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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

JERRY L. FREEDMAN, A PROFESSIONAL CORPORATION, Plaintiff and Respondent, v. SHERRI MICHELLE KOZY, Defendant and Appellant.	B250605 (Los Angeles County Super. Ct. No. LC093130)

APPEAL from the judgment of the Superior Court of Los Angeles County. Huey P. Cotton Jr., Judge. Affirmed.

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Law Offices of Lisa Fisher and Lisa Fisher for Defendant and Appellant.

Jerry L. Freedman and Eugene M. Rubinstein for Plaintiff and Respondent.

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Plaintiff Jerry L. Freedman, APC (Freedman), a law firm, sued its former client, defendant Sherri Michelle Kozy, for $43,233.01 in unpaid legal fees and expenses. The trial court declared the written contract between them void and awarded Freedman $22,852.77 under the theory of quantum meruit. In the judgment, the court included an additional $2,280 Kozy owed for a prior discovery sanction. Kozy appealed.

Kozy contends: (1) Freedman committed ethical violations that preclude any recovery; (2) the court improperly shifted the burden of proof to her; (3) the sanction award should not have been included in the judgment; (4) inconsistencies in the statement of decision require reversal; and (5) the judgment should not have include aliases. We reject these arguments and affirm the judgment.

FACTUAL SUMMARY

Kozy retained Freedman in March 2010 to represent her in opposing foreclosure proceedings by Countrywide Home Loans (Countrywide). They entered into a written legal services agreement, and Kozy paid Freedman an initial retainer of $10,000.

Freedman represented Kozy for seven months. During that time, Freedman successfully obtained a temporary restraining order and preliminary injunction against Countrywide. The firm also obtained leave to file a second amended complaint.

In August 2010, Kozy paid Freedman an additional $15,000. She did not make any more payments to Freedman. By the end of October 2010, the balance due on her account was $43,233.01.

In November 2010 Freedman terminated its representation of Kozy because of the unpaid invoices. Kozy obtained new counsel to represent her in the case against Countrywide.

In March 2011 Freedman sued Kozy to recover the unpaid amount. It asserted causes of actions for breach of contract, common counts, quantum meruit, and promissory estoppel. The summons and the complaint misspelled Kozy's first name as "Sherry."

Kozy answered the complaint and thereafter defended the case as "Sherri Michelle Kozy." She did not assert offset as an affirmative defense.

Following a bench trial, the court found that the written retainer agreement did not comply with Business and Professions Code section 6148 (Section 6148) because it failed to set forth the basis for calculation of fees, costs, and expenses incurred. On that basis, the court declared that the agreement was "void for unfairness." The court, however, found in favor of Freedman on its quantum meruit claim and awarded it $22,425 in fees plus $427.77 for expenses, a total of $22,852.77.

After the court issued its statement of decision and prior to judgment, Kozy filed an ex parte application for leave to amend her answer to conform to proof at trial or, alternatively, to reopen her case to establish offset. The application was based on the theory that the court did not apply the $25,000 she had paid to Freedman against the amount owed.

The court denied Kozy's application, stating: "The application is premised on the assumption that the court did not consider Kozy's payments of $25,000.00 to Freedman in calculating the amount now due and payable by Kozy to Freedman. This assumption is not correct. As noted in the court's Statement of Decision, . . . the payments by Kozy [were] established as facts at trial. Though not itemized, the payments were among the factors considered by the court in establishing quantum meruit, the discounted amount to be paid by Kozy. Accordingly, there is no necessity for amending the answer or for reopening the defense case."

The judgment was filed in May 2013. In addition to the award of $22,852.77 stated in the statement of decision, the judgment included the amount of $2,280 for an unpaid discovery sanction awarded to Freedman during the litigation. The total amount of the judgment is $25,672.77.

The judgment states the appearances of counsel in the case and identifies Kozy's counsel as appearing "for Defendant Sherri Michelle Kozy, aka S. Michelle Kozy aka Sherry Michelle Kozy aka Sherri M. Kozy." In the operative provision, the judgment states that Freedman shall recover the judgment amount "from Defendant Sherri Michelle Kozy."

Kozy moved for a new trial, which the court denied. This appeal followed.

Our record does not include a reporter's transcript of the trial or the exhibits admitted into evidence.

DISCUSSION

1. *Kozy Has Not Established Any Ethical Violation That Would Deprive Freedman Of A Recovery Under Quantum Meruit.*

Kozy contends that Freedman is not entitled to recover under a quantum meruit theory because of Freedman's alleged ethical violations. Although an attorney may be denied recovery in quantum meruit when the attorney has violated an ethical duty toward the client (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1150), there is no support for Kozy's assertion of such an ethical violation here.

