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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SAMUEL A. PERRONI, Plaintiff and Appellant, v. MARK A. FAJARDO et al., Respondents.	B281167 (Los Angeles County Super. Ct. No. BS159430)

APPEAL from an order of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Samuel A. Perroni, in pro. per., for Plaintiff and Appellant.

Pollak, Vida & Barer, Daniel P. Barer and Anna L. Birenbaum for Respondents.

I. INTRODUCTION

Plaintiff Samuel A. Perroni, an attorney representing himself, prevailed on a petition filed pursuant to the California Public Records Act (CPRA) (Gov. Code[1], § 6250 et seq.), in which he sought certain documents relating to the investigation of the drowning of actress Natalie Wood from the Los Angeles County Department of Medical Examiner-Coroner (the coroner's department), and the Los Angeles County Sheriff's Department (the sheriff's department).[2] The CPRA, in section 6259, subdivision (d), provides for attorney fees to a prevailing plaintiff. Though it found that plaintiff prevailed, the trial court nevertheless denied plaintiff's motion for attorney fees because plaintiff was self-represented. In this appeal from the order denying the fee motion, we reject plaintiff's argument that a self-represented attorney is entitled to recover attorney fees under section 6259, subdivision (d). Plaintiff also contends the trial court erred in its discovery rulings by denying his motions to compel. These rulings are not reviewable in an appeal from the denial of a CPRA attorney fee motion. Therefore, we affirm the trial court's order.

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1 Further statutory references are to the Government Code unless otherwise noted.

2 The coroner's department is not a party to this appeal.

II. BACKGROUND

A. *The Investigation Documents*

On November 29, 1981, Natalie Wood[3] drowned in the Pacific Ocean. In the early morning hours, Wood was reported missing from her yacht, the Splendour. Later that day, in the waters around Catalina Island, Wood's body was found.

The coroner's department investigated Wood's death. Thomas T. Noguchi, M.D., the coroner at the time, commissioned a report from Paul Miller (the Miller document). Noguchi determined Wood's death was accidental. The sheriff's department also investigated Wood's death. The sheriff's department closed its investigation on December 11, 1981.

Some documents from the 1981 investigation have been released to others, including two authors Suzanne Finstad and Sam Kashner.[4] These have included the first complaint report from an officer of the sheriff's department; a supplementary report from a different officer of the sheriff's department; photographs of the Splendour without photographs of Wood's remains; telephone messages; and investigator's notebooks. The sheriff's department has not provided any member of the public access to the autopsy photographs, photographs of Wood's

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[3] Wood was an American actress known for her role in films such as West Side Story (United Artists 1961), Splendor in the Grass (Warner Bros. 1961), The Searchers (Warner Bros. 1956), Rebel Without a Cause (Warner Bros. 1955), and Miracle on 34th Street (Twentieth Century Fox 1947).

[4] Finstad wrote a biography concerning Wood. Kashner wrote an article for Vanity Fair about Wood.

remains, or the Miller document. The coroner's department likewise had not released the Miller document to the public.

In November 2011, the sheriff's department reopened the Wood investigation. Files from both 1981 and 2011 are part of the open investigation into Wood's death. No information from the 2011 file has been released to the public.

B. *Plaintiff's CPRA Request*

Plaintiff is from Arkansas and is a licensed attorney with over 42 years of experience. Plaintiff's practice included handling white collar criminal cases and civil matters, including Freedom of Information Act cases. In 2008, plaintiff effectively retired from practicing law because of his health. Plaintiff has since consulted on criminal and civil cases, handled appeals, prepared pleadings and briefs, and authored a historical fiction novel. Plaintiff wanted to author a book related to Wood's death.

In 2015, plaintiff filed a CPRA request with the coroner's department. Plaintiff requested access to "a copy of the consultation report (also referred to as an evaluation report) of Mr. Paul Miller in the [Wood case]." The coroner's department released the original Wood autopsy report and a microfilm copy of the Wood autopsy report.

Also in 2015, plaintiff filed a CPRA request with the sheriff's department. Plaintiff requested "a copy of the [sheriff's department's] file pertaining to the investigation of the death of [Wood]." This included, "any and all interview memorandums, signed statements, documents, photographs, and any other file materials . . . ." The sheriff's department released no information to plaintiff. The sheriff's department asserted the documents

sought were exempt from CPRA disclosure under article I, section 1 of the California Constitution, section 6254, subdivisions (c), (f), and (k), section 6255, and case law.

