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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

ANDREW L. GERARD, Plaintiff and Respondent, v. BHC ALHAMBRA HOSPITAL, INC., Defendant and Appellant.	B248197 (Los Angeles County Super. Ct. No. SC110387)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bobbi Tillmon, Judge. Affirmed as modified.

Cole Pedroza, Curtis A. Cole and Matthew S. Levinson for Defendant and Appellant.

Bernard & Bernard, Stephan Bernard; Smith & McGinty, Daniel U. Smith and Valerie T. McGinty for Plaintff and Respondent.

INTRODUCTION

Defendant BHC Alhambra Hospital, Inc. appeals an order awarding plaintiff Andrew L. Gerard statutory attorneys' fees under Welfare and Institutions Code section 15657, subdivision (a), on Gerard's successful claim for dependent adult abuse. Alhambra Hospital argues that a "high/low" stipulation the parties entered into during trial precluded Gerard from seeking attorneys' fees, and that the trial court abused its discretion in awarding Gerard $333,727.56 in attorneys' fees. We conclude that Gerard is entitled to an award of attorneys' fees and that the trial court did not abuse its discretion in calculating his reasonable attorneys' fees, but that the cost award must be reduced. Therefore, we modify the award of costs and affirm as modified.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Claims*

Gerard filed this action against Alhambra Hospital alleging that while he was a patient there he was a "Dependent adult" (Welf. & Inst. Code, § 15610.23),[1] and that Alhambra Hospital was a "Care custodian" (§ 15610.17) within the meaning of the "Elder Abuse and Dependent Adult Civil Protection Act" (§ 15600 et seq., the "Act"). Gerard alleged that UCLA Neuropsychiatric Hospital, several hours after admitting him and placing him on a 72-hour suicide watch, transferred him to Alhambra Hospital. Alhambra Hospital placed him in a room with a patient who "had numerous prior commitments to psychiatric facilities, and was suffering from a serious psychiatric illness manifesting in violent behavior . . . ." Gerard alleged that Alhambra Hospital placed him in an unsafe and hazardous environment with a psychiatric patient that the hospital "knew or should have known exhibited dangerous and violent propensities . . . ." Within

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[1] Unless otherwise stated, all further section references are to the Welfare and Institutions Code.

minutes, the patient "brutally attacked" Gerard and struck him in the head, causing "numerous skull fractures, [a] mandible facture, eye occipital fractures, and subdural hemorrhage with traumatic brain injury." Gerard was in a coma for several days, was placed on life support, and suffered a "severe and debilitating infection."

Gerard asserted causes of action for medical negligence; dependent adult abuse under section 15610.07; violation of patient's rights under Health and Safety Code section 1430, subdivision (b), and California Code of Regulations, title 22, section 72527, subdivision (a); and willful misconduct. In his cause of action for dependent adult abuse, Gerard sought punitive damages and the enhanced remedies of section 15657, including reasonable attorneys' fees and costs.

B. *The Stipulation*

The case proceeded to a 10-day jury trial on Gerard's causes of action for negligence and dependent adult abuse. At the beginning of the jury's deliberations, the parties reached what they refer to as a "high/low" agreement, the terms of which counsel put on the record with the trial court just before the jurors went into the jury room to deliberate. The transcript of this oral stipulation, the interpretation of which is the main issue in this appeal, reads as follows:

"[Counsel for Alhambra Hospital]: All right. So for the record, the parties have reached a stipulation on a number of issues. The parties have agreed [to] the high/low limits of [$]2,250,000 for the high and [$]250,000 for the low. All parties have agreed to waive their appeal rights. The defense waives its right to periodisize. The high/low numbers will be based on the gross verdict by the jury. And just for point of clarification, if there is any jury verdict in excess of $2,250,000, what this agreement means is that the defense will only have a responsibility to pay $2,250,000. Is that your understanding?

"[Counsel for Gerard]: That's correct. . . . The gross verdict will be the economic and non-economic damages totalled. There will be no reduction of those numbers, other than if the numbers exceed the high.

"The Court: And if that happens?

"[Counsel for Gerard]: Then the court will cause the verdict to reflect the high number, which is $2,250,000.

