Filed 3/28/17 Casas v. City of Baldwin Park CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JULIAN CASAS, Plaintiff and Appellant, v. CITY OF BALDWIN PARK, et al., Defendants and Respondents.	B270313 (Los Angeles County Super. Ct. No. BS145297)

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

Law Office of Paul Cook and Paul Cook for Plaintiff and Appellant.

Albright, Yee & Schmit, Clifton W. Albright and Jamie E. Wright, for Defendants and Appellants.

Plaintiff and appellant Julian Casas (Casas) sought a writ of mandate to compel defendants and respondents City of Baldwin Park (the City) and City Manager Vijay Singh (collectively, defendants) to produce records pursuant to the California Public Records Act (CPRA or "the Act"). The trial court issued the writ, requiring production of certain specified records. Disputes then arose between Casas and defendants about whether defendants had produced all responsive records, and the trial court entertained two motions to compel compliance with the writ it issued. We consider whether the trial court was correct when it eventually determined defendants established they had produced records as ordered. We also consider Casas's contention that the trial court erred in taxing the entirety of the costs he claimed in connection with prevailing on his petition for a writ of mandate.

I. BACKGROUND

There are many documents associated with the trial court proceedings that counsel for Casas has not included in the appendix that serves as the record on appeal.[1] The record does not include, for instance, the petition that commenced the trial court writ proceedings (which presumably also includes a copy of the CPRA request Casas submitted to defendants in the first

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[1] We would perhaps be justified in dismissing Casas's appeal of the trial court's compliance orders for this reason. (Cal. Rules of Court, rule 8.124(b)(1)(B); *Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 643-644.) We opt, however, to consider his claims on the merits, albeit without reliance on any factual representations that are not directly supported by the record.

place). The record before us, however, does demonstrate the trial court issued a writ of mandate requiring defendants to release 20 categories of records for Casas's inspection pursuant to the Act.

As pertinent to the main issue we decide, the writ of mandate required production of (1) "[a]n accounting of all payments received" by the City from July 2008 to July 2013 as a result of boxing program memberships, aquatics programs, and the swim team program, including "all records reflecting whether payments were made in cash, check, or credit card"; (2) "[a]n accounting of all monies received from food sales at Concerts at the Park from July 2008 to July 2013"; (3) "[a]ll records reflecting the job application (including FBI clearance or absence of one) of Council Member Marlen Garcia's son, Robert Garcia's [*sic*] lifeguard position at Parks and Recreation"; (4) "[a]ll records reflecting the expenses paid out to Royal Coaches Autobody and Towing from July 2008 to July 2013"; (5) "[a]ll records reflecting monies received by the City . . . from cars that have been auctioned as a result of the City of Baldwin Park impounding them from July 2008 to July 2013"; (6) the resumes of all full-time employees of the City; and (7) all contracts entered into between Esther Snyder and the City.

In the months following the trial court's issuance of the writ of mandate, a dispute arose between the parties as to whether defendants had produced the documents required by the writ. Casas eventually filed a motion under Code of Civil Procedure section 1097 to compel compliance with the writ.[2]

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[2] Code of Civil Procedure section 1097, as it existed during the trial court litigation, provided: "When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, Board, or person, if it appear to the Court that any member of

Casas's motion asked the court to order defendants to produce records described in the above-referenced categories. The motion was supported by a four-paragraph declaration filed by counsel for Casas that failed to describe what defendants had (or had not) produced; its only substantive assertions were that counsel had "personal knowledge of all of the Exhibits attached," that counsel had "personal knowledge of the facts stated in all of the Exhibits," and that "[a]ll Exhibits are a true and correct copy of the original record."

Defendants opposed the motion to compel compliance with the writ. The opposition argued defendants had produced all responsive records and Casas was prolonging the case by changing his demands for production from what he initially requested. The opposition was accompanied not by a declaration from the City's custodian of records, but by a declaration from the City Attorney. With little additional detail, the City Attorney's declaration stated "the City has produced all its responsive records" and "[t]here simply are no more responsive documents to be produced."

