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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KATHLEEN A. KENNE,

Plaintiff and Appellant,

v.

KEVIN P. STENNIS,

Defendant and Respondent.

B259635, B262175

(Los Angeles County
Super. Ct. No. SC092747)

APPEALS from orders of the Superior Court of Los Angeles County, Richard A. Stone, Judge. Affirmed.

Kathleen A. Kenne, in pro. per., for Plaintiff and Appellant.

Law Office of Helaine Hatter and Helaine Hatter for
Defendant and Respondent.

INTRODUCTION

These are the third and fourth appeals in this matter. In the initial appeal, defendant and cross-complainant Zelma R. Stennis (Zelma) appealed from a portion of a judgment entered after a jury trial in favor of plaintiff and cross-defendant Kathleen A. Kenne (Kenne). Kenne appealed from the portions of the judgment in favor of Zelma and awarding attorney's fees and costs in favor of defendant Kevin P. Stennis (Kevin), Zelma's son.¹ Kevin also appealed from the judgment as to the award of attorney's fees and costs. We affirmed the judgment and awarded Kevin his costs on appeal. (*Kenne v. Stennis* (Feb. 26, 2013, B221752) [nonpub. opn.])

Kenne then appealed from post-judgment orders granting Kevin's third party claim of ownership of real property on which Kenne had filed a writ of execution to satisfy the judgment against Zelma. We affirmed the orders and again awarded Kevin his costs on appeal. (*Kenne v. Stennis* (Jun. 10, 2015, B250195) [nonpub. opn.])

Kenne now appeals from a post-judgment order awarding Kevin attorney's fees and costs on the first appeal (No. B259635) and a post-judgment order denying Kenne's motion to tax costs (No. B262175). We affirm.

¹ For clarity, we use the first names of Zelma and Kevin, given that they have the same last name.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Kenne's Representation of Zelma and Kevin, and Her Filing Of this Action To Recover Unpaid Fees and Costs*

On May 4, 2004, Zelma engaged Kenne to represent her in two lawsuits she had filed against Cecil McNabb, involving McNabb's purchase of Zelma's business and her attempt to evict McNabb from her commercial real property on South Central Avenue (the Compton property). The retainer agreements specified that Zelma was to pay Kenne's fees from the proceeds of the sale of the Compton property. Zelma regained possession of the Compton property by May 2005. Kenne also represented Zelma in a lawsuit against her which was settled in March 2006.

Beginning in October 2006, Zelma stopped returning Kenne's telephone calls. Neither Zelma nor Kevin, her son, responded to Kenne's certified letters demanding payment of outstanding legal fees and costs.

In early February 2007, Zelma was in escrow for sale of the Compton property. On February 13, Kenne filed this action against Zelma and Kevin for breach of contract, fraud, common counts for services rendered, and intentional interference with contractual relations and prospective economic advantage. She also recorded a lis pendens against the Compton property. While Kenne and Zelma entered into a conditional settlement and release agreement in September 2007, the settlement was never finalized.

In August 2008, Kenne recorded a lis pendens against Zelma's condominium on South Beverly Glen Boulevard and her real property on West Adams Boulevard (West Adams property). Zelma and Kevin filed a successful motion to expunge these lis

pendens as well as the previously-recorded lis pendens on the Compton property.

Zelma filed a cross-complaint against Kenne on May 13, 2009. She alleged causes of action for legal malpractice, breach of contract, fraud, breach of fiduciary duty, negligent infliction of emotional distress, and slander of title.

The case went to trial on October 13, 2009, after the conclusion of a mandatory fee arbitration (Bus. & Prof. Code, § 6201, subd. (c)). On Kenne's complaint, the jury found in favor of Kenne on her common counts cause of action against Zelma for reasonable value of goods and services rendered, and determined that the reasonable value of the legal services Kenne provided was \$176,901.03, plus unpaid litigation costs of \$313.97. The jury found in favor of Kevin on all of Kenne's causes of action against him. On Zelma's cross-complaint against Kenne, the jury found in favor of Zelma on her cause of action for breach of fiduciary duty, and determined Kenne caused Zelma noneconomic loss in the amount of \$50,000.