"[Counsel for Alhambra Hospital]: Fair enough. And that if the jury's verdict is anywhere between [$]250,000 and [$]2,250,000, that will be the number.

"The Court: The number that the jurors select?

"[Counsel for Alhambra Hospital]: Yes.

"The Court: Okay.

"[Counsel for Gerard]: Actually, yeah. The court doesn't reduce the verdict. The verdict stands, however —

"The Court: If it goes over the [$]2.250, then whatever the figure, it is no more than [$]2.250 —

"[Counsel for Alhambra Hospital]: Correct.

"The Court: Is that your understanding?

"[Counsel for Gerard]: Yes.

"[Counsel for Alhambra Hospital]: Correct. And if there is a defense verdict, the defense will agree to pay [$]250,000 to the plaintiff.

"[Counsel for Gerard]: Correct.

"[Counsel for Gerard]: Or if there is a verdict of not more than [$]250,000, then, again, it will be a [$]250,000 payment.

"[Counsel for Alhambra Hospital]: Also correct.

"The Court: I think that's what you just said, but okay.

"[Counsel for Alhambra Hospital]: Further clarification, but I'm okay with it.

"The Court: As long as everyone understands and there's a record of it.

"[Counsel for Gerard]: So whether there's a defense verdict or any number awarded to plaintiff of less than [$]250,[000] then [$]250[,000] will be paid.

"[Counsel for Alhambra Hospital]: Correct. And we've also agreed that this will be reduced to writing at a later date. There is a statutory lien, and the statutory lien will be dealt with as a part of a settlement. My agreement with counsel is that if the statutory lien comes into play, we will set aside x dollars for the statutory lien, and then counsel

will attempt to deal with the statutory lien and will advise us of what we are to pay. [¶] . . . [¶]

"[Counsel for Gerard]: And then with regard . . . to payment . . . there will be a payment one way or the other.

"The Court: But they're already waiving periodisizing.

"[Counsel for Gerard]: Well, we've waived that.

"[Counsel for Alhambra Hospital]: We've waived that.

"The Court: Okay. But anything else, you worked that out?

"[Counsel for Gerard]: I'm just saying that when can we expect payment? Can we say within 20 days?

"[Counsel for Alhambra Hospital]: Payment would traditionally be within 30 days. This company is fairly prompt, so it may well be before that.

"[Counsel for Gerard]: Okay.

"The Court: Anything else that needs to be a part of the record prior to the jurors beginning their deliberation?

"[Counsel for Gerard]: No.

"[Counsel for Alhambra Hospital]: I don't believe so, your honor."

C. *The Verdict*

On November 13, 2012 the jury found that Alhambra Hospital was negligent in the care of Gerard and that Alhambra Hospital had not proven that the act of the patient who attacked Gerard was a superseding cause. The jury also found that Gerard was a dependent adult while he was in the care and custody of Alhambra Hospital, and that Gerard had proven by clear and convincing evidence that Alhambra Hospital had recklessly failed to protect Gerard from health and safety hazards. The jury awarded Gerard $163,000 in past lost earnings, $288,689 in past medical expenses, $1,237,230 in future lost earnings, $1,301,850 in future medical expenses, $750,000 in past noneconomic damages, and $2,250,000 in future noneconomic damages, for a total verdict of $5,990,769.

After the trial court excused the jury, the court asked counsel to submit a judgment pursuant to the parties' stipulation. In response to an inquiry from the court, one of the attorneys for Gerard stated, "I'm in another world right now. I'm sorry." Another attorney for Gerard stated, "I didn't hear any of this either." The court set a "control date" to review submission of the stipulation.

