Filed 5/9/18 Grange v. Ward CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DEBRA LA GRANGE, Plaintiff and Appellant, v. R. JEFFERY WARD, Defendant and Respondent.	B280997 (Los Angeles County Super. Ct. No. BC522917)

APPEAL from an order of the Superior Court of Los Angeles County, Marc R. Marmaro, Judge. Affirmed.

Manahan Flashman & Brandon and David M. Brandon for Plaintiff and Appellant.

Seki, Nishimura & Watase, Bill H. Seki, Andrew C. Pongracz and Kari C. Kadomatsu for Defendant and Respondent.

INTRODUCTION

This is the third appeal in this malicious prosecution action. The factual and procedural background of this action and the underlying action is described in detail in *La Grange v. Tran* (Nov. 12, 2015, B255835) [nonpub. opn.] (*La Grange I*) and *La Grange v. Ward* (Jan. 23, 2018, B275459 [nonpub. opn.] (*La Grange II*).

In this appeal Debra La Grange challenges the trial court's award of $23,760 in attorneys' fees to R. Jeffrey Ward, an attorney who represented Tina Tran in the underlying action and who became a defendant in the malicious prosecution action. After the trial court granted Ward's special motion to strike under Code of Civil Procedure section 425.16,[1] a ruling we affirmed in *La Grange II*, the court granted Ward's motion for attorneys' fees, although the court awarded Ward much less than he asked for in fees.

La Grange does not dispute Ward prevailed, but argues the amount of the award of attorneys' fees was unreasonable. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

La Grange filed this action against Tran for malicious prosecution and other torts. Tran filed a special motion to strike La Grange's complaint under section 425.16, which the trial court denied. We affirmed that ruling in *La Grange I*.

---

1 Statutory references are to the Code of Civil Procedure.

While the appeal in *La Grange I* was pending, La Grange added Ward as a Doe defendant. Counsel for Ward, Andrew Pongracz, eventually filed a special motion to strike La Grange's complaint against Ward, which the trial court granted. We affirmed that ruling in *La Grange II*.

Pongracz also filed a motion for attorneys' fees under section 425.16, subdivision (c), requesting $55,638 in fees. The trial court granted the motion but awarded only $23,760. This is La Grange's appeal from that ruling.

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Reducing Ward's Attorneys' Fees Less Than La Grange Had Requested*

1. *Applicable Law and Standard of Review*

A prevailing defendant on a special motion to strike is entitled to an award of attorneys' fees. (§ 425.16, subd. (c); *Barry v. State Bar of California* (2017) 2 Cal.5th 318, 322; *Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924.) The trial court may calculate the amount of a fee award under section 425.16, subdivision (c), using the lodestar method. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 500; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-1132; *Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 93.) "'Under that method, the court "tabulates the attorney fee touchstone, or lodestar, by multiplying the number of hours reasonably expended by the reasonable hourly rate prevailing in the community for similar work."'" (*569 East County Boulevard LLC v. Backcountry Against*

the Dump, Inc. (2016) 6 Cal.App.5th 426, 432 (*569 East County Boulevard*).) The trial court calculated Ward's recoverable attorneys' fees using the lodestar method.

We review the amount of a fee award under section 425.16, subdivision (c), for abuse of discretion. (*569 East County Boulevard, supra*, 6 Cal.App.5th at p. 433; *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 487.) "'The reasonableness of attorney fees is within the discretion of the trial court, to be determined from a consideration of such factors as the nature of the litigation, the complexity of the issues, the experience and expertise of counsel, and the amount of time involved.'" (*Russell v. Foglio* (2008) 160 Cal.App.4th 653, 661.) "'A trial court's attorney fee award will not be set aside "absent a showing that it is manifestly excessive in the circumstances."'" (*Lunada Biomedical*, at p. 487.)

2. *The Trial Court Did Not Abuse Its Discretion in Calculating the Reasonable Number of Hours*

a. *Hours for the Special Motion To Strike*

La Grange argues Pongracz's request for "112.4 hours in connection with one deposition and one motion . . . is absurd on its face." In particular, La Grange argues the 41.3 hours Pongracz said he spent preparing Ward's special motion to strike was unreasonable because he "had previously filed a similar anti-SLAPP motion on behalf of" Tran, which Pongracz reported had required only 15 hours. (Fn. omitted.) La Grange argues: "Mr. Pongracz is essentially stating that the filing of one anti-SLAPP motion, which was largely duplicative of a previous motion he filed in this action, took over an entire week of billable time, in

contrast to the 15 hours that it took to draft . . . Tran's anti-SLAPP motion."