The trial court entered judgment on November 9, 2009. The court awarded Kenne \$177,215.00, with interest, and costs of \$4,231.79 on her complaint against Zelma. The court entered judgment for Kevin on Keene's complaint, with attorney's fees and costs to be determined later. Finally, on Zelma's cross-complaint against Kenne, the court awarded Zelma \$50,000.00.

Zelma and Kevin filed a motion for attorney's fees and memoranda of costs. The trial court denied Zelma's motion, finding Kenne the prevailing party as to her. The court found that Kevin was the prevailing party as to Kenne on her complaint and awarded him attorney's fees and costs. We affirmed the

judgment and awarded Kevin his costs on appeal. (*Kenne v. Stennis*, *supra*, B221752, p. 33.)

B. *Kenne's Post-Judgment Collection Efforts*

In November 2007, Zelma transferred her Beverly Glen condominium to herself and to Kevin as joint tenants; the grant deed was recorded December 13, 2007. In 2008, Zelma deeded the West Adams property to Kevin.

Prior to entry of judgment in Kenne's lawsuit against Zelma and Kevin, Kenne filed a second lawsuit against Zelma, Kevin, Helaine Hatter—Kevin's attorney and wife—and Kevin's son. (*Kenne v. Hatter* (Super. Ct. L.A. County, [pending], No. SC100219). Kenne alleged fraudulent transfers of the Beverly Glen condominium and the West Adams property from Zelma to Kevin.

Kenne also began efforts to collect on the November 9 judgment. She obtained an abstract of judgment naming Zelma as the judgment debtor and recorded it on February 16, 2010. On August 26, 2010, the trial court heard argument on Kenne's applications for examination of Zelma as a judgment debtor and Kevin as a third party subject to attachment. The court denied the applications, finding Zelma had not been properly served, and that Kenne failed to show that, as a third party, Kevin had "possession or control of property in which the judgment debtor has an interest." (Code Civ. Proc., § 708.120, subd. (a).)

Kenne obtained a writ of execution in April 2013, naming Zelma as the judgment debtor. Kenne recorded a notice of levy for execution on the West Adams and Compton properties on April 22, 2013.

C. *Zelma's Claim of Exemption and Kevin's Third Party Claim*

Zelma filed a claim of exemption for the West Adams and Compton properties on April 30, 2013. On May 2, 2013, Kevin filed a third party claim of ownership of the West Adams property and the rents and other income arising from that property. (Code Civ. Proc., §§ 720.110, 720.210.) In addition to claiming ownership of the property and entitlement to rents, Kevin asserted that Kenne owed him \$40,855.32 plus interest for the attorneys' fees judgment he obtained against Kenne. Kevin requested a levy on any money being held for Kenne pursuant to her notice of levy and garnishment of rents from the West Adams property, and asked to release his property and rents from garnishment.

On July 3, 2013, the trial court denied Zelma's claim and granted Kevin's third party claim.² It ordered all rents garnished pursuant to Kenne's prior garnishment order returned to Kevin and quashed the notice of levy on the West Adams property. Kenne appealed; we affirmed, awarding Kevin his costs on appeal. (*Kenne v. Stennis*, *supra*, B250195, p. 28.)

D. *Kevin's Motion for Attorney's Fees and Costs on Appeal*

We issued our remittitur in the first appeal on July 24, 2013. On September 3, 2013, Hatter filed Kevin's motion for attorney's fees and costs on appeal. In support of the motion, Hatter filed her declaration detailing the attorney's fees and costs incurred on Kevin's behalf. She noted that the appeal had lasted

² Zelma died on July 2, 2013.

for over three years and involved complex issues. Hatter included in her declaration a list of hours spent on Kevin's appeal and related matters.