D. *The Ex Parte Application*

The parties did not agree on a written form of their oral agreement. On November 27, 2012 Gerard filed an ex parte application for an order "enforcing the stipulation of the Parties regarding the high-low agreement on the jury verdict" and seeking "payment within 30 days of the verdict" because Alhambra Hospital had "expressed that payment may not be forthcoming." As part of this application, Gerard stated that he "requires clarification as to whether he is able to pursue an award of the enhanced remedies under the" Act. Gerard reported that the parties had been unable to "reduce the Stipulation to a writing" and that he intended to ask the court for an award of attorneys' fees and costs. Gerard stated that Alhambra Hospital had "made it clear . . . that it will be opposing said motion based upon [its] erroneous interpretation of the Stipulation of the Parties . . . ." Gerard's ex parte application sought an order that he was "entitled to motion [the court] for an award of attorney's fees and costs arising out of the Dependent Adult Neglect cause of action," and that Alhambra Hospital had "to render payment of the 'high' number of $2,250,000" by December 13, 2012.

On December 7, 2012 the trial court ruled on the ex parte application. "The Court finds that the jurors were not called upon to determine the attorney's fees based upon the [A]ct. There was no evidence of attorney's fees presented to the jury. The court finds [that Gerard] may petition the court for attorney's fees under the Act." The court stated that there was "no evidence that the stipulation included or contemplated attorney fees in the stipulation that was read on the record before the court." The court also stated that the jurors "were not called upon to determine whether or not attorney fees should issue in this case," but instead "were called upon to determine if they found reckless behavior

based on the testimony that they heard, and they did so." The court ruled that the parties had agreed that Alhambra Hospital would pay the "high/low amount" within 30 days and ordered payment by December 13, 2012.

On January 25, 2013 the trial court entered judgment in favor of Gerard and against Alhambra Hospital, pursuant to the jury's verdict and the parties' stipulation, in the amount of $2,250,000.

E. *The Motion for Attorneys' Fees*

On January 15, 2013 Gerard filed his motion for attorneys' fees. Gerard argued that he was entitled to attorneys' fees under section 15657, subdivision (a), because the jury found by clear and convincing evidence that Alhambra Hospital had been reckless in its care of him. In support of their lodestar calculation, counsel for Gerard submitted a 24-page "Itemized Statement of Services Rendered," which set forth in considerable detail the legal services performed by counsel by date, description, category,[2] attorney, hours, billing rate, and amount. Counsel asked for a lodestar multiplier of 1.5 to 2.0, "for a total fee award of $1,042,898.62 to $1,390,531.50." Gerard also sought recovery of costs and expert fees of $116,860.65.

In opposition to the motion, Alhambra Hospital argued that the high/low stipulation precluded Gerard from seeking attorneys' fees and costs in any amount above $2,250,000, and that the Itemized Statement contained mathematical errors, improper block and double billing entries, excessive time, and quarter-hour increments. Alhambra Hospital also challenged the reasonableness of counsel for Gerard's claimed hourly rates of $600 and $375 and opposed the application of any multiplier. Finally, Alhambra

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[2] Although counsel for Gerard did not submit actual time sheets, the information in the "Itemized Statement" in some ways was more detailed than most attorney time sheets. For example, in addition to a description of the work performed, the Itemized Statement includes a column entitled "Category," which describes whether the work was "Communication & Correspondence," "Discovery & Investigation," "Law & Motion," "Pleadings," "Trial & Trial Prep," or "Post-Trial."

Hospital argued that because Gerard was "not entitled to statutory fees . . . for his medical malpractice claims," and because "[a]t its heart, this was a medical malpractice case," the court should allocate only 10 percent of the fees to the dependent adult abuse claim. (Underscoring omitted.)

Alhambra Hospital also submitted the declaration of Melissa Nunnelee, a claims attorney with the third party administrator and claims adjustor for Alhambra Hospital's insurer, who negotiated the "high-low agreement of $2,250,000-$250,000." Nunnelee stated that in her final conversation regarding the agreement, counsel for Gerard "brought up the subject of his costs and fees in the event he was successful in obtaining a finding of Dependent Adult Abuse . . . . [Counsel for Gerard] asked me, to the effect: 'But if my maximum is $2,250,000, what happens to my extra costs and fees if the jury finds recklessness — finds for me on the Dependant Adult Abuse?' I responded, 'You get $2,250,000, max. You don't get anything over $2,250,000. That's the maximum we're going to pay — regardless.' [Counsel for Gerard] replied, 'OK. I understand.'" Nunnelee also attached a contemporaneous email she sent to counsel for Alhambra Hospital explaining the agreement she had reached with counsel for Gerard and stating, "They get no costs and fees, we get no cap." An email from counsel for Alhambra Hospital to Nunnelee, however, stated that the "high low numbers will be based on the gross verdict."