The trial court heard the writ compliance motion at a hearing in August 2015. The court noted the City Attorney's declaration was conclusory and inquired about what had been

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such tribunal, corporation, or Board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ."

produced, inviting counsel for Casas to identify all the materials he contended defendants had not produced as required by the writ. Casas's attorney did so, and in response, counsel for defendants maintained many, if not all, of the items Casas's attorney had identified were among the documents defendants had already made available. Based on the attorneys' representations during the hearing about the state of the production of documents, the trial court ordered defendants to produce, or to identify for Casas's attorney where in the prior productions the documents were included, three categories of documents: (1) records that show the expenses paid to Royal Coaches Auto Body and Towing from July 2008 to July 2013 for towing of civilian cars (including cars towed at DUI checkpoints); (2) records that reflect how much money the City received from the boxing program, aquatic program, swim team, and concession sales, including any bank statements or deposit slips the City may have that showed the deposit of the funds; and (3) the "live scan and Red Cross, if any, qualifications" for Robert Hernandez, aka Robert Garcia. The trial court denied Casas's motion to compel compliance insofar as it requested production of any additional materials.

A month later, the trial court held another hearing to take up two issues: (1) defendants' motion to tax a costs memorandum Casas filed in connection with prevailing on his petition for the writ of mandate, and (2) an ex parte application Casas's attorney filed to complain about the state of defendants' production of records pursuant to the court's writ compliance order. As to the motion to tax costs, the trial court granted the motion and taxed Casas's costs memorandum in its entirety. The court found the memorandum was not timely filed and the court concluded, in

any event, that all of Casas's claimed costs were either not permitted by statute or insufficiently substantiated by admissible evidence. As to the ex parte application, Casas's attorney contended defendants had not released any records in response to the court's writ compliance order. Defendants disputed the contention and argued they had produced all the materials to which Casas was entitled. The trial court ordered as follows: "So here's what we're going to do. If [Casas] believes there is still non-compliance, [Casas] will make another motion to compel compliance. . . . [¶] [I]f [Casas] shows there is non-compliance with admissible evidence, then the City is going to be sanctioned a hundred dollars a day until there is full compliance."

Casas thereafter filed a second motion contending defendants had "intentionally with[held]" what, according to him, were the three categories of documents the trial court specified during the first compliance hearing in August 2015: towing records that reflect the money the City collected from the Royal Coaches towing company, Robert Hernandez's "employment application," and records reflecting the deposit of funds collected from the City's recreation programs. With the motion, Casas submitted several exhibits that he purported to authenticate by way of a document titled "Authentication of Exhibits in Support of Second Writ Compliance Motion," which was signed by counsel for Casas under an attestation that states, "I declare this under the penalty of perjury."[3]

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[3] The "Authentication" asserted defendants had authenticated many of the documents attached thereto by presenting them in open court on September 10, 2015, i.e., the date of the joint hearing on the motion to tax costs and Casas's ex parte application. Neither side referenced specific documents on

Regarding the towing records, Casas argued the City had produced documents concerning City payments to the towing company but not the converse, i.e., records of towing company payments to the City. Casas argued such payments to the City must exist by pointing to one of his exhibits that purported to be a contract between the City and the towing company that requires the company to pay the City 20 percent of the funds generated from vehicle impounds. Regarding the City recreation program records, Casas conceded the City had "released a summary of all the monies collected for the various recreation programs," but he argued that was insufficient to comply with the writ and the court's compliance order because the City had not produced any bank statements that would prove the City had deposited the money into a bank account (and the 26 deposit slips the City had produced were insufficient). Finally, Casas acknowledged he had received Robert Hernandez's employment application, but he asserted there must be additional records because counsel for defendants would not answer, during a meet and confer session, whether a Live Scan or other certification existed.