Kenne opposed the request for attorney's fees, asserting that Business and Professions Code section 6204, subdivision (d), applied in the trial court only, and that our remittitur had not awarded attorney's fees. She also claimed Kevin's motion was untimely under the California Rules of Court, rules 3.1702(c)(1) and 8.278(c)(1). Finally, Kenne argued that some of the claimed attorney's fees and costs either were not incurred at all or were incurred only on Zelma's behalf.

Kenne also filed a motion to strike Kevin's memorandum of costs or, in the alternative, to tax costs. The motion to strike was based on the same grounds as the opposition to the motion for attorney's fees. The motion to tax costs raised numerous grounds, including lack of documentation and excessive fees. Kevin filed opposition, asserting his motion for attorney's fees and costs was timely, his entitlement to attorney's fees in the trial court extended to his appeal, and the amounts he requested were reasonable and necessary.

On August 22, 2014, the trial court granted Kevin's motion for attorney's fees. It found the award of attorney's fees to be governed by statute, and "[s]tatutory authorization for the recovery of attorney fees incurred in the trial court necessarily includes attorney fees incurred on appeal unless the statute specifically provides otherwise." After considering the relevant factors, the court awarded Kevin attorney's fees in the amount of \$15,500. Kenne appealed.

The court denied Kenne's motion to tax costs. The court first rejected Kenne's assertion that Kevin was not entitled to any

costs at all, noting our award of costs on appeal to Kevin. The court also rejected Kenne’s “assertion that the subject costs bill is untimely because it was filed on the 41st day after issuance of the remittitur on July 24, 2013, September 3, 2013 (rather than the 40th day after issuance of remittitur, i.e., September 2, 2013).” The court found this assertion was “not only lacking merit” but was “arguably misleading,” in that Kenne “failed to inform the Court of a material fact, i.e., that Monday, September 2, 2013, was Labor Day, a Court holiday.” Relying on Code of Civil Procedure section 12a and 135, the court found the filing date had been extended to the following day.

As to Kenne’s request to strike individual items, the court noted that the memorandum of costs made a prima facie showing for recovery of those costs, and that Kenne had not met her burden to establish that those costs were not recoverable. It found that Kenne “has not sufficiently supported her assertions that the claimed costs were incurred by Zelma and not Kevin, that the claimed costs were not reasonabl[y] incurred, and that the claimed costs are excessive.” The court awarded Kevin costs in the amount of \$3,117.75. Kenne appealed.

DISCUSSION

A. Case No. B259635

1. Kevin’s Memorandum of Costs Was Timely

This court issued the remittitur in the first appeal on July 24, 2013. Kevin timely filed his motion 41 days later.

Rule 8.278(c)(1) of the California Rules of Court provides: “Within 40 days after issuance of the remittitur, a party claiming costs awarded by a reviewing court must serve and file in the

superior court a verified memorandum of costs under rule 3.1700.” In this case, the fortieth day was September 2, 2013, which was Labor Day.³

Code of Civil Procedure section 12a provides: “(a) If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday. For purposes of this section, ‘holiday’ means all day on Saturdays, [and] all holidays specified in Section 135

“(b) This section applies to Sections 659, 659a, and 921, and to all other provisions of law providing or requiring an act to be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute, ordinance, rule, or regulation.”

Code of Civil Procedure section 135 provides that judicial holidays include those designated as holidays by Government Code section 6700, which includes Labor Day. Notwithstanding this authority, Kenne argues that the Code of Civil Procedure is “superseded by the applicable appellate rules of court.” Kenne is incorrect.