F. *The Trial Court's Ruling*

The trial court ruled that Gerard's motion was "denied as to the attorney's fees requested. [Gerard] is instead awarded $450,588.21 in attorney fees and costs."[3] The court stated in its February 28, 2013 ruling that on December 7, 2012 the court had "found that [Gerard] may petition for attorney fees under the [Act]. Thus, this issue will not be revisited . . . ." The court stated at the hearing that it was not addressing the issue

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[3] Thus the trial court actually granted the motion, but awarded Gerard less in attorneys' fees than he had requested.

of whether payment of the $2,250,000 precluded an award of attorneys' fees, stating, "And if you notice, the court didn't address that. And the reason is, if it's going to be appealed, let the appellate court decide how to interpret it."[4]

On the amount of reasonable attorneys' fees, the trial court stated, "An examination of the billing records shows excessive, inefficient billings as well as block billing. Some examples are pointed out by [Alhambra Hospital] such as the billing for '05/30/12 - 06/08/12' . . . where counsels [*sic*] claim 42.5 total hours for multiple tasks spanning a stretch of 9 days without specifying which attorney spent show [*sic*] much time on each task. The billing statement for '03/27/12 - 03/28/12' also shows multiple tasks and 76 hours claimed in a two-day period. . . . Counsels [*sic*] also inexplicably claim over $23,000 for 8.5 hours of total attorney time from '05/25/12-06/08/12.'" The court also found that the hourly rate for counsel for Gerard was "excessive given that the action did not involve novel or difficult questions of law or fact or a specialized skill in presenting them. Further, [Gerard's] counsel appears to seek attorney fees for all hours claimed in the litigation, rather than limiting fees to the [Act] claim. This is also improper as attorney fees for the medical negligence claim is [*sic*] not recoverable. While the claims may be similar and involve some overlap in preparation, it does not justify recovery of the full amount of time expended in the litigation." The court concluded that "under the Lodestar" method Gerard was "entitled to $333,727.56 in attorney fees," which was "a reduction of 52% or $361,538.19." The court denied a lodestar multiplier and awarded costs in the amount of $116,860.65.

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[4] There are several things wrong with this ruling, none of which affects our de novo review of this issue and decision in this appeal. First, the trial court did not actually rule as part of the ex parte application that Gerard was entitled to attorneys' fees under the stipulation, but ruled only that Gerard had the right to file a motion seeking an order that he was entitled to reasonable attorneys' fees. Second, the fact that appellate review of a trial court's interpretation of a contract is de novo does not relieve the trial court of its obligation to interpret a contract if called upon to do so.

On March 14, 2013 the court entered a judgment awarding Gerard $333,727.56 in attorneys' fees and $118,229.80 in costs, for a total of $451,957.36.[5] Alhambra Hospital appeals.

DISCUSSION

A. *Standard of Review*

"The issue of a party's entitlement to attorney fees is a legal issue subject to de novo review." (*Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1016; see *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) We review the trial court's calculation of the amount of attorneys' fees awarded, however, for abuse of discretion. (*Dzwonkowski v. Spinella* (2011) 200 Cal.App.4th 930, 934; see *Northwest Energetic Services, LLC v. California Franchise Tax Bd.* (2008) 159 Cal.App.4th 841, 879.)

B. *Gerard Is Entitled To Recover His Reasonable Attorneys' Fees*

Alhambra Hospital argues that the stipulation placed on the record "precluded an award of costs and attorney's fees." Alhambra Hospital argues that "the legal principles which apply to contracts generally apply to settlement contracts," and the "plain meaning" of the settlement agreement here precludes an award of attorneys' fees because Alhambra Hospital's "complete and 'only' responsibility [was] to tender the high amount of $2,250,000." Alhambra Hospital focuses on the words in the transcript "what the agreement means is that the defense will only have a responsibility to pay $2,250,000" and the high/low amount "will be paid." Alhambra Hospital's argument, however, ignores both the applicable law and the rest of the language in, and the context of, the stipulation.