Defendants opposed Casas's motion to compel further compliance, arguing the City had produced all materials it located that were responsive to the categories the court identified in its August 2015 writ compliance order. Defendants' opposition

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the record during that hearing and it is therefore unclear whether any documents were presented. If documents were presented, it is also unclear what documents those were, and whether they are the same documents submitted by Casas as exhibits to his motion.

was supported by a declaration from City Chief Executive Officer Shannon Yauchzee (Yauchzee).

Yauchzee's declaration explained he was responsible for overseeing all employees and appointed officials working for the City, and he attested to having "actively been a part of the team of City employees that handle all Public Records Act requests submitted to the City for formal response and the location of responsive documents." He declared he had instructed the City's Finance Department to respond to "Casas's request for documents pertaining to monies received from the towing company" and that all responsive documents had been provided to Casas in full compliance with the writ. Yauchzee made similar averments with respect to the request for documents pertaining to Robert Hernandez and the request for "documents pertaining to proof that the monies collected [from] the City's recreation program was deposited into its bank" (he stated all responsive documents had been produced after he instructed the Community Services and Recreation Department and the Human Resources Division to respond to the former category and the Community Services and Recreation Department and the Finance Department to respond to the latter category).

Casas objected to the Yauchzee declaration, contending it was inadmissible hearsay, "self-serving," and "an improper opinion that rules on a legal conclusion." Casas maintained the trial court should sanction the City unless it produced the additional materials that he believed had been withheld.

During the hearing on Casas's motion to compel further compliance, Casas "stipulate[d] that Robert Hernandez's records will no longer be needed," but he maintained the court should still require production of bank statements pertaining to the

City's recreational programs and records of payments made by (not only to) the towing company for towing cars. The trial court denied the motion, except as to a narrow category of records.

Regarding the issue of bank statements and deposit slips, the trial court refused to make a further non-compliance finding because defendants maintained the City had no responsive records it had not produced and Casas had produced no admissible evidence suggesting otherwise. Specifically, the trial court agreed the Yauchzee declaration was thin on foundational facts and thus "not very persuasive evidence," but the court ruled the declaration was still sufficient to be received in evidence. The court further found the exhibits Casas submitted in an attempt to demonstrate the City may be withholding further responsive records were inadmissible because the "Authentication of Exhibits" Casas's attorney submitted was not a declaration in compliance with Code of Civil Procedure section 2015.5, and because several of the exhibits (including documents Casas contended were City bank statements he had "discovered") had not been properly authenticated in any event.

Regarding the portion of the prior August 2015 compliance order concerning payments made in connection with the Royal Coaches towing company, the trial court believed the wording it used in its minute order may have been ambiguous or erroneous. That is, the minute order specified defendants must produce records of payments the City made *to* the towing company but not vice versa. The court found that, under the circumstances, the "better course" was to order defendants to also produce monthly reports and franchise checks in the possession of any City department that would show any funds the towing company paid to the City. The trial court acknowledged the Yauchzee

declaration suggested such records did not exist, and the court explained "the City need only clarify this to be true or produce the records."[4]

II. DISCUSSION

Based on our review of the materials included in the record, Casas's appeal is meritless. With no admissible evidence presented by Casas that would suggest otherwise, we see no basis to overturn the trial court's determination that defendants produced the documents required by the writ of mandate or sufficiently established there were no (further) documents to produce. We additionally hold that the trial court correctly taxed Casas's costs memorandum in its entirety.

A. Standard of Review

We review factual determinations made by a trial court, including those made in resolving CPRA litigation, for substantial evidence. (*Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1420 (*Community Youth*); *American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55, 66 (*ACLU*).) Contentions regarding the legal requirements of the Act or Code of Civil Procedure section 1097 (the statute authorizing trial courts to compel compliance with a writ of mandate) are subject

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[4] The trial court noted the parties were now "down to one thing, the Royal Coach[es] monthly report and copies of checks," and recognized Casas could potentially file another motion if defendants did not produce this last group of records. So far as the record before us reveals, no such motion was filed.

to de novo review. (*Community Youth*, *supra*, at p. 1420; *ACLU*, *supra*, at p. 66.)