As explained by our Supreme Court, “The California Constitution gives the Judicial Council authority to ‘adopt rules for court administration, practice and procedure,’ but it specifies that ‘[t]he rules adopted shall not be inconsistent with statute.’ (Cal. Const., art. VI, § 6, subd. (d).) Thus, the Judicial Council ‘may not adopt rules that are inconsistent with the governing statutes.’ (*In re Alonzo J.* (2014) 58 Cal.4th 924, 937.) “If a rule

³ We take judicial notice of the fact that day was Labor Day. (Evid. Code, §§ 452, subd. (h), 459.)

is inconsistent with a statute, the statute controls. [Citation.]” (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 532.)

The trial court correctly ruled that because the fortieth day after the remittitur issued was Labor Day, Kevin’s memorandum of costs was timely filed.

2. *Kenne Has Not Established The Court Erred in Denying the Motion To Strike*

Kenne additionally asserts that the trial court erred in failing to strike Kevin’s memorandum of costs and motion for attorney’s fees. She does not, however, support her factual allegations with either citations to evidence in the record of the asserted failings, or applicable authority and supporting legal argument.

One of “the most fundamental rule[s] of appellate law is that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant’s burden to affirmatively demonstrate error.” (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) “To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]’ [Citation.] ‘Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.’ [Citation.] ‘Hence, conclusory claims of error will fail.’ [Citation.]” (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th

1428, 1457; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.)⁴

3. *Kenne Has Not Demonstrated Error In The Apportionment of Costs*

Kenne contends that the trial court should have awarded Kevin only those costs that were reasonably necessary and were incurred for work performed on his behalf. This is correct. (See *Musaelian v. Adams* (2011) 197 Cal.App.4th 1251, 1259 [right to recover costs on appeal requires “(1) There must be a valid judgment awarding costs to the party claiming them; (2) the item must be one allowed by rule or statute; (3) the amount claimed must have been actually incurred; (4) the amount claimed must be reasonable”].)

Kenne argues, however, that the trial court failed to do so, and that this court should conclude, based on her explanation and the proceedings in prior appeals, that Kevin either did not incur the costs claimed, or that those costs were not properly apportioned. Her argument, however, is neither supported by any citation to the record other than to her own opposition to Kevin’s motion for attorney’s fees, nor specific as to the cost items to which she is referring. More is required of an appellant.

⁴ Kenne’s brief contains other perfunctory and unsupported assertions of error. We will not consider references to issues or errors without analysis or authority, and “not set forth under an appropriate separate heading or subheading.” (*In re Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 820, fn. 33; accord, *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 457, fn. 4.)

As the trial court correctly observed, “[i]f the items on a verified cost bill appear proper charges, they are prima facie evidence that the costs, expenses and services therein listed were necessarily incurred.” (*Seever v. Copley Press, Inc.* (2006) 141 Cal.App.4th 1550, 1557; *Bach v. County of Butte* (1989) 215 Cal.App.3d 294, 308.) “[I]t is not enough for the losing party to attack submitted costs by arguing that [s]he thinks the costs were not necessary or reasonable. Rather, the losing party has the burden to present evidence and prove that the claimed costs are not recoverable.” (*Seever v. Copley Press, Inc.*, *supra*, 141 Cal.App.4th at p. 1557.) Kenne failed to do so below, and she has similarly failed to meet her burden on appeal to demonstrate error in the award of costs. (*Multani v. Witkin & Neal*, *supra*, 215 Cal.App.4th at p. 1457.)

Kenne’s claim of error “is a mere challenge to [Kevin and to this court] to prove that the court was right. . . . An appellant is not permitted to evade or shift his [or her] responsibility in this manner.’ [Citation.]” (*In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 505.)

4. *The Court Properly Awarded Attorney’s Fees*

a. *Kevin Was Entitled to Attorney’s Fees.*

The attorney’s fees award in this case was based on Business and Professions Code section 6204, subdivision (d). That statute provides that “[t]he prevailing party may, in the discretion of the court, be entitled to an allowance for reasonable attorney’s fees and costs incurred in the trial after arbitration, which allowance shall be fixed by the court. In fixing the attorney’s fees, the court shall consider the award and

determinations of the arbitrators, in addition to any other relevant evidence.”