C. *Plaintiff's CPRA Petition*

On November 10, 2015, plaintiff filed a CPRA petition under sections 6258 and 6259. Plaintiff named as parties former Coroner Mark A. Fajardo in his official capacity, the coroner's department, Sheriff Jim McDonnell in his official capacity, and the sheriff's department. Plaintiff requested an order directing the coroner's department to release the Miller document. Plaintiff requested an order directing the sheriff to release: crime scene photographs, including photos of Wood's body in the water, the inside and outside of the yacht, the dinghy, and any items removed or found in the yacht; autopsy photos of any abrasions, scrapes, bruises or scratches on the body or face; any witness statements; reports of any tests, recreations, or experiments conducted by the sheriff's department or consultants; aerial photographs of the scene where the yacht was moored; and copies of any documents or personal property gathered from those interviewed.

The agencies answered the petition and asserted, inter alia, the documents were: exempt as investigatory record and files under section 6254, subdivision (f); exempt pursuant to federal or state law under section 6254, subdivision (k); privileged under Evidence Code section 1040; and prohibited under Code of Civil Procedure section 129 for the release of a deceased person's photographs. The sheriff's department determined that certain items from the 1981 investigation had been released to authors

Finstad and Kashner, as identified above, and released those items to plaintiff.

Plaintiff engaged in discovery, including taking five depositions that included a sheriff's department lieutenant, detective, and retired captain, a former coroner, and a former coroner information officer. Plaintiff moved to compel further responses to his deposition questions , and moved to compel responses to his interrogatories and requests for document production.

After a hearing, the trial court denied both discovery motions. For the motion to compel written discovery, the trial court held plaintiff failed to provide an adequate separate statement as required under rule 3.145 of the California Rules of Court, and that most of the written discovery plaintiff sought was not available in a CPRA action. The court limited his discovery to the departments' efforts to comply, waiver, and affirmative defenses. For the motion to compel further deposition answers, the trial court also found plaintiff failed to provide an adequate separate statement, and ruled the motion to compel further deposition answers concerned investigation details that were privileged from disclosure. The trial court imposed sanctions on plaintiff totaling $3,000.[5]

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[5] The sanctions are not before the court on appeal. They were raised via plaintiff's petition for extraordinary writ from the trial court's order denying in part his CPRA petition. Plaintiff's petition was denied.

D. *CPRA Rulings*

During a series of three CPRA hearings, plaintiff prevailed on some matters. The trial court ordered the coroner's department to produce the Miller report. After an in camera review of the 1981 sheriff's department files, the court ordered the sheriff to produce to plaintiff a map of Avalon, California (located on Santa Catalina Island) from that file.[6] The trial court denied the petition as to other matters, including denying ordering the release of the sheriff's 2011 investigation files.

The parties informed the court that plaintiff had settled his case with the coroner and the coroner's department. Thereafter, plaintiff moved for attorney fees under section 6259, subdivision (d) against the sheriff and sheriff's department. Plaintiff requested an award of $92,595.50 as fees for him and his legal assistant, as well as $5,713.66 in costs. Defendants opposed the motion, asserting a self-represented attorney should be unable to recover attorney fees under the CPRA.

On January 26, 2017, the trial court denied plaintiff's attorney fees motion. The trial court held that the CPRA's fee-shifting statute does not permit a self-represented attorney to obtain attorney fees.

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[6] The trial court also permitted plaintiff to further depose a sheriff's department detective as to his statement in a declaration that he had provided "access" to certain authors as to the 1981 sheriff's department files.

III. DISCUSSION

A. *As a Self-Represented Attorney, Plaintiff May Not Recover Attorneys Fees Under CPRA*

Plaintiff contends the trial court was required to award him attorney fees as the prevailing plaintiff under the CPRA. The order denying attorney fees is appealable as a final judgment under Code of Civil Procedure section 904.1, subdivision (a)(1). (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1388.) While a fee award is reviewed for abuse of discretion, review here is de novo because the issue of whether a self-represented attorney may receive fees under the CPRA is a question of law. (See *Law Offices of Marc Grossman v. Victor Elementary School Dist.* (2015) 238 Cal.App.4th 1010, 1013-1014.)