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[5] The trial court's February 28, 2013 order awarded Gerard $116,860.65 in costs. The court's March 14, 2013 judgment awarded Gerard $118,229.80 in costs.

The Supreme Court has held that a settlement agreement that is silent on the issue of attorneys' fees and costs does not create a bar to a motion for statutory attorneys' fees or a memorandum of costs. (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 671.) This is because "absent affirmative agreement of the parties," a settlement agreement does not include "matters incident to the judgment that were no part of the cause of action." (*Id.* at p. 677.) Statutory attorneys' fees "are not a part of the cause of action" but "are incidents to the cause, properly awarded after entry of a stipulated judgment, unless expressly or by necessary implication excluded by the stipulation." (*Id.* at p. 678.) "Therefore, absent affirmative agreement of the parties to the contrary, the trial court retains jurisdiction after the filing of a compromise agreement to entertain a cost bill. It also retains jurisdiction to consider a statutory fee motion—at least where the showing required by statute could not have been made prior to judgment." (*Id.* at p. 679; see *id.* at p. 680 [a settlement agreement that "include[s] no provision as to costs or statutory fees" does "not deprive the trial court of jurisdiction to entertain either a cost bill or . . . a motion for fees"].)[6] The same rule applies when the parties reach a settlement pursuant to Code of Civil Procedure section 998. (See *Wohlgemuth v. Caterpillar Inc.* (2012) 207 Cal.App.4th 1252, 1259 [the "'bright-line rule'" is that a Code of Civil Procedure "'section 998 offer to compromise excludes [attorney] fees *only* if it says so expressly,'" and therefore "the fact that defendant's offer to compromise was silent on the subject of recovery of attorney fees and costs clearly left such recovery available"]; *Engle v. Copenbarger & Copenbarger, LLP* (2007) 157 Cal.App.4th 165,

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6 This rule does not apply where attorneys' fees "are part of the relief sought and hence must be pleaded and proved at trial," such as where the plaintiff seeks attorneys' fees incurred in a prior action as damages or where an attorney seeks recovery of fees from his or her client. (*Folsom v. Butte County Assn. of Governments*, *supra*, 32 Cal.3d at p. 678, fn. 16; see *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 79 ["a party seeking to recover attorney fees and costs as tort damages ordinarily should plead and prove them to the fact finder, and not in a posttrial or postsettlement cost memo"].)

168 ["[w]here a [Code of Civil Procedure] section 998 offer is silent on costs and fees, the prevailing party is entitled to costs and, if authorized by statute or contract, fees"].)

The parties' stipulation, placed on the record in open court, was silent on the issue of attorneys' fees and costs. There was no express statement or affirmative agreement on the issue of fees and costs. There may be a (relatively weak, in our opinion) implication in the isolated words quoted by Alhambra Hospital that its "responsibility" will "only be" $2,250,000, and that no less than $250,000 "will be paid," that the high/low settlement agreement included attorneys' fees. Under *Folsom*, however, that is not enough. Had Alhambra Hospital wanted to include attorneys' fees and costs in the $250,000/$2,250,000 settlement agreement, counsel for Alhambra Hospital had to have expressly said so when he stated the stipulation on the record.

Moreover, the language of the stipulation placed on the record made it clear that the high/low agreement applied to the jury verdict. As stated by counsel for Alhambra Hospital, the parties agreed that the $2,250,000/$250,000 "high/low numbers will be based on the gross verdict by the jury," not on any post-verdict matters such as attorneys' fees and costs. Counsel for Gerard confirmed that "[t]he gross verdict will be the economic and non-economic damages totalled." Counsel for Gerard also stated that if "the numbers exceed the high," then "the court will cause the verdict to reflect the high number, which is $2,250,000." Counsel for Alhambra Hospital did state that if there were "a defense verdict or any number awarded to [Gerard] of less than [$]250,[000,] then [$]250[,000] will be paid," but in the context of the discussion "will be paid" referred to the jury verdict. Thus, even if *Folsom* allowed us to consider implications and inferences from the language of the agreement, rather than just the absence of an express agreement, those implications and inferences here are that the agreement applied to what the jury would award in its verdict, not what the court might award later in fees and costs.