In her prior appeal challenging the award of attorney’s fees to Kevin after the trial, Kenne “assert[ed] that (1) the trial court erred in relying on Business and Professions Code section 6204, subdivision (d), as the basis for the fee award; (2) there was no legal basis for the award; (3) Kevin was not a prevailing party under Business and Professions Code section 6204, subdivision (d); (4) Kenne was the prevailing party based upon the greater dollar amount awarded to her under the judgment and based upon Kenne’s achievement of her litigation objectives against Kevin and Zelma, given their unity of interest; and (5) the amount awarded to Kevin was unreasonable.” (*Kenne v. Stennis*, *supra*, B221752, p. 25.) She did not prevail; we specifically affirmed Kevin’s entitlement to attorney’s fees under Business and Professions Code section 6204, subdivision (d). (*Kenne*, at p. 27.)

Kenne nonetheless contends again that she was the prevailing party at the arbitration and throughout the litigation and therefore she is the party entitled to attorney’s fees. Her claim that we should revisit the issue already finally determined in the prior appeal is contrary to law. “The doctrine of ‘law of the case’ deals with the effect of the first appellate decision on the subsequent retrial or appeal: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.” [Citations.]” (*Lucky United Properties Investments, Inc. v. Lee* (2013) 213 Cal.App.4th 635, 651.) Kenne cites no authority suggesting the law of the case doctrine does not

apply and we should revisit “an issue presented and decided in the prior appeal.” (*Ibid.*)

Kenne also asserts that, even were Kevin properly considered the prevailing party, this statute does not permit him to recover attorney’s fees on appeal. Although she argues that the law requires that result, she does so without citation to supporting authority. This does not satisfy her burden on appeal of demonstrating error in the trial court’s ruling. (*Multani v. Witkin & Neal, supra*, 215 Cal.App.4th at p. 1457.)

b. *The Court Did Not Abuse Its Discretion In Setting the Fees*

Kenne next argues that Kevin bore the initial burden of proving that the \$15,500 in attorney’s fees he sought were for services performed on his behalf. On appeal, however, it is Kenne’s burden to demonstrate that the amount awarded was not supported by the evidence.

“““The standard of review on issues of attorney’s fees and costs is abuse of discretion. The trial court’s decision 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.”” [Citation.] As with all orders and judgments, this fee order ‘is presumed correct, all intendments and presumptions are indulged in its favor, and ambiguities are resolved in favor of affirmance.’” (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 882.) The appellant has the burden of affirmatively showing an abuse of discretion. (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 153; *FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1275-1276.)

Kenne correctly asserts that, where an attorney represents more than one party, and only one of those parties is a prevailing party entitled to attorney's fees, the prevailing party may recover only reasonable attorney's fees incurred on his own behalf. However, "[t]o the extent his shared counsel engaged in litigation activity on behalf of [the other party] for which fees are not recoverable, the court has broad discretion to apportion fees. [Citations.] 'A court may apportion fees even where the issues are connected, related or intertwined.' [Citations.]" (*Zintel Holdings, LLC v. McLean* (2012) 209 Cal.App.4th 431, 443.) "Allocation of fees incurred in representing multiple parties is not required,' however, when the claims at issue are ""inextricably intertwined,""" such that it is not possible to differentiate between compensable and noncompensable time." (*Hill v. Affirmed Housing Group* (2014) 226 Cal.App.4th 1192, 1197.)

In support of his motion for attorney's fees, Kevin submitted a declaration under penalty of perjury by his attorney Hatter, setting forth the time spent and fees incurred on behalf of Kevin on the appeal. An attorney's declaration "as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; accord, *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698-699.)

