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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MARIE PITTMAN, et al.,

Plaintiffs and Appellants,

v.

MOHAN PATEL, et al.,

Defendants and Respondents.

B236946

(Los Angeles County
Super. Ct. No. BC454167)

APPEAL from an order of dismissal of the Superior Court of Los Angeles County. William F. Fahey, Judge. Reversed.

Litigation & Advocacy Group and Glenn A. Murphy for Plaintiffs and Appellants.

Vanderford & Ruiz, Rodolfo F. Ruiz, Nathan V. Okelberry and Coleman D. Heggi for Defendants and Respondents.

INTRODUCTION

This is an appeal from an order of dismissal following the trial court's order granting the defendants' motion for out-of-state plaintiffs to file an undertaking pursuant to Code of Civil Procedure section 1030. We reverse.

FACTUAL AND PROCEDURAL SUMMARY

On January 31, 2011, along with their original complaint in this case, Marie Pittman and Joan Smith-Clavon filed confidential requests to waive court fees (Judicial Council Form FW-001), checking a box indicating they received "SSI" as the basis supporting the request; both requests were granted by court order (Form FW-003).¹

In their first amended complaint filed in May, Pittman and Smith-Clavon alleged defendants Mohan Patel, Deepa Patel, Milan Bhagat, Aseem Corporation and Mohammed Hossain, owners and operators of the Days Inn Hollywood, had discriminated against them in violation of Civil Code section 51 et seq., on the basis of race, disability and use of a service dog. (We include Smith-Clavon in our further references to Pittman and include all defendants in our further references to Patel unless otherwise indicated.) More particularly, Pittman alleged she and Smith-Clavon were turned away from Patel's hotel on three separate occasions in February 2009 because they are African-American and were accompanied by L.P., a severely disabled four-year-old child who uses a service dog to assist her.

Patel answered and, shortly thereafter, filed a motion for undertaking to secure an award of costs and attorney's fees in the sum of \$95,368.50 pursuant to Code of Civil Procedure section 1030. Patel argued Pittman and Smith-Clavon resided out of state (in

¹ These documents were filed under seal in this appeal. (Gov. Code, § 68633, subd. (f) ["Financial information provided by an applicant shall be kept confidential by the court. . . ."].)

Tennessee) and there was a “reasonable possibility, if not a strong probability” Patel would obtain judgment because deposition testimony in another case suggested Pittman and Smith-Clavon had not been in California in February 2009, and Pittman’s “cohorts” and her counsel had filed “frivolous” lawsuits in the past. In addition, Patel argued Pittman and Smith-Clavon were not indigent because they had not applied for a fee waiver and, even if they had, Pittman owned a house worth \$100,000, claimed in her petition to adopt L.P. that she was financially able to provide for her, had flown between Tennessee and California numerous times in 2008 casting doubt on an indigency claim and had obtained a \$150,000 settlement (which included attorney’s fees and costs) two years earlier (in June 2009) in an action filed against Hampton Inn in Santa Clarita.

Pittman filed opposition, arguing her complaint was not frivolous as she had videos documenting the alleged discrimination, but Patel was trying to prejudice the court with irrelevant arguments about unrelated cases. In any case, citing this court’s decisions in *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427, and *Cruz v. Superior Court* (2004) 120 Cal.App.4th 175, 185, Pittman argued indigent status precluded imposition of a cost bond and said the cost bond statute was unconstitutional as applied to out-of-state plaintiffs. Both Smith-Clavon and Pittman filed supporting declarations stating that “nothing ha[d] changed” since they filled out their in forma pauperis declarations for a waiver of court costs and fees in this case and neither had good credit. Pittman further stated she was an 80-year-old great-grandmother living on her Social Security income, and Smith-Clavon stated that she was unemployed and was living on her Social Security income. Their attorney (Glenn A. Murphy) filed a declaration stating he had contacted two specified bonding companies and was advised that unless a plaintiff had “outstanding credit,” the plaintiff must have either “good solid credit[]worthy indemnitors to sign off” on the bond or “cash or a letter of credit” to obtain a fully collateralized cost bond.