Alhambra Hospital argues that *Folsom* is not controlling because the original January 25, 2013 judgment "does not merely constitute an award on which attorney's fees may later be claimed," but "includes terms beyond that, including an express limitation on [Alhambra Hospital's] total responsibility," a time limit on payment, and

waivers of the right to appeal, the $250,000 cap on noneconomic damages under Civil Code section 3333.2, and periodic payment of future damages under Code of Civil Procedure section 667.7. The judgment, however, does not include "an express limitation" on Alhambra Hospital's "total responsibility." To the contrary, the judgment states that Gerard is to recover from Alhambra Hospital "damages in the total sum of $2,250,000.00" More important, Alhambra Hospital does not cite any authority for the proposition that *Folsom* does not apply if the judgment includes terms in addition to the payment of money (unless, of course, one of the additional terms is an express agreement on attorneys' fees and costs).

Alhambra Hospital also argues that the Supreme Court in *Folsom* noted that the "facts surrounding the agreement" did not suggest that the parties "intended a waiver of costs and statutory fees," and that the Supreme Court in *Folsom* even commented that the defendants "conceded at oral argument that neither costs nor fees were discussed during settlement negotiations." (*Folsom v. Butte County Assn. of Governments*, *supra*, 32 Cal.3d at pp. 680-681.) Alhambra Hospital points to the "unrefuted" statement in Nunnelee's declaration in opposition to Gerard's motion for attorneys' fees that she discussed the issue of fees and costs with counsel for Gerard, and that they agreed Gerard would get "$2,250,000, max" even if the jury found in favor of Gerard on his dependent adult abuse claim. The statement in the *Folsom* opinion about the circumstances surrounding the agreement, however, was part of the Supreme Court's discussion, not part of its holding. The statement supported the Supreme Court's conclusion "declin[ing] to infer waiver from mere silence" in the agreement. (*Id.* at p. 681.) Moreover, the "facts surrounding the agreement" in this case include the facts that the parties reached the agreement during the trial, put it on the record as the jury was about to begin deliberations, and focused their comments and concerns on the amounts the jury would

award in its verdict. There are "facts surrounding the agreement" supporting both sides' position, which is another reason to apply the rule of *Folsom*.[7]

C. *The Trial Court Did Not Abuse Its Discretion in Calculating the Amount of Reasonable Attorneys' Fees*

Alhambra Hospital argues that even if Gerard was entitled to recover attorneys' fees, the amount the trial court awarded "was excessive in light of numerous factors, even after partial reduction by the trial court." Specifically, Alhambra Hospital argues that lead counsel for Gerard "was not expert in the field," and that his hourly rate of $600 and his associate's hourly rate of $375 were too high. Alhambra Hospital also argues that Gerard's motion for attorneys' fees "was not based on contemporaneous timekeeping" but "was based on post hoc reconstruction of time spend [*sic*] over the course of several years." Alhambra Hospital also complains that the "Itemized Statement of Services Rendered" submitted by counsel for Gerard reflected "block billing," was based on quarter-hour timekeeping, and included gross errors. Alhambra Hospital further contends that the trial court failed to appropriately apportion the fees between Gerard's cause of action for violation of the Act, which authorizes recovery of attorneys' fees, and his non-statutory cause of action for medical negligence, which does not. Finally, Alhambra Hospital contends that the trial court should have allocated the fees 10 percent/90 percent (statutory to non-statutory) rather than 48 percent/52 percent.

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[7] Alhambra Hospital does not argue that the trial court should have considered Nunnelee's declaration as extrinsic evidence of the parties' intent because the stipulation placed on the record was ambiguous and reasonably susceptible to Alhambra Hospital's interpretation. (See *City of Bell v. Superior Court* (2013) 220 Cal.App.4th 236, 248 ["if the instrument is reasonably susceptible to the interpretation urged, the court must receive any relevant extrinsic evidence the party puts forth to prove its interpretation"]; *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126 ["[i]f, in light of the extrinsic evidence, the language is reasonably susceptible to the interpretation urged, the extrinsic evidence is then admitted to aid the court in its role interpreting the contract"].) The record would not support such an argument. The agreement was not ambiguous on whether Gerard could recover his attorneys' fees and costs; it was silent.