"California follows what is commonly referred to as the American rule, which provides that each party to a lawsuit must ordinarily pay his own attorney fees." (*Trope v. Katz* (1995) 11 Cal.4th 274, 278 (*Trope*).) However, attorney fees are recoverable as costs by a prevailing party when authorized by contract, statute, or law. (Code Civ. Proc., § 1033.5, subd. (a)(10).)

The CPRA's section 6259, subdivision (d) is one such fee-shifting statute. It provides for attorney fees to a prevailing plaintiff: "The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. . . . If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency." The parties do not dispute plaintiff prevailed in the litigation for purposes of

section 6259, subdivision (d). It is also undisputed plaintiff represented only himself in this case.

"The very purpose of the [CPRA's] attorney fees provision is to provide protections and incentives for members of the public to seek judicial enforcement of their right to inspect public records subject to disclosure." (*Law Offices of Marc Grossman v. Victor Elementary School Dist., supra*, 238 Cal.App.4th at p. 1013.) The incentive is that a plaintiff will receive an award of costs and reasonable attorney fees from a public agency upon prevailing, but will not be liable for the public agency's costs and reasonable attorney fees unless the action is frivolous. (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 427.) Nevertheless, nothing in the CPRA, nor relevant case law, indicates that the Legislature intended for a self-represented attorney, representing no clients, to recover attorney fees.

In *Trope*, our Supreme Court discussed whether a self-represented attorney could recover attorney fees under Civil Code section 1717, the provision governing contractual attorney fees. *Trope* involved a law firm that represented itself and prevailed in a breach-of-contract lawsuit against its former client. (*Trope, supra*, 11 Cal.4th at p. 278.) The law firm moved for attorney fees, citing a provision in the retainer agreement. (*Id.* at pp. 277-278.) Our Supreme Court affirmed the denial of the attorney fees motion. (*Ibid.*)

Our Supreme Court held that under Civil Code section 1717, subdivision (a)[7] an attorney representing himself cannot

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[7] Civil Code section 1717, subdivision (a) provides in pertinent part that "In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to

recover "reasonable attorney's fees": "[T]he usual and ordinary meaning of the words 'attorney's fees,' both in legal and in general usage, is the consideration that a litigant actually pays or becomes liable to pay in exchange for legal representation. An attorney litigating in propria persona pays no such compensation." (*Trope, supra*, 11 Cal.4th at p. 280.)

Later, in *Musaelian v. Adams* (2009) 45 Cal.4th 512, our Supreme Court held that attorney fees should not be awarded to a self-represented attorney as a sanction under Code of Civil Procedure section 128.7, which allows for sanctions for frivolous lawsuits and tactics. (*Id.* at pp. 519-520, citing *Trope, supra*, 11 Cal.4th at p. 285.) The Supreme Court also noted that where it had upheld attorney fees awards, "attorney fees were 'incurred' in the sense that there was an attorney-client relationship, the attorney performed services on behalf of the client, and the attorney's right to fees grew out of the attorney-client relationship." (*Musaelian v. Adams, supra*, 45 Cal.4th at p. 520, citing *Lolley v. Campbell* (2002) 28 Cal.4th 367, 373-376 [party could recover fees under Lab. Code, § 98.2 when Labor Commissioner representing party without charge], *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1141-1142 [party represented on a contingency basis recovered fees under Code Civ. Proc., § 425.16, subd. (c)], and *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1097 [award of fees under Civ. Code, § 1717 to in-house counsel].) The Supreme Court indicated that a party "as in *Trope*

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one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

and here, litigating his or her own case" could not recover fees. (*Musaelian v. Adams, supra*, 45 Cal.4th at p. 520.)

The Court of Appeal has applied the *Trope* holding to many fee-shifting statutes. (See, e.g., *Carpenter & Zuckerman, LLP v. Cohen* (2011) 195 Cal.App.4th 373, 385 [denying attorney fees under Code Civ. Proc., § 425.16, subd. (c) to law firm represented by associate attorney because associate was firm employee]; *Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 524 [under section 425.16, "the commonly understood definition of attorney fees applies . . . and a prevailing defendant is entitled to recover attorney fees *if represented by counsel*. "] (emphasis added); *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1179 [attorney fees as monetary discovery sanction under former Code Civ. Proc., § 2023, subd. (b) not awarded to self-represented attorney].) *Trope* applies to section 6259, subdivision (d), just as in these cases, and it does not permit plaintiff to recover attorney fees here.