Kenne urges us to conclude that Hatter's declaration is either inaccurate, or insufficient. She challenges specific portions of the declaration setting forth the time Hatter incurred, arguing that the time could not have been spent in that manner. She concludes from her own assertions that Kevin is "fraudulently"

attempting to recover fees that either were never incurred, or not incurred on his behalf, and are thus not recoverable. Those assertions are not, however, evidence.

As explained above, Kevin was entitled to attorney's fees as the prevailing party in this litigation and on appeal. Moreover, the record demonstrates that Hatter filed a notice of cross-appeal on Kevin's behalf; that notice is part of the record on appeal of which we have taken judicial notice. In any event, Kenne's appeal challenged the judgment in Kevin's favor. This record does not demonstrate any abuse of discretion in awarding attorney's fees for the time Hatter spent defending against Kenne's appeal, moving to consolidate the related appeals, and taking other actions of benefit to a party to an appeal.⁵

Without evidence that the challenged actions did not in fact benefit Kevin, we must presume that the actions were intended to benefit both Zelma and Kevin and the trial court determined the costs were apportioned accordingly. (*Ellis v. Toshiba America Information Systems, Inc.*, *supra*, 218 Cal.App.4th at p. 882;

⁵ Some challenges are unsupported by any citation to the record. For example, with respect to time claimed for preparing and presenting oral argument, Kenne argues that "Hatter did not spend three hours '*doing*' any oral argument for any party. Ms. Hatter *waived all oral arguments* for both [Kevin and Zelma] on February 8, 2013." The docket does not reflect any waiver of oral argument, and Kenne does not point to anything in the record which supports her argument. At the hearing on Kevin's motion for attorney's fees, Hatter told the trial court: "We did make oral argument. I tried not to make an oral argument, but when Ms. Kenne agreed to do oral argument, I had to do one as well. I don't know why she said I didn't give an oral argument. All my fees are correct."

Zintel Holdings, LLC v. McLean, *supra*, 209 Cal.App.4th at p. 443.)

Kenne has failed to meet her burden of demonstrating the trial court abused its discretion in awarding Kevin the claimed attorney's fees. (*Multani v. Witkin & Neal*, *supra*, 215 Cal.App.4th at p. 1457; *Collins v. City of Los Angeles*, *supra*, 205 Cal.App.4th at p. 153; *FLIR Systems, Inc. v. Parrish*, *supra*, 174 Cal.App.4th at pp. 1275-1276.)

c. *The Trial Court Is The Appropriate Forum for the Determination of Attorney's Fees*

Finally, Kenne asserts that because Judge Stone was the third bench officer assigned to this case, and was assigned after the trial proceedings, Judge Stone was not in a better position than this court to make the determination as to fees and costs. She contends that the customary deference to the trial court in such matters should not be indulged in this case. Nonetheless, this experienced trial court exercised its discretion after reviewing all of the filings and balancing and weighing the evidence in front of it.

Kenne relies on *Mann v. Quality Old Time Service, Inc.* (2006) 139 Cal.App.4th 328, in an attempt to persuade this court to decide the fee award itself. In that case, the reviewing court determined that the trial court had erred in its analysis of the fees, but declined "under the particular circumstances of [that] case" to remand. In deciding to resolve the fee issue itself, the reviewing court noted that its own familiarity with the case exceeded that of the trial court, that the record was sufficient to allow the calculations to be made, and that all remaining issues in the case, other than the attorney's fees, had been resolved.

Under those circumstances, the court concluded remand would be wasteful. (*Id.* at p. 346.) Nothing in *Mann* suggests it is necessary, or even appropriate, for us to reverse this trial court's reasoned award of attorney's fees.