La Grange has a point, and the trial court agreed with it, reducing the number of recoverable hours for this task from 41.3 to 20. The court found that "41.3 hours, which amounts to about one week of work, is not reasonable. The court acknowledges counsel's assertion that considerable time was spent preparing multiple drafts of the motion and supporting documentation. . . . However, given the fact that counsel already had filed an anti-SLAPP motion on Tran's behalf, and in light of counsel's assertion that he has 'worked on anti-SLAPP motions and first amendment litigation for close to a decade,' . . . it should not have taken a week to prepare the special motion to strike. The court again generally agrees with [La Grange] on this point and determines that 20 hours of work (i.e., 2.5 days) is reasonably compensable for the preparation and filing of Ward's anti-SLAPP motion."[2] Twenty hours to prepare Ward's special motion to strike is not manifestly excessive. The trial court did not abuse its discretion in failing to reduce the number of compensable hours more than the court did.

b. *Hours for Ward's Deposition*

La Grange argues the trial court should not have awarded any fees for Pongracz's "preparation for and attendance at" Ward's five-hour deposition because "this deposition-related work would have had to be undertaken by . . . Ward's attorney

---

[2] The trial court also reduced from 11.7 hours to 10 hours the compensable time Pongracz spent reviewing La Grange's opposition to the motion and preparing a reply.

regardless of whether the anti-SLAPP motion was filed." The trial court agreed with La Grange to a point, and reduced the number of recoverable hours for this work from 16 to 10. The court agreed with Ward that "the time spent defending the deposition is compensable since [La Grange] sought the deposition in order to oppose the anti-SLAPP motion. . . . However, there is no evidence justifying 16 hours of time spent meeting with Ward to prepare the motion and for the deposition. The court concludes that 10 hours of time preparing for and defending Ward's deposition is reasonably compensable."

The court did not abuse its discretion in allowing Ward to recover attorneys' fees incurred at a deposition La Grange had requested to oppose the special motion to strike,[3] nor did the court abuse its discretion in not reducing the amount of compensable deposition preparation time more than the court did. That La Grange may have taken Ward's deposition later in the litigation, even if Ward had not filed a special motion to strike, did not deprive Ward of the right to recover reasonable attorneys' fees incurred by Pongracz in preparing for and defending the deposition under section 425.16, subdivision (c). (See *Jackson v. Yarbray*, *supra*, 179 Cal.App.4th at p. 92 ["fees awarded should include services for all proceedings, including discovery initiated by the opposing party pursuant to section

---

3 Pongracz stipulated to allow counsel for La Grange to take Ward's deposition to oppose the special motion to strike in order to avoid a court hearing on La Grange's ex parte application. La Grange submitted portions of Ward's deposition testimony in opposition to the motion.

425.16, subdivision (g), directly related to the special motion to strike"].)

c. *Hours for Reviewing Documents*

La Grange argues the 17 hours Pongracz spent reviewing documents from the underlying action was unreasonable because he "had already brought an anti-SLAPP motion on behalf of . . . Tran with respect to the same" action. Again, La Grange has a point, and the trial court agreed with it, reducing the number of compensable hours from 17 to two. The court found that "the 17 hours allegedly spent reviewing the underlying litigation commenced by Tran is not reasonable, particularly in light of the fact that [Pongracz] previously filed an anti-SLAPP motion on Tran's behalf. Counsel was necessarily familiar with the issues by the time he filed the second anti-SLAPP motion on Ward's behalf. The primary difference between the two motions was Ward's assertion of the statute of limitations as an affirmative defense. However, the statute of limitations alone does not justify such an extensive amount of time reviewing the underlying litigation. The court agrees with [La Grange] that two hours of time of review is reasonably compensable." The court did not abuse its discretion by failing to eliminate the two remaining hours the court awarded for this document review.

d. *Hours for Mock Oral Argument*

La Grange argues the four hours Pongracz spent in connection with a mock oral argument "illustrate the inflated nature of the fees requested" and were unreasonable because "none of the other purported participants in this mock argument billed any time for this." Again, La Grange has a point, and the

trial court agreed with it, reducing the number of recoverable hours for this item from four to zero. The trial court found this time was "not reasonably compensable" because Pongracz "already was well versed in the issues, and while a mock argument might assist counsel in preparing a more polished presentation, it was not necessary in the circumstances of this motion." The trial court did not abuse its discretion in not reducing the recoverable hours more than the total amount of time billed. Indeed, it would not have been an abuse of discretion for the court to have awarded these hours. (See Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2017) ¶ 10:80 ["[i]t may even be helpful to hold a 'mock' argument, with an associate attorney taking the court's role and posing various questions"].)