The de novo standard of review applies to questions regarding whether the civil costs statute permits a party to claim an expense as a reimbursable cost. (*Naser v. Lakeridge Athletic Club* (2014) 227 Cal.App.4th 571, 575-576 (*Naser*); *Crews v. Willows Unified School Dist.* (2013) 217 Cal.App.4th 1368, 1379 (*Crews*).) A trial court's ruling on a motion to tax costs is otherwise reviewed for abuse of discretion. (*Naser*, *supra*, at pp. 575-576; *Crews*, *supra*, at p. 1379.)

B. The Trial Court's Writ Compliance Orders Are Appealable

CPRA provides that "[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided." (Gov. Code, § 6253, subd. (a).) Under CPRA, and "in order to assist the member of the public [in] mak[ing] a focused and effective request that reasonably describes an identifiable record or records," a public agency must help a requester "identify records and information that are responsive to the request or to the purpose of the request, if stated." (Gov. Code, § 6253.1, subd. (a).) If a party requesting records under the Act files a petition that demonstrates public records are being improperly withheld, a trial court may issue an order (more precisely, a writ of mandate) requiring disclosure of the records. (Gov. Code, § 6259, subd. (a).) Code of Civil Procedure section 1097, which we have already quoted *ante*, provides courts with statutory authority to issue orders to compel compliance with a writ of mandate.

Defendants argue no appeal lies from the trial court's writ compliance orders in this case because the Act states a court order directing or denying disclosure of public records is not appealable and must instead be reviewed only by petition to this court for an extraordinary writ. (Gov. Code, § 6259, subd. (c).) This is an argument that has some force: the text of Government Code section 6259 does state "an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." (Gov. Code, § 6259, subd. (c).) The next sentence of the statute, however, states: "*Upon entry of any order pursuant to this section*, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order . . . ." (Gov. Code, § 6259, subd. (c) (emphasis added).) We read the "any order pursuant to this section" language as a descriptive constraint on the broader "an order of the court" language in the prior sentence—meaning, only an order issued pursuant to Government Code section 6259 is an order from which an appeal may not be taken and a writ petition must instead be filed. Because the trial court's compliance orders here were issued pursuant to the authority conferred by Code of Civil Procedure section 1097, not by Government Code section 6259, we hold Casas may take an appeal from the orders.[5] (Code Civ.

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[5] We express no view on whether an appeal may be taken from an order made in connection with a hearing on the adequacy

Proc., § 904.1, subd. (a)(2); see *Robles v. Employment Division Dept.* (2015) 236 Cal.App.4th 530, 546 [deciding appeal taken from writ enforcement order issued under Code of Civil Procedure section 1097]; *Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, 1355.)

C. Casas Presents No Valid Basis to Overturn the Trial Court's Orders and Require Further Production of Records

Under established law, defendants are entitled to a presumption they complied with their legal obligations to disclose records as ordered in the trial court's writ of mandate. (Evid. Code, § 664 [presumption that official duty has been regularly performed]; *ACLU*, *supra*, 202 Cal.App.4th at p. 85 ["Government agencies are, of course, entitled to a presumption that they have reasonably and in good faith complied with the obligation to disclose responsive information"].) In light of this presumption—and as Casas was the moving party under Code of Civil Procedure section 1097 (distinguishable from the scenario where it is the public entity that files a return to a writ of mandate to prove compliance)—it was Casas's burden to come forward with admissible evidence sufficient to establish a prima facie case that defendants had failed to comply with the trial court's writ. Upon presentation of such evidence, the presumption would stand rebutted and the City would have an obligation to demonstrate compliance.

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of a public agency's return to a writ of mandate issued pursuant to Government Code section 6259.