B. Case No. B262175

As she did with respect to the other pending appeal, Kenne argues that the post-judgment costs claimed by Kevin were either incurred by Zelma, or never incurred at all. She also asserts that the trial court erred by failing to require Kevin to document his costs after she filed her motion to tax costs.⁶

Kevin filed a memorandum of costs detailing expenditures for preparation of the reporter's transcript, printing of briefs, production of additional evidence, expenses of service, and transmission and filing of briefs and other papers. Kenne filed a motion to strike the cost memorandum or, in the alternative, to tax all of Kevin's costs on appeal challenging the cost memorandum as untimely, and the right to costs or attorney's fees on appeal pursuant to Business and Professions Code section 6204. She also asserted, as she does in this appeal, that Kevin never incurred any costs on appeal and was attempting to recover costs incurred by Zelma, and he had no documentation to support any of his claimed costs. Kenne supported her motion with her own declaration, concluding that because Kevin never filed a notice of appeal or designated an appellate record or paid filing

⁶ Rule 8.278(a) of the California Rules of Court provides the prevailing party on appeal is entitled to an award of costs. Rule 8.278(c)(2) provides for a motion to tax costs. Rule 8.278(d) specifies what costs are recoverable and that they must be reasonable.

fees, he never incurred any costs on appeal, and all claimed costs were incurred on Zelma's behalf.

In Kevin's opposition he argued that he paid the costs claimed. He demonstrated that Kenne had not supported her assertions with evidence but instead made arguments based only on speculation. Kenne objected to Kevin's opposition as untimely and moved to strike it.

The trial court denied Kenne's motion, finding that the verified memorandum of costs "establishes a prima facie case for the recovery of costs; once that is submitted, the burden is on the party moving to strike or tax costs to establish that each disputed item is not recoverable," citing *Bach v. County of Butte*, *supra*, 215 Cal.App.3d at p. 308. The court concluded that Kenne "has not carried that burden as to any of the individual items she seeks to tax. Simply put, she has not sufficiently supported her assertions that the claimed costs were incurred by Zelma and not Kevin, that the claimed costs were not reasonable[y] incurred, and that the claimed costs are excessive." The court was correct.

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that were not reasonable or necessary." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774; accord, *Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1486-1487.) "If the items are properly objected to, they are put in issue" (*Ladas*, *supra*, at p. 774), and "the burden shift[s] to" the party claiming costs to provide the necessary documentation to prove those costs (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1265; accord, *Rappenecker v. Sea-Land Service, Inc.* (1979) 93 Cal.App.3d 256, 266). A proper objection to the memorandum of costs, however, requires more than counsel's statement that the costs were not

incurred; it must be sufficient to rebut the prima facie showing in the memorandum of costs. (*Id.* at p. 265; see *Adams, supra*, at p. 1487 “[a]part from the allegations contained in her own pleadings, Adams has failed to make any showing indicating that the expert fees listed in Ford’s memorandum were unreasonable or unnecessary”]; *County of Kern v. Ginn* (1983) 146 Cal.App.3d 1107, 1113-1114 [burden of proving deposition unnecessary was on party seeking to have that cost taxed, and party’s mere allegation that it was unnecessary was insufficient to rebut prima facie showing].)

Here, Kenne’s unsupported objection to the memorandum of costs was, as the trial court found, insufficient to rebut Kevin’s prima facie showing. The trial court therefore did not abuse its discretion in denying Kenne’s motion to tax costs. (*Adams v. Ford Motor Co., supra*, 199 Cal.App.4th at p. 1488; *Ladas v. California State Auto. Assn., supra*, 19 Cal.App.4th at p. 774.)⁷

⁷ Kenne raises a number of other issues in this appeal that are duplicative of issues we have addressed in connection with case No. B259635, and have been fully considered in that regard.

We also deny Kenne’s request for sanctions. We do not agree with Kenne’s claim that this appeal was necessitated by a “meritless Motion for Attorney Fees and Memorandum of Costs on Appeal.” To the extent Kenne is claiming sanctions are warranted by misconduct on Kevin’s part, we also deny her request, which is unsupported by the record before this court.

DISPOSITION

The orders are affirmed. To avoid further litigation, each party shall bear its own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.