At the outset of the hearing in the matter, the trial court indicated it was inclined to grant the motion, but in the amount of \$50,000 as the district court in another case had ordered. Initially, the court challenged plaintiffs' counsel's assertion of the plaintiffs' indigency, indicating there was no documentation in the court file. "[W]hat determination in this case has been made that your clients are in forma pauperis?" Plaintiffs' counsel maintained that such orders had been issued when the complaint was filed. "[A]s explained . . . in the *Cruz v. Superior Court* case," he argued, "if the plaintiffs are indigent, their status in the case is one of proceeding in forma pauperis[, then] it is an abuse of discretion for the trial court to refuse to waive the section 1030 cost bond requirement." (*Cruz v. Superior Court, supra*, 120 Cal.App.4th 175.)

The trial court responded, "Should we have a hearing and allow your clients to be examined on their status? Because these in forma pauperis petitions, even if granted, tend to be briefly reviewed by a commissioner, and have limited waivers in them, including for maybe initial filing fees. [¶] But proceeding after that, should there be a full-blown evidentiary hearing to review the financial status of your clients and allow for examination and cross-examination?" The trial court then stated that the defendants had "made some valid points here, which I think may shift the burden" "If, in fact, there is a prima facie showing, is the natural result of that an evidentiary hearing?"

Plaintiffs' counsel indicated he could submit supplemental declarations "detailing" his clients' finances, including where the \$150,000 settlement proceeds had gone, the net value of the house after accounting for the mortgage, and their current assets and income, but said they could not afford to come to California "just for a hearing" (although he said "normally" they came to California once a year). When the trial court stated the plaintiffs had already filed declarations in opposition to the motion and appeared to be "declining

to have” an evidentiary hearing, plaintiffs’ counsel said he could check with his clients “to see if they [had] a trip planned” to California.²

The trial court then said it would issue its ruling requiring the \$50,000 bond because “the motion today is ripe for decision” “[O]n [his own] time,” the court indicated, plaintiffs’ counsel could “check with [his] clients and negotiate with opposing counsel [to] come up with a proposed stipulation and proposed order” for an evidentiary hearing. Plaintiffs’ counsel requested a one-week stay to ascertain whether plaintiffs would be able to come to California if the trial court was willing to permit them to appear for an evidentiary hearing. Counsel for the defendants responded, “We’re not going to stipulate to a further evidentiary hearing. Our position is that the plaintiffs have had ample opportunity to brief this issue and provide declarations in support of the indigent status.” Noting no prejudice to the defense, the trial court granted the motion for an undertaking in the amount of \$50,000, but stayed the order for one week (until close of business on August 30, 2011), indicating that if the parties submitted “a stipulation and proposed order to conduct an evidentiary hearing, then the order will be vacated.”

While the stay remained in effect, Pittman filed an ex parte application for an order accepting plaintiffs’ further declarations of indigency and merit in lieu of personal appearance. Patel opposed the application as an improper motion for reconsideration and said there was no urgency warranting the application. The trial court denied the application on these grounds. Pittman then filed notice of inability to post \$50,000 cost bond with additional declarations from Pittman and Smith-Clavon. Patel filed an ex parte application for hearing on his motion to dismiss for failure to post undertaking along with his motion to dismiss. According to the minute order dated September 28, 2011, the

² By this point in the hearing, the trial court had located and acknowledged the fee waiver forms and orders in the court file, but said that “doesn’t go to the issue whether or not an undertaking should be posted.”

matter was set for hearing on October 11, with opposition due on October 6. On October 6, Pittman filed opposition to this motion as well. In their further supporting declarations, Pittman and Smith-Clavon detailed their negligible bank accounts and income, listed various expenses and declared there was nothing left of the settlement proceeds received more than two years earlier from which attorney's fees and costs were paid. They said they had nothing to do with multiple lawsuits Patel had identified as "frivolous" lawsuits filed by "cohorts." On October 7, noting "in chambers 10-7-11," the motion for order dismissing action for failure to post security for costs was "well-taken" with "no timely opposition," the matter was dismissed.

Pittman appeals.

DISCUSSION

According to Pittman, the trial court erred in granting Patel's motion for an undertaking. Because the trial court's ruling was based on an erroneous view of in forma pauperis law and cost bond law and how these areas of law intersect, we agree.

