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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GERALD V. HOLLINGSWORTH, Plaintiff and Appellant, v. STEVEN L. SUGARS, Defendant and Respondent.	B277900 (Los Angeles County Super. Ct. No. BC603587)

APPEAL from an order of the Superior Court of Los Angeles County, Debre K. Weintraub, Judge. Affirmed.

Gerald V. Hollingsworth, in pro. per., for Plaintiff and Appellant.

Law Offices of Lee & Wong and Bryan Y. Wong for Defendant and Respondent.

In this malicious prosecution action, plaintiff Gerald V. Hollingsworth appeals from the order granting attorney fees of $10,920 to defendant Steven L. Sugars, the prevailing party under the anti-SLAPP statute. (Code Civ. Proc., § 425.16, subd. (c)(1).)[1] Finding no abuse of discretion, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Hollingsworth and Sugars are both attorneys. This case arises from two earlier actions. In the first, Hollingsworth defended Jenny Hui Duan Deng in a lawsuit for misappropriation of trade secrets, unfair competition, breach of fiduciary duty and other claims. The plaintiffs—Deng's former employer, Jimmy Loh and Su Liu, CPAs, APC, an accounting firm, and its president, Su Liu (collectively, JLASL)—voluntarily dismissed that action in September 2012. At the time, JLASL's attorney, Peter Hwu, told Hollingsworth that the dismissal was due to JLASL's concern that Deng was judgment proof.

The following month, in October 2012, Hollingsworth and Hwu sent separate letters regarding the dismissed JLASL action to Deng's customers, associates, and friends.[2] These letters gave

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[1] All further section references are to this code.

[2] Hollingsworth stated in his October 8, 2012 letter that JLASL had sued Deng to interfere with her business as a bookkeeper and tax preparer, and had implicitly admitted by dismissal of its action that the claims lacked merit. He also stated that Deng was considering filing her own claims against JLASL, and was ready to provide bookkeeping and tax preparation services.

In his October 18, 2012 letter, Hwu stated that JLASL had dismissed its action because of concerns that Deng was judgment

rise to further litigation: In December 2012, Deng, still represented by Hollingsworth, sued JLASL and Hwu for defamation and other claims. JLASL, represented by Sugars, filed a cross-complaint for defamation and other claims against Deng and Hollingsworth.

In December 2014, JLASL entered a settlement agreement with Deng, and offered to dismiss its cross-complaint against Hollingsworth for a waiver of costs. Although Hollingsworth did not respond, JLASL dismissed the cross-complaint in January 2015. In June 2015, JLASL's new counsel, Marc Rohatiner, wrote Hollingsworth that the dismissal of the cross-complaint was based on the statute of limitations.

In December 2015, Hollingsworth filed the present action for malicious prosecution against JLASL and its former attorney Sugars. JLASL and Sugars filed separate motions to strike the complaint under the anti-SLAPP statute. The trial court (Judge Debre K. Weintraub) granted both motions in May 2016 (the May 2016 orders).

JLASL and Sugars each moved for costs and attorney fees under the anti-SLAPP statute. Their motions were stayed during Hollingsworth's previous appeal from the May 2016 orders, which we affirmed in October 2017. (*Hollingsworth v. Jimmy Loh and Su Liu et al.* (Oct. 16, 2017, B275749) [nonpub. opn.].)

After the matter was remanded, the trial court considered JLASL's motion for costs and attorney fees. In its August 15, 2016 order, the court granted JLASL costs of $120 and attorney fees of $16,937.

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proof, and that the Los Angeles County Sheriff's Department was still investigating JLASL's complaint against Deng.

One month later, the trial court considered Sugars' motion for costs and attorney fees. Sugars submitted two itemized billing statements. In the first, Sugars was billed by Wong for 40.7 hours spent on tasks such as researching and drafting the anti-SLAPP motion, "conform[ing]" the motion to JLASL's anti-SLAPP motion, drafting objections to Hollingsworth's evidence, and drafting the reply memorandum. In the second, Sugars was billed $10,830 by the Law Offices of Steven P. Chang for additional time spent by attorneys Steven Chang and Heidi Cheng in reviewing documents and appearing at the anti-SLAPP hearing.

Sugars provided a declaration by Wong that purported to authenticate the two billing statements. Hollingsworth objected that Wong was not competent to authenticate the billing statement for the Chang law firm, and that objection was later sustained by the trial court.

Hollingsworth also argued that the billing statements were duplicative, fraudulent, excessive, and not credible. He claimed the attorneys had inflated their hours in such a "rampant and egregious" manner that it was impossible to calculate a reasonable fee award. He contended the bills were deceptive because both anti-SLAPP motions used the same language, case authority, and declarations, and that Sugars' motion—which was filed after JLASL's motion—contained no original work.