Throughout his briefs on appeal, Casas urges us to create a "new test" for CPRA compliance, namely, "[i]f a writ is obtained and the petitioner shows good cause that the writ hasn't been complied with, the burden must shift to the respondent for her to prove, by a preponderance of the evidence, that she's complied with the writ." That is not a new test; it is merely the upshot of the already-established presumption, and it is also the standard the trial court here employed.[6] The problem for Casas is that he did not come forward with admissible evidence that would suggest defendants had not complied with the writ.

1. Casas's First Writ Compliance Motion

Casas challenges the trial court's ruling on his first motion to compel compliance with the writ only insofar as that ruling denied his request to compel defendants to produce additional employee resumes and any covenant attached to a deed for the Esther Snyder Community Center. Casas introduced no admissible evidence that defendants had failed to produce these documents (assuming they exist)—the exhibits attached to the declaration submitted by counsel for Casas were not properly

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[6] During the August 2015 hearing on the first writ compliance motion, Casas's attorney asked the trial court how he was supposed to prove the City had not produced all the required materials. The trial court answered: "[Y]ou get a representation from [defendants] that it's all been produced. [¶] Now, if you don't like that, then you present circumstantial evidence of what must exist or what you know exists. That's how you do it. [¶] . . . [¶] What you don't do is file a motion to compel compliance and say 'We didn't get anything, therefore it must exist.'"

authenticated, and none had any relevance to employee resumes or a community center deed in any event. (Evid. Code, §§ 1400, 1401; accord, *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1283 (*Kinda*) [proof necessary for authentication depends on the purpose for which evidence is offered and requires a foundation of sufficient evidence for the trier of fact to find the writing is what it purports to be].)

In fact, even though the trial court invited Casas's attorney to make representations during the writ compliance hearing about what had not been produced—and accepted those representations in lieu of actual evidence when ordering further production of materials—Casas did not complain during the hearing about the lack of any production of a community center covenant or additional employee resumes.[7] That is tantamount to acquiescence, which bars Casas from raising those issues on appeal. (See *Cushman v. Cushman* (1960) 178 Cal.App.2d 492, 498 ["one cannot on appeal complain of rulings assented to or acquiesced in by him in the court below"] (*Cushman*).)

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[7] During the writ compliance hearing, the trial court was quite solicitous of Casas's complaints about the state of defendant's production of records. Before hearing further argument from defendants' attorney, the court verified that counsel for Casas was "done" identifying what materials he believed defendants should be ordered to produce.

2. Casas's Second Writ Compliance Motion

Casas's argument concerning the trial court's order on his motion to compel further compliance suffers from similar problems as his argument with respect to the court's first compliance order.[8] As we have already detailed, the trial court's August 2015 order on Casas's first writ compliance motion required defendants to either produce three categories of materials or to identify for Casas's attorney where the materials were among the documents already produced. Casas filed a further motion to require compliance with that August 2015 order, and the only evidentiary showing he made to suggest defendants had not complied were a sheaf of exhibits accompanied by an invalid declaration (lacking any reference to the place of execution or to the laws of the State of California) purporting to authenticate them. (Code Civ. Proc., § 2015.5; *ViaView, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 217 [declining to consider, for purposes of appellate review, declaration that did not comply with Code of Civil Procedure section 2015.5 and therefore has "no evidentiary value"].) On the other side of the ledger, the declaration from the City's Chief Executive Officer was admissible (though we agree with the trial court, not very persuasive) to reinforce the legal presumption that defendants had regularly discharged their duties and complied with the court's order. Under the circumstances, defendant made no showing by admissible evidence that should have led the trial court to demand defendants to do more to establish they had complied with the court's prior order.

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[8] Casas continues to contend on appeal that defendants were required to produce additional records concerning Robert

D. The Trial Court Correctly Taxed the Entirety of Casas's Claimed Costs

The CPRA states "[t]he court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section."[9] (Gov. Code, § 6259, subd. (d).) Code of Civil Procedure section 1033.5 enumerates those costs that are properly reimbursable, and those that are not. (See generally *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 773-774 [cost items not specifically allowable under Code of Civil Procedure section 1033.5, subdivision (a) nor expressly prohibited under subdivision (b) may be recoverable in the discretion of the court if "reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation"].)

