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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

| | |
|-----------------------------|--------------------------|
| YUAN YUAN GENG, | B280207 |
| Plaintiff and Appellant, | (Los Angeles County |
| v. | Super. Ct. No. KC067906) |
| LU ZHU et al., | |
| Defendants and Respondents. | |

APPEAL from the judgment of the Superior Court of Los Angeles County. Robert A. Dukes, Judge. Affirmed.

Law Office of Jiakun Lei and Jiakun Lei for Plaintiff and Appellant.

Lu Zhu and Jin Yan, in pro. per.; Skanadore Reisdorph and Deborah S. Reisdorph for Defendants and Respondents.

* * * * *

After Lu Zhu and Jin Yan sued Yuan Yuan Geng in small claims court, Ms. Geng filed an unlimited jurisdiction civil case against them, and moved to have the small claims case transferred to the general jurisdiction court. After the small claims case was transferred, Ms. Geng voluntarily dismissed her general jurisdiction case against Zhu and Yan. After the dismissal was filed, Zhu and Yan filed a memorandum of costs, seeking \$950 in filing and motion fees, \$60 for service of process, and \$15,606.25 in attorney fees, and also filed a separate motion explaining the basis for an attorney fee award. Ms. Geng filed a motion to tax costs, and opposed the motion for attorney fees, arguing that Zhu and Yan were not entitled to costs or fees under Code of Civil Procedure sections 1032 or 116.390, subdivision (e). The trial court entered judgment in favor of Zhu and Yan for costs of \$1,010. Ms. Geng timely appealed the cost award.

DISCUSSION

We generally review the determination that a party is entitled to an award of costs for an abuse of discretion. However, de novo review is appropriate where the matters brought to the appellate court involve questions of law, such as statutory construction. (See, e.g., *Litt v. Eisenhower Medical Center* (2015) 237 Cal.App.4th 1217, 1221.) The question posed by this appeal is whether the general costs statute, Code of Civil Procedure section 1032 (allowing a prevailing party in a civil action to recover certain costs as a matter of right) controls this case, or whether section 116.390, subdivision (e) (the provision addressing the allocation of costs when a small claims case is transferred to another court) controls.

Code of Civil Procedure section 1032, subdivision (b) provides that “[e]xcept as otherwise expressly provided by

statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.” The statute defines a prevailing party as “a defendant in whose favor a dismissal is entered.” (*Id.*, subd. (a)(4).) Section 116.390 provides that a defendant in a small claims case, who has a claim against the small claims plaintiff exceeding the jurisdictional limits of small claims court, may file an action in the appropriate court, and “request the small claims court to transfer the small claims action to that court.” (§ 116.390, subd. (a).) If the small claims case is transferred, and the receiving “court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including attorney’s fees and filing fees.” (§ *Id.*, subd. (e).)

Ms. Geng contends that the award of costs was in error, arguing that Code of Civil Procedure section 1032 does not apply in cases involving the transfer of small claims cases to other courts, and because section 116.390 does not permit an award of costs here since the trial court did not “rule[] against” her. (§ 116.390, subd. (e).)

The court properly awarded costs under Code of Civil Procedure section 1032, because the defendants in the general jurisdiction case, Zhu and Yan, were prevailing parties in the general jurisdiction action Ms. Geng filed against them after she dismissed the general jurisdiction case against them. (§ 1032, subds. (a)(4), (b); *County of Santa Barbara v. David R.* (1988) 200 Cal.App.3d 98, 101; see also *Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 505.)

The general jurisdiction court did not issue any ruling in the small claims action against any party, or at all. Since the

general jurisdiction court did not purport to award costs other than as a consequence of the dismissal of the general jurisdiction action, Code of Civil Procedure section 116.390 does not apply.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

ROGAN, J.*

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