To support her argument, Kozy points to the trial court's determination that the retainer agreement was unenforceable based on "unfairness." In its statement of decision, the court stated that the retainer agreement failed to set forth the basis for calculation of fees, costs, and expenses incurred, as required by section 6148. It is because of "these deficiencies" and "Freedman's failure to explain these deficiencies to Kozy," the court explained, that it found the agreement "void for unfairness."[1] Although the failure to comply with section 6148 makes the retainer agreement voidable by the client (§ 6148, subd. (c)), it does not deprive the attorney of the right to recover under quantum meruit. Indeed, section 6148, subdivision (c) expressly provides that if the agreement is voided for noncompliance with that statute, the attorney is still "entitled to collect a reasonable fee." (See *Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 275.)

Kozy also asserts that Freedman conducted no discovery, hired no investigator, conducted no early settlement discussions, and did "nothing that would help her prove her case." These points might be relevant to determining the reasonableness of an award and, therefore, the amount of a quantum meruit award, but do not establish an ethical

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[1] The court removed any doubt about the reason for voiding the retainer agreement at the hearing on Kozy's motion for new trial when it stated: "Let's be clear. The contract or the agreement was voided because it didn't provide for incremental billing in tenths of an hour, et cetera, et cetera, as required by the code. It wasn't voided because the work wasn't done."

violation or other basis to deny any recovery whatsoever. Kozy further claims that Freedman had a conflict of interest because the firm began "litigation that they had no intention of prosecuting." She does not cite to the record for this statement and we have found nothing to support it.

Finally, Kozy states that Freedman knew that Kozy "could not understand due to her traumatic brain injury" and that "she had been victimized before based on documentation." Kozy refers to the court's statement that "Freedman knew that Kozy was disabled and collecting social security disability." Even if we assume that the disability of which Freedman was aware was a traumatic brain injury, Kozy does not explain how such knowledge is related to an ethical violation that could deprive Freedman of its right to recover under quantum meruit.

Because there is no support in the record for Kozy's assertion the Freedman committed an ethical violation toward her, we reject her argument that Freedman should be denied recovery under quantum meruit.

2. *The Record Is Inadequate To Evaluate The Sufficiency Of The Evidence And The Court Did Not Shift The Burden Of Proof To Kozy.*

Kozy states the principle that the burden of proof in a quantum meruit action is on the law firm seeking its fees and identifies factors that bear upon a quantum meruit analysis. She then asserts that Freedman "failed to meet these standards, and instead relied on evidence of the time billed that 'lacks provision with respect to hours per task.'" This is, apparently, a challenge to the sufficiency of the evidence to support the court's quantum meruit findings. We reject it.

In evaluating the sufficiency of the evidence, we presume that the judgment is correct and that the record contains evidence to sustain every finding of fact; the appellant has the burden to demonstrate that it does not. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133, *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) To satisfy this burden, the appellant "must marshal *all* of the record evidence relevant to the point in question and affirmatively demonstrate its insufficiency to sustain the challenged finding. [Citation.]" (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007)

154 Cal.App.4th 547, 557.) If the appellant fails to provide an adequate record on an issue, we must resolve that issue against the appellant. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) Here, our record on appeal does not include any trial transcript or exhibits. In the absence of a complete record, we must presume it supports the challenged findings. We therefore reject Kozy's challenge to the sufficiency of the evidence.

We also reject Kozy's point that the court erroneously shifted the burden of proof to her. In its statement of decision, the court identified its task of determining "the reasonable amount of hours that should have been billed for the work performed." In performing this task, the court explained, "it must be kept in mind that the attorney/firm has the burden of demonstrating entitlement to the fees just as a litigant would bear the burden of proving a claim for any other money judgment." The court proceeded to discuss Freedman's bills for its services, focusing first on the work pertaining to "the most significant pleadings prepared by Freedman." The court then considered the time attributed to "other miscellaneous activities." As to this time, the court stated that "[t]he state of the evidence does not provide the court with a reasonable basis for reducing Freedman's hours . . . . Therefore, the court must find that the hours as billed are not unreasonable."

Contrary to Kozy's contention, this last statement does not indicate that the court shifted the burden of proof to her. In the absence of a complete record, we must presume that the record includes evidence of Freedman's time spent on the "miscellaneous activities" and that such evidence is sufficient to support the court's finding that the time billed was reasonable and recoverable in its entirety. The comment Kozy relies on merely indicates that the evidence does not support a contrary conclusion, i.e., that the time should be discounted. It does not suggest that the court placed the burden of proof on Kozy.