3. *The Trial Court Did Not Abuse Its Discretion in Calculating the Reasonable Hourly Rate*

La Grange argues Pongracz's hourly rate was excessive. The trial court agreed with La Grange to a point, and reduced Pongracz's reasonable hourly rate from $495 to $400. The trial court found that Pongracz's "claimed hourly rate is somewhat excessive. For instance, [counsel for La Grange's] hourly rate for this matter is $250, and he has been practicing law for approximately ten years longer than Ward's counsel. . . . While this factor is not determinative, it is relevant. [Pongracz] states that he has been practicing for eight years, and has handled several anti-SLAPP cases, including appeals, as well as numerous complex cases in arbitration, bench trials, and jury trials. . . . While [Pongracz] does not submit evidence of what other attorneys charge for comparable representation, the court

may rely on its own knowledge and experience in assessing the appropriate value of the services provided. Having practiced law in the area for eight years, [Pongracz] is not particularly senior, and the court determines that in the circumstances the claimed hourly rate of $495 is excessive and should be reduced to $400." (Fn. omitted.)

The trial court did not abuse its discretion. "The courts repeatedly have stated that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom [citation], and this includes the determination of the hourly rate that will be used in the lodestar calculus. [Citation.] In making its calculation, the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees [citation], the difficulty or complexity of the litigation to which that skill was applied [citations], and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases." (*569 East County Boulevard*, *supra*, 6 Cal.App.5th 426, at pp. 436-437; see *Cordero-Sacks v. Housing Authority of City of Los Angeles* (2011) 200 Cal.App.4th 1267, 1286 ["[t]he trial court is in the best position to determine the reasonableness of the hourly rate of an attorney appearing before the court and the value of the attorney's professional services"].) The court, acknowledging that Pongracz did not submit evidence of comparable hourly rates,[4] relied on its

---

[4] In his reply memorandum of points and authorities, Pongracz cited the so-called "*Laffey* Matrix"* and "a number of cases awarding considerably larger attorney fee awards and hourly rates" than those requested by Ward. The trial court disregarded the former because Ward submitted it for the first

experience as a trial judge and former civil litigator in the community. The law allows a trial court to do just that.

B. *The Trial Court Did Not Abuse Its Discretion in Not Denying Ward's Motion for Attorneys' Fees in Its Entirety*

La Grange argues the trial court should have denied the motion for attorneys' fees "outright in its entirety" because Pongracz "sought an award of attorney's fees that was outrageous, inflated, and without evidentiary support." Citing *Ketchum v. Moses*, *supra*, 24 Cal.4th 1122, La Grange argues that "[a] fee request that appears unreasonably inflated is a special circumstance permitting the trial court to deny the request altogether."

Permitting, perhaps, but not requiring. "Because the Legislature specified the prevailing defendant 'shall be entitled to

---

time on reply and found the latter not relevant because Ward included no "discussion of the issues involved in [the] cases, or the experience and skill of the attorneys involved in those cases."

*"[T]he *Laffey* matrix is an inflation-adjusted grid of hourly rates for lawyers of varying levels of experience in Washington, D.C." (*Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, 454.) "Although the matrix can be adjusted for different regions, courts in other districts have found that the Laffey Matrix is not 'more helpful than the rates actually used by other courts or the rates of law firms.'" (*Villanueva v. Account Discovery Systems, LLC* (D.Colo. 2015) 77 F.Supp.3d 1058, 1080; see, e.g., *Iroanyah v. Bank of America* (7th Cir. 2014) 753 F.3d 686, 694 ["[t]he Laffey Matrix is a chart of hourly rates in the Washington, D.C. area," and "it is not determinative, or even persuasive, evidence of a reasonable hourly rate in the Northern District of Illinois"].)

recover his or her attorney's fees and costs' [citation], an award is usually mandatory." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) Nevertheless, courts have held that a trial court has discretion to deny a request for attorneys' fees under section 425.16, subdivision (c), where the request is "grossly" or "unreasonably inflated," and, "[t]o the extent a trial court is concerned that a particular award is excessive, it has broad discretion to adjust the fee downward or deny an unreasonable fee altogether." (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1138; see *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 990; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635; *Morrison v. Vineyard Creek* (2011) 193 Cal.App.4th 1254, 1273, fn. 12; *Christian Research Institute*, at p. 1321.)