The trial court agreed with most if not all of Alhambra Hospital's arguments in opposition to Gerard's motion for attorneys' fees, and the court made an across-the-board reduction of 52 percent. The trial court concluded that a reduction in the amount of attorneys' fees was warranted because the court found there was "excessive, inefficient billing as well as block billing,"[8] counsel for Gerard's hourly rates were excessive,[9] and counsel for Gerard sought fees for the entire litigation rather than just the dependent adult

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[8] "[B]lock billing is not automatically suspect or grounds for a fee reduction," and "is commonly used and is not intended to facilitate 'padding' of hours but simply reflects the interrelated nature of many tasks performed during a day." (2 Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar. 3d ed. 2010) *Determining the Lodestar*, § 9.84, pp. 519-520 (rev. 2/13).) Trial courts have "discretion to penalize block billing when the practice prevents them from discerning which tasks are compensable and which are not." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1010; see *Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811, 830 ["blockbilling is not objectionable 'per se,' though it certainly does increase the risk that the trial court, in a reasonable exercise of its discretion, will discount a fee request"]; *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325 [block billing is "not objectionable per se," but can exacerbate the vagueness of a fee request]; *Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 102-103 [monthly billing statements containing block billing were sufficient for trial court "to determine whether the tasks described in each month's statement reasonably required the total amount of time billed each month"].)

[9] "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "In determining hourly rates, the court must look to the 'prevailing market rates in the relevant community.' [Citation.] The rates of comparable attorneys in the forum district are usually used. [Citation.] In making its calculation, the court should also consider the experience, skill, and reputation of the attorney requesting fees. [Citation.] The court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate. [Citation.] 'Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate.' [Citation.]" (*Heritage Pacific Financial, LLC v. Monroy, supra*, 215 Cal.App.4th at p. 1009.) Lead counsel for Gerard stated in his declaration that his firm's hourly rates were "within the range of usual and customary rates at small West Los Angeles litigation firms of comparable experience and expertise levels," but did not submit any evidence of the rates of comparable attorneys in the forum district or any declarations of other attorneys regarding prevailing rates in the community.

abuse claim. The trial court also denied any multiplier enhancement. Counsel for Gerard requested $695,265.75 (before any multiplier enhancement) in attorneys' fees. The trial court awarded $333,727.56, or 48 percent of this amount. Alhambra Hospital argues that the trial court did not reduce the award enough.

The trial court's decision to account for the deficiencies it found in counsel for Gerard's attorneys' fees submission by simply multiplying by (exactly) 48 percent was not a model of lodestar analysis. The trial court was supposed to determine "the number of hours reasonably expended by the attorneys and then multipl[y] this figure by the reasonable hourly rate prevailing in the community for similar work," and then "engage[] in the multiplier analysis, and determine[] whether the lodestar figure should be augmented or diminished by one or more relevant factors . . . . [Citations.]" (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 820.) The trial court did not give any express indication that it followed this procedure. The trial court appears to have short-circuited the process and decided to impose an across-the-board reduction of 52 percent without disclosing the details of its lodestar analysis.

Nevertheless, "[t]he determination of an appropriate statutory fee award is committed to the trial court's sound discretion and will not be reversed unless the court abused this discretion and the appellate court is '"'convinced'"' the ruling is '"'clearly wrong.'"' [Citation.]" (*Cates v. Chiang*, *supra*, 213 Cal.App.4th at pp. 820-821; see *Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 275 ["[o]ur review of a trial court's decision on fees is 'highly deferential'"].) Moreover, there is no requirement that the trial court "show its work" in performing the lodestar calculation. (See *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 193 [specific findings reflecting the court's lodestar calculations are not required]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 64 ["the trial court has wide discretion in making reductions based on its estimate of time spent on activities that are noncompensable in whole or in part"]; cf. *El Escorial Owners' Assn. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1366 ["'[t]he only proper basis for reversal of a fee award is an award so . . . small that it shocks the conscience'"].) In addition, the '"'"'experienced trial judge is the best judge of

the value of professional services rendered’”” in his or her courtroom. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1249.)