Competing policies inform the court's discretion in granting waivers from fees, costs, and undertakings at different stages in civil proceedings. Preliminarily, the statutes and rules providing for waiver of initial filing fees and allowing a party to proceed in forma pauperis reflect two important policies. First, "our legal system cannot provide 'equal justice under law' unless all persons have access to the courts without regard to their economic means," and second, "fiscal responsibility should be tempered with concern for litigants' rights to access the justice system." (Gov. Code, § 68630, subds. (a) & (b).) The additional policy of protecting a litigant's financial interest comes into play when a party seeks waiver of security for costs or damages on grounds of indigence. (See *Conover v. Hall* (1974) 11 Cal.3d 842, 851 [injunction bond]; see also *Alshafie v. Lalande* (2009) 171 Cal.App.4th 421, 429 (*Alshafie*) [Code Civ. Proc., § 1030 security for costs].) Code of Civil Procedure section 1030, which requires out-of-state plaintiffs to file an undertaking to secure costs and/or attorney fees, addresses "the difficulty of enforcing a judgment for costs against a person who is not within the court's

jurisdiction.” [Citation.]” (*Alshafie, supra*, 171 Cal.App.4th at p. 428; *Yao v. Superior Court* (2002) 104 Cal.App.4th 327, 331 [the statute’s aim is “to prevent out-of-state residents from filing frivolous lawsuits against California residents”].)

“Plaintiffs who reside outside of California may be required to post an undertaking to ensure payment of costs to a prevailing defendant. [Code of Civil Procedure s]ection 1030, subdivision (a), provides, ‘When the plaintiff in an action or special proceeding resides out of the state, or is a foreign corporation, the defendant may at any time apply to the court by noticed motion for an order requiring the plaintiff to file an undertaking to secure an award of costs and attorney’s fees which may be awarded in the action or special proceeding.’ The plaintiff, however, will not be required to file an undertaking unless ‘there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding.’ ([Code Civ. Proc.,] § 1030, subd. (b).) If the plaintiff fails to file an undertaking after the court determines the grounds for the motion have been established, the plaintiff’s ‘action or special proceeding shall be dismissed as to the defendant in whose favor the order requiring the undertaking was made.’ ([Code Civ. Proc.,] § 1030, subds. (c) & (d).)”³ (*Alshafie, supra*, 171 Cal.App.4th at p. 428.)

In both *Alshafie, supra*, 171 Cal.App.4th 421, and *Baltayan v. Estate of Getemyan* (2001) 90 Cal.App.4th 1427 (*Baltayan*)), the trial courts considered motions for relief from posting the undertaking required under Code of Civil Procedure section 1030 (and subsequent dismissals for failure to post such an undertaking). Unlike the plaintiffs in this case, the plaintiffs in both of those cases had not applied for or obtained in forma pauperis status prior to the hearing on the cost bond motion. In *Baltayan, supra*, 90

³ “The determinations of the court under this section have no effect on the determination of any issues on the merits of the action or special proceeding and may not be given in evidence nor referred to in the trial of the action or proceeding.” (Code Civ. Proc., § 1030, subd. (f).) Notwithstanding Patel’s assertions that Pittman had another action pending in which her deposition testimony undermined her credibility and her “cohorts” and her counsel had a history of filing “frivolous” actions, he did not establish that this action was meritless as a matter of law.

Cal.App.4th 1427, the plaintiff obtained an order waiving fees and costs based on indigency after the hearing on the motion for a cost bond and argued the court was required to waive the undertaking as well. (*Id.* at p. 1432.) “Where the plaintiff establishes indigency,” we explained, “a trial court has discretion to waive the posting of security under Code of Civil Procedure section 1030.” (*Id.* at p. 1433.) “[G]iven the finding of indigency necessarily underlying the in forma pauperis order,” we concluded, “the trial court acted arbitrarily and capriciously in refusing to either vacate or reduce the amount of the undertaking.” (*Id.* at p. 1435.)

Similarly, in *Alshafie*, although the plaintiff in that case had not obtained a fee waiver, we stated, “to fulfill its statutory duties when exercising its discretion, the court must review the plaintiff’s showing, identify deficiencies, if any, and give the plaintiff the opportunity to supply additional information that may be necessary to establish his or her entitlement to a waiver under the circumstances of the particular case.” (171 Cal.App.4th at p. 435; and see *Garcia v. Santana* (2009) 174 Cal.App.4th 464, 472 [“hearing on financial condition [is] required to determine if out of state plaintiff must post [a] bond”].) “Because the trial court failed to follow a procedure that ensured [the plaintiff] received a full and fair hearing on the question whether he could afford to post a bond,” we determined that reversal was required “for a new determination of [the plaintiff’s] financial condition.” (*Alshafie, supra*, 171 Cal.App.4th at p. 424.)