The trial court did not deny Ward's motion entirely, impliedly finding that, although Pongracz billed too much, he did not grossly or unreasonably inflate his bills. The trial court did not abuse its discretion in reducing the request for fees by 57.3 percent (from $55,638 to $23,760) rather than 100 percent. (See *569 East County Boulevard*, *supra*, 6 Cal.App.5th at p. 440 ["trial court is not bound to accept the evidence submitted by counsel when making its determination [citation], and may reduce the hours if it concludes the attorneys performed work . . . that was unnecessary or duplicative or excessive in light of the issues fairly presented"]; *Christian Research Institute v. Alnor*, *supra*, 165 Cal.App.4th at p. 1329 [trial court has discretion to reduce "the number of compensable hours"].)

C. *The Trial Court Did Not Abuse Its Discretion in Denying La Grange's Request That the Court Order Pongracz To Submit a Supplemental Declaration*

La Grange argues the trial court abused its discretion in denying her request to require Pongracz to submit a supplemental declaration providing more specificity and detail about "what work was actually performed" in connection with Ward's special motion to strike. She argues that "the only way [she] would have been able to properly oppose and challenge the amount of attorney's fees sought in the Motion was for the Trial Court to order Mr. Pongracz to file a supplemental declaration that provided more specificity regarding his billable time" and that "the production of detailed billing records with redactions is the standard manner in which attorneys prove the veracity of attorney's fees incurred."

The trial court noted the same problem with Pongracz's declaration. The court noted "the documentation submitted to the court in support of the present motion consists primarily [of] block billing," an "undisciplined practice" that made it more difficult for the court to evaluate the reasonableness of the fee request. In fact, the court made significant reductions to the time requested by Pongracz in part because of the deficiencies in his declaration in support of the motion. The court, however, concluded it had enough information to rule on the motion based on the declarations and information it had, including a supplemental declaration Pongracz filed (before La Grange filed her opposition) "to proactively provide as much detail as possible in order for [La Grange] to meaningfully oppose this motion" and "the court's own experience and expertise in handling civil litigation cases." The court's ruling was entirely proper. (See

Lunada Biomedical v. Nunez, *supra*, 230 Cal.App.4th at p. 487 [evidence was sufficient for the court to rule on motion for attorneys' fees under section 425.16, subdivision (c), despite the contention the "defendants submitted 'block billing' of their attorney fees that did not amount to careful compilations of the time spent"]; *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1270 ["'[t]he "'experienced trial judge is the best judge of the value of professional services rendered in his [or her] court"'"]; *Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 874 ["[t]he trial court was fully cognizant of the quality of the services performed, the amount of time devoted to the case and the efforts of counsel"]; *Russell v. Foglio*, *supra*, 160 Cal.App.4th at p. 661 ["[t]he trial court possesses personal expertise in the value of the legal services rendered in the case before it"].)

Nor were production of Pongracz's redacted bills required or even "standard." "'"[T]he absence of time records and billing statements"'" does not "'"deprive[ ] [a] trial court of substantial evidence to support an award. . . ."'" (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1324; see *Lunada Biomedical v. Nunez*, *supra*, 230 Cal.App.4th at pp. 487-488 ["[a] defendant . . . can carry its burden of establishing its entitlement to attorney fees by submitting a declaration from counsel instead of billing records or invoices"]; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698 ["[i]t is well established that 'California courts do not require detailed time records, and trial courts have discretion to award fees based on declarations of counsel describing the work they have done and the court's own view of the number of hours reasonably spent'"]; *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375 ["[t]he

law is clear . . . that an award of attorney fees may be based on counsel's declarations, without production of detailed time records"].) The trial court concluded it had enough information to rule on the motion without Pongracz's billing records or invoices. Again, the court's ruling was entirely proper. (See *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 786 ["the lack of billing statements does not automatically establish that there was insufficient evidence for the trial court to render a decision"].)

DISPOSITION

The order is affirmed. Ward is to recover his costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.*

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