We are not convinced the trial court’s award of $333,727.56 is “clearly wrong.” (See *Cates v. Chiang*, *supra*, 213 Cal.App.4th at pp. 820-821.) The trial court stated it was making a “Lodestar determination.” The trial court’s order stated that the court “examin[ed] . . . the billing records” and found excessive and inefficient billing. The court acknowledged examples pointed out by Alhambra Hospital, such as 42.5 hours spent during May 30, 2012 to June 8, 2012, 76 hours spent during March 27, 2012 to March 28, 2012, and $23,000 billed for 8.5 hours. The court also found that the case was not novel or complex, that counsel for Gerard’s hourly rates were excessive, and that counsel for Gerard had not allocated or apportioned their fees between the statutory fee claim (dependent adult abuse) and the nonfee claim (medical negligence). Nor did the trial court exercise its discretion to find that the claims were “inextricably intertwined” so that apportionment was not appropriate. (See *Taylor v. Nabors Drilling USA, LP*, *supra*, 222 Cal.App.4th at p. 1251.) That was enough. (See *Gorman v. Tassajara Development Corp.*, *supra*, 178 Cal.App.4th at p. 65 [Supreme Court decisions on lodestar calculations do not require “a trial court to provide an explanation of its decision on a motion for attorney fees,” and “[t]his precedent teaches trial courts how to think about claims for fees, not what to say in ruling on the claims”].) As the court stated in *Gorman*: “When confronted with hundreds of pages of legal bills, trial courts are not required to identify each charge they find to be reasonable or unreasonable, necessary or unnecessary. The party opposing the fee award can be expected to identify the particular charges it considers objectionable. A reduced award might be fully justified by a general observation that an attorney overlitigated a case or submitted a padded bill or that the opposing party has stated valid objections.” (*Id.* at p. 101.) The trial court’s 52 percent reduction may not have been precise, but it was not “snatched whimsically from thin air” (*ibid*.), and there was no abuse of discretion. (See *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 82 [“[d]ecisions awarding or denying attorneys’ fees are reviewed under an abuse of discretion standard,” where “[t]he trial court’s discretion ‘“‘is not a

whimsical, uncontrolled power, but a legal discretion’”””]; *City of Fresno v. California Highway Com.* (1981) 118 Cal.App.3d 687, 700 [“[a]buse of discretion is arbitrary determination, capriciousness or ‘whimsical thinking’”].)

D. *The Trial Court’s Cost Award Must Be Reversed*

Alhambra Hospital contends that the trial court abused its discretion by awarding Gerard $87,213.48 in expert witness fees and $2,462.73 in other unrecoverable costs, so that Gerard’s cost recovery should be reduced to $31,016.32. Alhambra Hospital argues that under *Davis v. KGO-T.V., Inc.* (1998) 17 Cal.4th 436, expert witness fees and investigation, copying, and postage costs are not recoverable under section 15657.[10] Gerard “concedes that [Alhambra Hospital] properly challenges” these costs, and “acquiesces in this Court’s modification of the judgment to reduce the amount awarded by the trial court to the extent of $87,213.48, leaving the judgment intact with respect to . . . the undisputed recoverable costs of $31,016.32.” We will so modify the judgment.

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10 In *Davis*, the Supreme Court held that the prevailing party in a FEHA action may not recover “fees of an expert not ordered by the court,” “in the absence of any law expressly authorizing the award of such fees . . . .” (*Davis v. KGO-T.V., Inc.*, *supra*, 17 Cal.4th at p. 438.)

DISPOSITION

The judgment is modified to award Gerard $31,016.32 in costs. As so modified, the judgment is affirmed. Gerard is to recover his costs on appeal.

SEGAL, J.*

We concur:

PERLUSS, P. J.

WOODS, J.

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