Plaintiff attempts to distinguish section 6259 from Civil Code section 1717 by arguing the former refers to "attorney fees" while the latter referred to "attorney's fees." We do not believe the difference is material. *Trope* uses each term many times and does not indicate that there is a meaningful difference between them. (See, e.g., *Trope, supra*, 11 Cal.4th at pp. 278, 279.) Black's Law Dictionary makes no distinction either, as it defines "attorney's fee" as follows: "The charge to a client for services performed for the client, such as an hourly fee, a flat flee, or a contingent fee.—Also spelled *attorneys' fees*.—Also termed *attorney fees*." (Black's Law Dict. (10th ed. 2014) p. 154, col. 2.) There is no significance to the use of the term "attorney's fees" in

Civil Code section 1717 and "attorney fees" in section 6259, subdivision (d). *Trope*'s reasoning applies equally to both terms.

Plaintiff argues that *Trope* is distinguishable because Civil Code section 1717 refers to attorney fees that were "incur[red]" by a party. While *Trope* discussed the definition of "incur" in the context of Civil Code section 1717, that was not the sole focus of its analysis, as *Trope* also extensively discussed the meaning of the term "attorney's fees." (See *Trope, supra*, 11 Cal.4th at pp. 280-282.) Furthermore, as noted, *Trope*'s reasoning has been applied to Code of Civil Procedure section 425.16, subdivision (c)(1) (*Carpenter & Zuckerman, LLP v. Cohen, supra*, 195 Cal.App.4th at p. 385), which does not use the word "incur" or any form of it.

Plaintiff also contends the Legislature intended for any prevailing plaintiff to recover attorney fees. Plaintiff asserts that because section 6259, subdivision (d) provides for an agency to recover attorney fees from a plaintiff who filed a frivolous CPRA petition, the Legislature must have intended for a self-represented plaintiff to be able to recover his or her own attorney fees. Whether the CPRA should allow such recovery is a policy choice, and plaintiff cites to no evidence that the Legislature made that choice. "In the absence of some indication either on the face of that statute or in its legislative history that the Legislature intended its words to convey something other than their established legal definition, the presumption is almost irresistible that the Legislature intended them to have that meaning." (*Trope, supra*, 11 Cal.4th at p. 282.) As discussed, the legal meaning of "attorney fees" does not include recovery by a self-represented attorney.

Plaintiff also suggests that even non-attorneys representing themselves should be able to recover attorney fees. "Attorney fees," however, are fees earned for providing services as an attorney. (See *Atherton v. Board of Supervisors* (1986) 176 Cal.App.3d 433, 437 ["In our view, the decision to limit an award of attorneys' fees to individuals licensed to practice law is consistent with Business and Professions Code sections 6125, 6126, which restrict the practice of law to active members of the State Bar and make the unauthorized practice of law a misdemeanor. Awarding [a non-attorney] attorneys' fees would grant him the status without the license."]; see also Black's Law Dict. (10th ed. 2014) p. 154, col. 2 [definition of "attorney's fee"].)[8] Plaintiff has identified no case law that supports his suggestion that self-represented non-attorneys can recover attorney fees.[9]

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[8] Furthermore, Civil Code section 1717, subdivision (a) and section 6259, subdivision (d) refer to "reasonable attorney's fees" and "reasonable attorney fees." Black's Law Dictionary defines "reasonable attorney fee" as, "An *attorney's* compensation determined to be equitable or fair based on several factors . . . ." (Black's Law Dict. (10th ed. 2014) p. 154, col. 2 (emphasis added).)