Accordingly, in this case, reversal is required for a full and fair hearing on the question of Pittman’s financial condition and ability to post a cost bond. After marking the box indicating they received “SSI”, both Pittman and Clavon-Smith had obtained orders granting their applications for waiver of court fees, and relied on these applications and orders in opposing Patel’s motion for an undertaking.⁴ Standing alone at least, “a

⁴ In addition, they filed declarations under penalty of perjury stating that nothing had changed since the filing of those applications, that they did not have good credit, that Pittman was 80, Smith-Clavon was unemployed and both lived on their Social Security

plaintiff who has been granted in forma pauperis status has the right to a waiver of an undertaking.” (*Alshafie, supra*, 171 Cal.App.4th p. 434; *Baltayan, supra*, 90 Cal.App.4th 1427; see also *Cruz v. Superior Court* (2004) 120 Cal.App.4th 175.) Nevertheless, the question of indigency may be revisited, and this right to a waiver may be lost.

Although the fact that an applicant’s fees and costs have been initially waived and the amount of waived fees and costs are not confidential, the financial information provided by the applicant “shall be kept confidential.”⁵ (§ 68633, subd. (f).) In her opening brief, however, Pittman has specified her reliance on her receipt of “SSI” pursuant to section 68632, subdivision (a)(1), in support of her original application. In addition, she provided further declarations detailing her indigence.

As relevant, *subdivision (a)* of section 68632 provides: “Permission to proceed without paying court fees and costs because of an applicant’s financial condition *shall be granted initially to all of the following persons*: [¶] (a) *A person who is receiving public benefits under one or more of the following programs*: [¶] (1) *Supplemental Security Income (SSI) and State Supplementary Payment (SSP)* (Article 5 (commencing with

income. Their attorney also filed a supporting declaration regarding their inability to obtain an undertaking.

⁵ Subdivision (f) of section 68633 provides in full as follows: “Financial information provided by an applicant *shall be kept confidential* by the court. No person shall have access to the application except the court, authorized court personnel, and any person authorized by the applicant. No person shall reveal any information contained in the application except as authorized by law. *Any hearing regarding whether to grant or deny a fee waiver request shall be held in camera, and the court shall exclude all persons except court staff, the applicant, those present with the applicant’s consent, and any witness being examined.* The fact that an applicant’s fees and costs have been initially waived and the amount of the waived fees and costs are not confidential. The Judicial Council shall adopt procedures to keep the financial information confidential and to consider a request seeking that confidential information.” (Italics added.)

Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code).”⁶ (*Italics added.*)

As further relevant, subdivision (a) of section 68633 specifies: “(a) An applicant for an initial fee waiver *under subdivision (a) of Section 68632* shall complete, under penalty of perjury, a Judicial Council application form requiring the applicant to list his

⁶ In addition, subdivision (a) lists the following: “(2) California Work Opportunity and Responsibility to Kids Act (CalWORKs) (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program (Section 10553.25 of the Welfare and Institutions Code). [¶] (3) Food Stamps (Chapter 51 (commencing with Section 2011) of Title 7 of the United States Code) or the California Food Assistance Program (Chapter 10.1 (commencing with Section 18930) of Part 6 of Division 9 of the Welfare and Institutions Code). [¶] (4) County Relief, General Relief (GR), or General Assistance (GA) (Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code). [¶] (5) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section 18937) of Part 6 of Division 9 of the Welfare and Institutions Code). [¶] (6) In-Home Supportive Services (IHSS) (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code). [¶] (7) Medi-Cal (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).”

Applications may also be submitted on the basis of subdivisions (b) and (c) of section 68632, which provide, respectively: “(b) A person whose monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of paragraph (2) of Section 9902 of Title 42 of the United States Code. [¶] (c) A person who, as individually determined by the court, cannot pay court fees without using moneys that normally would pay for the common necessities of life for the applicant and the applicant’s family. Only if a trial court finds that an applicant under this subdivision can pay a portion of court fees, or can pay court fees over a period of time, or under some other equitable arrangement, without using moneys that normally would pay for the common necessities of life for the applicant and the applicant’s family, the court may grant a partial initial fee waiver using the notice and hearing procedures set forth in paragraph (5) of subdivision (e) of Section 68634. ‘Common necessities of life,’ as used in this article, shall be interpreted consistently with the use of that term in paragraph (1) of subdivision (c) of Section 706.051 of the Code of Civil Procedure, as that paragraph read prior to January 1, 2012.”

or her current street address, or another address where the court can contact the applicant, occupation, employer, and *the type of public benefits that he or she is receiving*. At the time the application is submitted, the applicant shall *not* be required to provide documents supporting receipt of public benefits, to provide evidence of identity, to submit to interviews regarding the applicant's financial circumstances, to be physically present to file the application, or to fill out additional parts of the application form."⁷ (Italics added.)