In the reply memorandum, Sugars explained that the similarity of the two anti-SLAPP motions was due to the collaborative efforts of the defense counsel, who cited the same cases and used "much of the same language and arguments." He argued that even though Wong copied "a great deal of the language from co-counsel's anti-SLAPP motion," Wong

independently researched the case law "in order to make certain that the best arguments were, in fact, being made." He argued that the hours billed by Wong, Chang, and Cheng were reasonable and necessary, "regardless of the fact that the two motions were substantially the same."

At the September 22, 2016 attorney fee hearing, the trial court generally accepted Sugars' explanation that the hours billed by Wong were reasonable and necessary. After finding Wong's hourly rate of $350 to be reasonable, the court awarded Sugars a reduced fee award of $10,920.

In arriving at this reduced fee award, the trial court exercised discretion to deduct $3,325 from the total fees billed by Wong of $14,245. At a billing rate of $350 per hour, this deduction is equivalent to striking 9.5 hours from the 40.7 hours billed by Wong, resulting in compensation for 31.2 hours of his time.

Because the trial court sustained Hollingsworth's objection to the billing statement for the Chang law firm, no additional fees were awarded for services billed by that firm.[3]

In the settled statement obtained by Hollingsworth after the September 22, 2017 hearing, the trial court explained its deduction of $3,325 from Wong's fee request: "The Court then stated that it found that there was a limited amount of time required for research, that the first prong of the anti-SLAPP motion was not complicated, and the second prong was more complicated because Plaintiff had raised some novel issues. [¶] The Court stated that in light of the Court's assessment of the

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[3] Sugars did not cross appeal from the denial of his request for fees billed by the Chang law firm.

level of difficulty involved, the Court concluded that a reasonable amount of attorney fees billed by attorney Bryan Wong in connection with the anti-SLAPP motion and all fees motion was $10,920.00, and it was $14,245.00 billed, less $3,325.00 in reduction due to the Court's discretion."

The settled statement also provided a brief but direct response to Hollingsworth's objection that Sugars' anti-SLAPP motion was "a direct verbatim copy": "based on the facts and circumstances of the case, and as addressed by the Court, . . . the reasonable amount of attorney fees in this case was $10,9[20].00."

Hollingsworth filed a timely notice of appeal from the September 22, 2016 order.[4]

DISCUSSION

I

The anti-SLAPP statute protects the exercise of constitutional rights of freedom of speech and petition for the redress of grievances. (§ 425.16, subd. (a).) Subject to certain exceptions, the statute provides that "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." (*Id.*, subd. (c).) By shifting the costs of bringing a special motion to strike, the Legislature sought to discourage the filing of SLAPP suits and encourage "private representation in SLAPP cases, including situations when a SLAPP defendant is unable to afford fees or the lack of potential monetary damages precludes a standard contingency fee arrangement." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.)

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[4] The notice of appeal also referred to the September 15, 2016 award of fees and costs to JLASL, but a subsequent dismissal was filed as to that order.

The fee-shifting provision is not intended to provide "a windfall. [Citations.] The prevailing party is entitled to a reasonable award [citation]; consequently, the trial court need not simply award the sum requested. [Citation.] To the contrary, ascertaining the fee amount is left to the trial court's sound discretion. [Citations.]" (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321 (*Christian Research Institute*).)

The starting point in assessing attorney fees is the calculation of the touchstone or lodestar figure. (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1321.) "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. [Citations.] '[T]he lodestar figure may be increased *or decreased* depending on a variety of factors, including the contingent nature of the fee award.' [Citation.]" (*Ibid.*) "The trial court is not required to issue a statement of decision. [Citations.]" (*Id*. at p. 1323.)

The trial courts have discretion to reduce or deny an award where the fee request appears unreasonably inflated. (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1322.) ""[P]adding" in the form of inefficient or duplicative efforts is not subject to compensation. [Citation.]' [Citation.]" (*Id.* at p. 1321; but see *Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1007 (*Margolin*) [notwithstanding some duplication of time spent in depositions and other matters "'the duplicated time was not inappropriate"'].)

In reviewing an attorney fee award, we apply the general appellate principles that "'[t]he judgment of the trial court is

presumed correct; all intendments and presumptions are indulged to support the judgment; conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court's resolution of any factual disputes arising from the evidence is conclusive.' [Citation.]" (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1322.) Accordingly, the trial court's assessment of an attorney's declaration may not be reweighed on appeal. (*Id.* at p. 1323.)

We review the attorney fee award under the deferential abuse of discretion standard. (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 545.) Under that standard, the trial court's ruling "will only be disturbed when there is no substantial evidence to support the trial court's findings or when there has been a miscarriage of justice. If the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence." (*Ibid.*, fns. omitted.)

II

Hollingsworth seeks reversal of the entire fee award based on the principal theory that Wong performed no original work on Sugars' anti-SLAPP motion. This theory, which we find is not supported by the record, underlies various permutations of Hollingsworth's appellate argument: that the fees were not reasonable, that they were not actually incurred, that the case was not complicated, and that Wong's claim to have spent 8.9 hours on the reply brief was therefore excessive.[5]

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[5] Hollingsworth also contends that Wong for the first time on appeal concedes he copied large portions of JLASL's motion.