[9] Plaintiff appears not to be licensed or otherwise authorized to practice law in California. "'No one may recover compensation for services as an attorney at law in this state unless [the person] was at the time the services were performed a member of The State Bar.' [Citation.]" (*Birbrower, Montalbano, Condon, & Frank v. Superior Court* (1998) 17 Cal.4th 119, 127.) Plaintiff's theory that he should be compensated for performing attorney services may rely on plaintiff's engaging in the unauthorized practice of law. (Bus. & Prof. Code, § 6126, subd. (a).) We need

Plaintiff cites to numerous decisions from other states to argue that California should interpret the CPRA to provide for attorney fees to an self-represented attorney in a Public Records Act case. We decline to rely on rulings from other jurisdictions concerning other jurisdictions' statutes. "[I]f a rule of law is clearly established by the decisions of the courts of California we are not at liberty to overrule it in favor of one followed in decisions of other states." (*Schneider v. Schneider* (1947) 82 Cal.App.2d 860, 862; accord, *Kohan v. Cohan* (1988) 204 Cal.App.3d 915, 922.) The rule that self-represented litigants cannot recover attorney fees is clearly established in California.

The Court of Appeal has held that *Trope*'s rationale does not apply when a self-represented attorney is also representing a client. (See *Law Offices of Marc Grossman v. Victor Elementary School Dist., supra*, 238 Cal.App.4th at p. 1014 ["The mandamus action was not filed to seek compensation for the Law Firm or to obtain any other relief beneficial to the Law Firm alone. It was filed to obtain information pertinent to three separate civil actions filed on behalf of separate clients of plaintiff. To deny fees because the petition was filed in the name of the Law Firm is to elevate form over substance."]; *Ramona Unified School Dist. v. Tsiknas, supra*, 135 Cal.App.4th at p. 525 ["Because an attorney-client relationship existed between the prevailing defendants and Hamilton [an attorney also appearing as a codefendant], *Trope* does not preclude the award of attorney fees [under Code of Civil

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not make such a determination here, as plaintiff cannot recover attorney fees as a self-represented attorney.

We further note that it is unclear whether plaintiff is currently authorized to practice law in any jurisdiction. Plaintiff indicated he is "effectively retired" as an attorney.

Procedure section 425.16, subdivision (c)] merely because Hamilton was a codefendant with the nonattorney clients to whom she provided legal assistance."].) In such cases, however, there was an attorney-client relationship in existence. (*Musaelian v. Adams, supra*, 45 Cal.4th at p. 520.) No such attorney-client relationship exists here.

Accordingly, we conclude that plaintiff, a self-represented attorney, cannot recover attorney fees under section 6259, subdivision (d).

B. *The Discovery Rulings Are Not Reviewable in This Appeal*

Plaintiff also argues the trial court erred by denying his motions to compel. We conclude that the discovery orders are not reviewable here.

"A trial court's order is appealable when it is made so by statute." (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696.) There is no statute making discovery rulings directly appealable, so they are subject to review only after entry of a final judgment. (*Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1060.) Here, the final judgment was an order denying plaintiff's motion for attorney fees. (*Los Angeles Times v. Alameda Corridor Transportation Authority*, *supra*, 88 Cal.App.4th at p. 1388.) An order granting or denying a CPRA petition is reviewable only by extraordinary writ. (§ 6259, subd. (c).) It cannot serve as a final judgment under Code of Civil Procedure section 904.1, subdivision (a)(1). (*Ibid.*)

In this appeal from the denial of plaintiff's motion for attorney fees, we may review intermediate rulings that are directly related to that order. (See Code Civ. Proc., § 906 ["Upon

an appeal pursuant to Section 904.1 . . . , the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party . . . ."]; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 948 ["[N]onappealable orders or other decisions substantively and/or procedurally collateral to, and not directly related to, the judgment or order being appealed are not reviewable pursuant to [Code of Civil Procedure] section 906 even though they literally may 'substantially affect[]'one of the parties to the appeal."]; see also *Oiye v. Fox, supra*, 211 Cal.App.4th at p. 1060 [discovery order unrelated to and not necessarily affecting the merits of injunction was not reviewable on appeal under Code of Civil Procedure section 906].) The order denying plaintiff's motions to compel is collateral, and not directly related, to the merits of the order denying attorney fees. Thus, it is not reviewable on appeal under Code of Civil Procedure section 906. Plaintiff has identified no other basis for this court to review the discovery ruling order. Plaintiff's arguments about that order therefore cannot now be addressed and provide no basis for reversal.

IV. DISPOSITION

The order denying plaintiff's request for attorney fees is affirmed. Defendants Jim McDonnell in his official capacity as Los Angeles County Sheriff, and the County of Los Angeles may recover their appeal costs from plaintiff Samuel A. Perroni.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RAPHAEL, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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