Under subdivision (d) of section 68633, "The clerk shall provide forms adopted by the Judicial Council pursuant to this article without charge to any person who requests those forms or indicates that he or she is unable to pay any court fees or costs. *An applicant shall not be required to complete any form as part of his or her application under this article other than those forms adopted by the Judicial Council.*" (Italics added.) Pursuant to subdivision (e) of section 68633, however, "An applicant for an

⁷ More documentation is required for applications based on subdivisions (b) and (c) of section 68632 as follows: "(b) An applicant for an initial fee waiver under subdivision (b) of Section 68632 shall complete, under penalty of perjury, both of the following: (1) A Judicial Council application form requiring the applicant to provide his or her current street address, or another address where the court can contact the applicant, occupation, and employer. (2) A financial statement showing monthly or yearly income as determined under rules, and on forms, adopted by the Judicial Council. At the time the application is submitted, the applicant shall not be required to provide documents to prove income, dependents, or expenses, to provide evidence of identity, to submit to interviews regarding the applicant's financial circumstances, to be physically present to file the application, or to fill out additional parts of the application form. [¶] (c) An applicant for an initial fee waiver under subdivision (c) of Section 68632 shall complete, under penalty of perjury, both of the following: (1) A Judicial Council application form requiring the applicant to provide his or her current street address, or another address where the court can contact the applicant, occupation, and employer. (2) A financial statement showing monthly or yearly income and expenses and a summary of assets and liabilities as determined under rules, and on forms, adopted by the Judicial Council. At the time the application is submitted, the applicant shall not be required to provide documents to prove income, dependents, or expenses, to provide evidence of identity, to submit to interviews regarding the applicant's financial circumstances, or to be physically present to file the application."

initial fee waiver shall be informed that, *at a later date, the court may require proof of receipt of benefits or financial information to verify eligibility, as provided in Section 68636*, and that a trial court may seek reimbursement of initially waived fees under circumstances set forth in Section 68637. This notice requirement is satisfied if the information is provided on the Judicial Council fee waiver application form.” (Italics added.)

Subdivision (b) of section 68636 specifies: “If, before or at the time of final disposition of the case, the court obtains information, including information derived from the court file, suggesting that a person whose fees and costs were initially waived is not entitled to a fee waiver, or that the person’s financial condition has changed so that he or she is no longer eligible for a fee waiver, the court may require the person to appear at a court hearing by giving the applicant *no less than 10 days’ written notice of the hearing and the specific reasons why the initial fee waiver might be reconsidered. The court may require the person to provide reasonably available evidence, including financial information, to support his or her eligibility for the fee waiver*, but shall not require submission of information that is not related to the criteria for eligibility and application requirements set forth in Sections 68632 and 68633. The court shall not conduct a hearing pursuant to this subdivision more often than once every six months.” (Italics added.)

Here, because both plaintiffs marked the box indicating they received “SSI”, Pittman’s waiver applications and orders were premised on subsection (a) of sections 68632 and 68633. However, as the term is defined in section 68632, subdivision (a)(1), “SSI” refers to “*Supplemental Security Income*” pursuant to this state’s Welfare and Institutions Code 12200 et seq., while it appears from Pittman’s own further evidence and argument she erroneously understood “SSI” to include her Social Security income, and she was never advised her waiver would be reconsidered on this ground. She not only explained that the financial information Patel demanded, such as documentation regarding her mortgage and settlement were not required under subdivision (a)(1) of

section 68632 and section 68636, but she provided such documentation. Moreover, she provided evidence of her unsuccessful attempts to obtain a bond although, contrary to Patel’s assertions, she was not categorically required to do so. (*Alshafie, supra*, 174 Cal.App.4th at p. 435, fn. 10.) Pursuant to section 68636, she was entitled to no less than 10 days’ written notice of a hearing on the matter as well as “the specific reasons why” her fee waiver might be reconsidered.