The difficulty he faces is illustrated by the *Margolin* case in which the appellants similarly challenged an attorney fee award that they argued involved a "duplication of effort" and inadequate time records. (*Margolin*, *supra*, 134 Cal.App.3d at p. 1006.) Their challenge proved unsuccessful because they were incapable of overturning the trial court's adverse factual findings that "all hours allegedly worked by counsel for which no time records were available were attested to by the attorneys under oath" (*ibid.*), and that notwithstanding some duplication of time spent in depositions and other matters "'the duplicated time was not inappropriate.'" (*Id.* at p. 1007.) In affirming the attorney fee award, the appellate court stated that because the "vast majority of the hours devoted to this matter by respondents' counsel were substantiated by contemporaneous time records," it was bound by "the trial court's acceptance of the total hours" billed. (*Ibid.*)

The same rationale applies to this case. Because factual and credibility findings are left to the discretion of the trial court (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1323), an attorney fee award will not be disturbed ""'merely because reasonable people might disagree. "An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." [Citations.] . . . ."' [Citation.]" (*Ibid.*) "'The trial court, with declarations and supporting affidavits, [is] able to assess credibility and resolve any conflicts in the evidence. Its findings . . . are entitled to great weight. Even though contrary findings *could* have been made, an appellate court should defer to the factual determinations made by the trial court when the evidence is in conflict. This is true

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He is wrong. The same concession appears in Sugars' trial court reply points and authorities, which the trial court read.

whether the trial court's ruling is based on oral testimony or declarations. [Fn. omitted.]' [Citation.]" (*Ibid.*)

A comparison of each party's tables of authorities in support of their respective anti-SLAPP motions shows that Wong cites six appellate decisions not cited by counsel for JLASL and chose not to cite 10 decisions that JLASL reviewed and relied on. This supports Wong's assertion that he reviewed the decisions cited by JLASL and did his own independent research.

Furthermore, the reply memorandum in support of the anti-SLAPP motion covered matters that were unique to Sugars, such as the timeliness of his motion and the timeliness of Hollingsworth's opposition papers, and included an April 27, 2016, declaration by Sugars regarding a conversation with Hollingsworth, and an April 28, 2016, declaration by Wong regarding the timeliness of Sugars' reply memorandum.[6]

Based on its review of the billing statement and declaration provided by Wong, as well as its knowledge of the points and authorities filed in support of the respective anti-SLAPP motions by Sugars and JLASL, the trial court implicitly rejected the contention that Wong performed no original work on Sugars' anti-SLAPP motion. The evidence set forth above, along with the deference we accord the trial court's determination of the reasonable value of an attorney's services, lead us to accept the trial court's determination that all but 9.5 hours listed on Wong's billing statement were reasonably and actually required in order to bring the anti-SLAPP motion.

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[6] Hollingsworth does not address these items in his opening brief, leading us to alternatively conclude that this contention is waived. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.)

Hollingsworth also complains that the trial court erroneously based its fee award on a comparison with the results in several appellate decisions. There is no indication that the trial court did anything other than base its fee award on its own independent evaluation of the record before it. We therefore apply the long-standing principle of appellate review that requires us to presume the trial court's judgment was correct and to draw all inferences in favor of the judgment. (*Christian Research Institute, supra,* 165 Cal.App.4th at p. 1322.)

Hollingsworth also contends the trial court erred by awarding fees for 16.1 hours billed for matters such as reading the complaint, drafting an answer, reviewing JLASL's motion, reading appellate decisions, and drafting a stipulation to continue the hearing. This contention suffers from two defects. First, there is no way of knowing which, if any of these, the court might have cut from its fee award. Second, the lion's share of them—a combined 15 hours to read appellate decisions, review JLASL's motion, and meet with Sugars to discuss the anti-SLAPP motion—were clearly proper expenditures of attorney time.

Finally, Hollingsworth argues the record contains no evidentiary support for the trial court's factual finding that an hourly rate of $350 per hour is a reasonable rate. However, the record contains a declaration by Wong, which states that he has extensive experience in the field of civil litigation and post judgment fee litigation practice, and that attorneys with comparable "experience and expertise are able to charge in the legal marketplace $350 per hour for trial and post judgment fee litigation practice of this kind. I believe that a reasonable hourly rate for my services in this case would be $350 per hour."

Because factual and credibility findings are left to the discretion of the trial court (*Christian Research Institute*, *supra*, 165 Cal.App.4th at p. 1323), we defer to the court's acceptance of Wong's declaration on this point. (See *Margolin*, *supra*, 134 Cal.App.3d at p. 1007 ["'[t]he "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong"'"].)

DISPOSITION

The order is affirmed. Sugars is entitled to costs on appeal.

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MICON, J.*

We concur:

WILLHITE, Acting P. J. COLLINS, J.

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