Casas's costs memorandum, which we will assume for argument's sake was timely filed, requested reimbursement for the following expenses:

Hernandez. As already noted, he expressly abandoned that claim in the trial court and he therefore may not advance it now on appeal. (*Cushman*, *supra*, 178 Cal.App.2d at pp. 498-499.)

[9] Section 1021.5 of the Code of Civil Procedure, a statute Casas invokes in his briefs on appeal, also permits a court to award attorney fees to a successful party in any action which has resulted in the enforcement of an important right affecting the public interest if certain prerequisites are satisfied. Casas made no claim in the trial court that attorney fees were justified under Code of Civil Procedure section 1021.5, and we accordingly do not consider that argument on appeal. (*Dowling v. Farmers Ins. Exchange* (2012) 208 Cal.App.4th 685, 696 ["We generally will not consider an argument asserted for the first time on appeal"].)

(1) $615 for filing and motion fees (which Casas himself did not pay because he obtained a fee waiver);

(2) $390 for service of process expenses;

(3) $127 for "court-ordered transcripts" (when the court in fact had not ordered any transcripts);

(4) $1,571.87 for "other" expenses (including $112.89 for expenses he described as "parking" and "postage"; $228.50 for library parking expenses, which Casas's attorney now dubs "research fees"; $630.48 for "mileage" expenses incurred driving to court and the law library; and $900 in fees for a non-court-ordered mediation that defendants allegedly backed out of attending); and

(5) $2,450 in attorney fees, which Casas later sought to increase to $6,860, solely for his attorney's work in preparing his costs memorandum and litigating defendants' motion to tax costs.[10]

Casas argues the trial court was obligated to award all these costs because defendants' motion to tax costs was untimely. He agrees he filed his costs memorandum on April 14, 2015, and that defendants filed their motion within 15 days of that date, April 29, 2015. He claims, however, the motion to tax costs was untimely because he served defendants with his costs memorandum weeks before it was filed and the applicable court rule measures the timeliness of a motion to tax costs from the date of service of a costs memorandum, not the date the memorandum is filed. (Cal. Rules of Court, rule 3.1700(b)(1)

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[10] The trial court had already awarded Casas almost $40,000 in attorney fees for his attorney's work that led to the issuance of the writ of mandate.

["Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the cost memorandum"].)

We reject the argument for both legal and factual reasons. Legally, rule 3.1700 requires a prevailing party to "serve and file a memorandum of costs" within the applicable deadlines (Cal. Rules of Court, rule 3.1700(a)(1)), and this is sufficient indication that the time for filing a motion to tax costs should not begin running until the motion is both served *and* filed. Factually, as the trial court found, the proofs of service Casas relied upon to establish he served his memorandum weeks before it was filed were defective and unreliable—there were three different proofs of service, one of which was unsigned, one of which attested to a different date of service than the other two, and two of which, though signed, did not attest to the service of the costs memorandum itself (instead referring to a "Memorandum of Points and Authorities for Court Costs").

On the merits of defendants' motion to tax costs, the trial court appropriately taxed the entirety of each of the claimed costs other than attorney fees because the cost in question was either unauthorized by statute or unsubstantiated by evidence the cost was in fact incurred. And as to Casas's request for attorney fees, it fails even assuming it were supported by sufficient evidence. Casas was not entitled to attorney fees for his attorney's wholly unsuccessful efforts to seek costs and oppose defendants' motion to tax costs. (*Bennett v. California Custom Coach, Inc.* (1991) 234 Cal.App.3d 333, 340 [no error in refusing to award additional attorney fees for having to oppose motion to tax costs]; see also *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1004 [fees should not be awarded for work on unsuccessful claims].)

DISPOSITION

The trial court's orders are affirmed. Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

TURNER, P.J.

KRIEGLER, J.