In addition, as we stated in *Baltayan, supra*, 90 Cal.App.4th at page 1433, “Where the plaintiff establishes indigency, a trial court has discretion to waive the posting of security under Code of Civil Procedure section 1030.” “[T]here is no rigid standard for the requisite showing of indigency. . . .” (*Alshafie, supra*, 171 Cal.App.4th at p. 434.) Indeed, Code of Civil Procedure section 995.240 provides as follows: “The court may, in its discretion, waive a provision for a bond in an action or proceeding and make such orders as may be appropriate as if the bond were given, if the court determines that the principal is unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties, whether personal or admitted surety insurers. *In exercising its discretion the court shall take into consideration all factors it deems relevant*, including but not limited to the character of the action or proceeding, the nature of the beneficiary, whether public or private, and the potential harm to the beneficiary if the provision for the bond is waived.”⁸ (Italics added.) “Even if the defendant establishes the grounds for an undertaking, the trial court may waive the requirement if the plaintiff establishes indigency.” (*Alshafie, supra*, 171 Cal.App.4th at p. 429.)

⁸ (See also Code Civ. Proc., § 995.210, subd. (b) [unless the provision or context otherwise requires, “[i]f a statute provides for an undertaking, a bond that otherwise satisfies the requirements for the undertaking may be given in its place with the same effect as if an undertaking were given, and references in the statute to the undertaking shall be deemed to be references to the bond”; similarly, under subdivision (a), the reverse is true such that an undertaking that otherwise satisfies the requirements for a bond may be given in its place where a statute provides for a bond, and statutory references to a bond shall be deemed references to the undertaking].)

Rather than proceeding in the manner contemplated under these statutes and this case law, the trial court instead *granted* the defense motion for an undertaking notwithstanding Pittman's orders for waiver, her indication she could further document her claim she was entitled to a waiver when that status was first called into question and her further submission of such financial condition information. In fact, the trial court refused to consider Pittman's further evidence—first, on the ground Pittman's supplemental submission amounted to an improper motion for consideration and, then again, notwithstanding the second opportunity to consider Pittman's supplementary evidence (filed in support of Pittman's opposition to Patel's motion to dismiss), when the trial court said no timely opposition had been filed although the record reflects Pittman's filing on the date specified in the court's order shortening time for hearing on the motion.

According to this record, (1) Pittman obtained a fee waiver. (2) Patel then filed a motion for cost bond, arguing (a) there is a reasonable probability he will prevail and (b) Pittman can afford to post a bond. (3) Pittman then filed opposition (and supplemental documentation), arguing the evidence established she would prevail and she could not afford to post a cost bond. At this point, (4) the trial court had the discretion to (a) ask for more documentation from Pittman and/or (b) hold an evidentiary hearing. Because the trial court did not allow Pittman to submit supplemental evidence *before exercising its discretion* to require a hearing, reversal is required. On remand, after considering the supplemental declarations and evidence Pittman filed, the trial court could conclude either that a hearing is necessary to decide the motion or, in the alternative, that the court has enough information to decide the motion without a further hearing. (See *Alshafie*, *supra*, 171 Cal.App.4th at p. 434, quoting *Cruz*, *supra*, 120 Cal.App.4th at p. 187, footnote omitted [“[i]n some instances the financial information submitted by the applicant may conclusively demonstrate his or her lack of entitlement to a fee waiver without raising a “substantial evidentiary conflict” and thus no hearing need be held before denial of the application”]; and Gov. Code, § 68634, subd. (e) [verification of an applicant's financial condition].) (5) If the trial court decides to have a hearing, Patel's

counsel can question Pittman about the evidence submitted in opposition to the motion for undertaking (but not the information contained in the fee waiver application). In the absence of a hearing, Patel has the opportunity to respond to Pittman's supplemental evidence. (6) The trial court may then decide (a) whether to require a bond, and (b) how much the bond should be after considering Pittman's financial status, the relative merit of her claims and Patel's need for a bond to cover his costs.⁹

DISPOSITION

The order of dismissal and order granting Patel's motion for an undertaking are reversed, and the cause is remanded for further proceedings not inconsistent with this opinion. Patel's requests for judicial notice and motion for additional evidence are denied. Pittman is to recover her costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J.

SEGAL, J.*

⁹ We resolve this matter on the record presented and deny Patel's request that we take judicial notice of documents such as minute orders in other cases. Similarly, we deny Patel's motion for additional evidence not presented to the trial court.

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