3. *Kozy Failed To Establish That Inclusion Of A Prior Monetary Sanction In The Judgment Was Error Or Prejudicial.*

At some point during the litigation, the court ordered Kozy to pay a discovery sanction to Freedman.[2] In the judgment, the court ordered that, in addition to the amounts stated in the statement of decision, Freedman "shall also recover from Kozy the sum of $2,2820.00 for discovery sanctions ordered to be paid to Freedman by Kozy . . . , but which to date have not been paid." Kozy contends that the discovery sanction should not be included in the judgment. We reject the argument.

Kozy acknowledges that an order to pay a monetary sanction is enforceable in the same manner as a judgment. (See *Jones v. Otero* (1984) 156 Cal.App.3d 754, 759, Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) 9:344:20, p. 9(1)-155.) She argues, however, that the amount of the sanction and the amount of the award after trial must not be "rolled into" a single judgment. She offers no authority or reason for her argument beyond saying it was "improper" for the court to do so. Nor has she explained how any error was prejudicial; whether the amounts are stated in two documents or one, she owed the entire sum. In the absence of legal authority or a cogent legal argument, we may consider these points waived. (See *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Even if not waived, we know of no legal reason why the sums cannot be included in a single judgment. We therefore reject the argument.

[2] Our record does not disclose when or why the sanction was imposed. Kozy's references to the sanctions order in her opening brief is without any citation to the record.

4. *Kozy has not Established Error Regarding the Calculation of the Award*

Kozy contends that the court's "calculation of damages was inexplicably confusing and failed to consider the *entirety* of the billing statements." According to her, the court failed to analyze "at least 74 hours" of billings by Freedman. As with the substantial evidence argument, we cannot determine the merits of this argument without a complete record. Kozy does not, for example, refer us to any evidence of the 74 hours that were allegedly not analyzed. Indeed, Kozy cites to only one point in the record for this argument—to the court's finding that the agreement was void. Although this fact explains why the court conducted a quantum meruit analysis, it does not support Kozy's argument that the analysis was erroneous. Nor does Kozy explain how the alleged failure to analyze the 74 hours resulted in "a windfall on an unconscionable retainer." We therefore reject this argument.

Kozy further argues that the court should not have included $427.77 for expenses related to "travel mileage, parking, and Federal Express." Kozy asserts that such expenses are not recoverable under Code of Civil Procedure section 1033.5. That statute, however, specifies items recoverable as "costs" by the prevailing party in a lawsuit. The challenged $427.77 was not awarded to Freedman as costs under Code of Civil Procedure section 1033.5, but rather as part of its quantum meruit damages. We therefore reject the argument.

5. *The Court Correctly Spelled Defendant's Name in the Judgment*

Kozy contends that the judgment should not have included "other names." The operative provision of the judgment identifies "Sherri Michelle Kozy" as the judgment debtor. Although this is the correct spelling of her name, she points out that the summons named only "*Sherry* Michelle Kozy." (Italics added.) In addition, prefatory recitals in the judgment state that her attorney represented "Sherri Michelle Kozy, aka S. Michelle Kozy aka Sherry Michelle Kozy aka Sherri M. Kozy." She does not contend that the misspelling of her first name in the summons deprived her of due process or the court of jurisdiction over her. Nor does she argue that the misspelling caused her any prejudice in

defending the lawsuit. Nevertheless, she contends that a reference in the judgment to anyone other than "Sherry" requires a new trial. We disagree.

The judgment debtor is the person who was served with the summons in the action, even if the summons misspelled the defendant's name. (See *Brum v. Ivins* (1908) 154 Cal. 17, 20.) ["party regularly served with summons, although under a name not his own, must come in and set up the misnomer and whatever defense he may have, or else be held concluded by the judgment"].) Although the summons misspelled Kozy's first name, there can be no dispute that Kozy, however she spells her name, was the person served with the summons in this case and is the proper judgment debtor.

If, as Kozy contends, the judgment should have included only the name stated in the summons, the court would have the authority to correct the judgment to state her correct name. (See *Thomson v. L. C. Roney & Co.* (1952) 112 Cal.App.2d 420, 425 [court may amend a judgment to "designate the real name of the judgment debtor"].) Here, however, there is nothing to amend or correct because the court named the judgment debtor correctly in the first place. There was no error.

Nor can Kozy complain that the prefatory recitals in the judgment improperly refer to her attorney as counsel for "Sherri Michelle Kozy, aka S. Michelle Kozy aka Sherry Michelle Kozy aka Sherri M. Kozy." First, these aliases are not stated in the operative portion of the judgment. Second, to the extent the inclusion of these aliases might result in someone other than Kozy being the object of an attempt to execute the judgment, the concern is speculative. We therefore need not consider it.

DISPOSITION

The judgment is affirmed. Freedman shall recover its costs on appeal.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.*

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