entitled to an award of attorneys' fees. This Court is well familiar with this case and the issues it involved, having tried the matter in a court trial. After considering all of the evidence submitted by plaintiff in support of the motion, the arguments made by both parties in support of their positions, and after considering each of the factors which the court must or may consider in determining whether a fee award is reasonable, the Court has determined that prevailing party Freeman shall be awarded attorneys' fee in the total amount of $50,000, including the fees for making this motion. [¶] The Court has not considered any comments with respect to settlement discussions relating to mediation or arbitration in reaching the decision in this case. Mediation discussions should remain confidential and to those discussions are in the declarations they are stricken.

DISCUSSION

I

Vista contends a denial of attorney fees is warranted because the fee request was unreasonably inflated. Vista points out that Freeman requested $105,322.50 but the trial court awarded only $50,000.

Vista relies on *Serrano v. Unruh* (1982) 32 Cal.3d 621. There, the question was whether a prevailing party could recover fees for the time spent making a motion for fees. The court held the prevailing party could recover such fees. But it warned: "Nonetheless the . . . rule does not license prevailing parties to force their opponents to a Hobson's choice of acceding to exorbitant fee demands or incurring further expense by voicing legitimate objections. . . . A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether. [Fn. omitted.]" (*Id.* at p. 635.)

Serrano does not require the trial court to reduce or deny a fee award. It simply gives the trial court discretion to consider an exorbitant fee demand in reducing the award or denying it altogether.

Assuming Freeman's demand for fees qualifies as exorbitant, the trial court did not abuse its discretion here. First, Vista points to nothing in the record that would justify the extraordinary step of denying an award of fees altogether. Second, an order of the trial court is presumed correct, and we must indulge in all intendments and presumptions to support it when the record is silent. (*Kunzler v. Karde* (1980) 109 Cal.App.3d 683, 688.) If the trial court was required to reduce the award due to an exorbitant demand, we must presume it did so. Vista points to nothing in the record to rebut the presumption.

Vista also contends the trial court should have denied Freeman's motion because she filed an unlimited jurisdiction case, but her recovery is within the court's limited jurisdiction.

But Freeman's complaint requested declaratory relief as well as damages. An action for declaratory relief can only be filed as a limited civil case where it is

brought by way of a cross-complaint or after a nonbinding fee arbitration between an attorney and client. (Code Civ. Proc., § 86, subd. (a)(7).) Thus Freeman properly filed her action as an unlimited civil case.

II

Vista contends the amount of attorney fees is not supported by substantial evidence.

We review the amount of fees awarded for an abuse of discretion. (*In re Lugo* (2008) 164 Cal.App.4th 1522, 1544.) The only proper basis for a reversal of the amount awarded is that the amount is either so large or small that it shocks the conscience and suggests passion and prejudice influenced the determination. (*Id.* at pp. 1544-1545.)

Here neither party requested a statement of decision. Because the record is silent, all intendments and presumptions support the trial court's order. (*Kunzler v. Karde*, *supra*, 109 Cal.App.3d at p. 688.)

Freeman's primary attorneys, Cohn Stewart, claimed 134 hours at $395 per hour for attorneys and $175 per hour for a paralegal, for a total of $49,860. Vista points out that Cohn Stewart did not specify the amount of time spent on particular tasks. But the highly experienced trial judge who awarded the fees is the same judge who presided over the trial. He is perfectly capable of determining reasonable fees without such specifics such as the amount of time spent on each task.

Vista points out that other attorneys with whom Cohn Stewart consulted also submitted claims for fees. Vista argues that such fees are unreasonable. Assuming fees for attorneys with whom Cohn Stewart consulted are unreasonable, Vista cannot show that any such fees were awarded. We note that the $50,000 the trial court awarded is substantially the same as the $49,860 claimed by Cohn Stewart alone. In any event, if fees were awarded for consulting attorneys, the trial court apparently lowered the award to Cohn Stewart by the same amount.

Vista argues the amount awarded is not supported by the policy of the MRL to protect homeowners' principal residence. Vista points out that Freeman's mobilehome is not her principal residence.

But section 798.85 provides in part: "In any action arising out of a provision of this chapter the prevailing party shall be entitled to reasonable attorney's fees and costs." Freeman prevailed in an action arising out of the relevant chapter. Nothing in the section provides for diminished fees where the mobilehome is not the principal residence of the prevailing party.

The order is affirmed. Costs are awarded to Freeman

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Thomas P. Anderle, Judge

Superior Court County of Santa Barbara

Hart, King & Coldren, Robert S. Coldren and Robert G. Williamson, Jr. for Defendant and Appellant.

Cohn Stewart and Martin P. Cohn for Plaintiff and Respondent.