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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

JEFFERY L. ELLIS et al., Plaintiffs, v. TOSHIBA AMERICA INFORMATION SYSTEMS, INC., Defendant and Respondent; LORI J. SKLAR, Objector and Appellant.	B257966 (Los Angeles County Super. Ct. No. BC328556)

APPEAL from an order of the Superior Court of Los Angeles County, Anthony J. Mohr, Judge. Affirmed.

Lori Sklar, in pro. per., for Objector and Appellant.

Umberg Zipser, Dean J. Zipser, Adina W. Stowell; Manatt, Phelps & Phillips and Benjamin G. Shatz for Defendant and Respondent.

Lori Sklar (Sklar) appeals from a trial court order on remand from this court, awarding her costs of $3,200. We affirm.

Sklar requested millions of dollars in attorney fees for her representation of the plaintiffs in a class action filed in 2005 against Toshiba America Information Systems, Inc. (Toshiba) and resolved by a settlement agreement. In *Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 890–891 (*Ellis I*), we affirmed the trial court's order awarding monetary sanctions against Sklar for refusing to comply with a court order to allow Toshiba to inspect her original electronic billing records, and we affirmed in part the order awarding her no attorney fees. We described Sklar's prolonged litigation regarding her attorney fees requests (which varied from $7,847,362.50 to $12,079,534.69 to $24,743,965.50). We concluded that the trial court did not abuse its discretion in denying fees, as it applied the correct legal standard and found Sklar not credible and her records unusable to calculate a lodestar amount. (*Id.* at pp. 856–857, 881.) We granted in part Toshiba's motion to strike and awarded monetary sanctions against Sklar for altering the trial court record as it appeared in her appellant's appendix. (*Id.* at pp. 875–877.) We remanded to the trial court to correct the amount due for the work of one of Sklar's staff members. As the trial court had not ruled on Sklar's request for $905,572 in costs, we also remanded "for a determination by the trial court of the amount, if any, of costs to be awarded to Sklar Law Offices, with a maximum cost award of $114,900," to be based on the evidence in the record. (*Id.* at pp. 887, 890.) We directed the clerk of court to send a certified copy of our opinion to the State Bar, pursuant to Business and Professions Code section 6086.7, subdivision (a)(3). (*Id.* at pp. 890-891.)

On remand and after hearing, the trial court filed an order on May 27, 2014 awarding Sklar costs of $3,200. The court declined to consider supplemental records filed by Sklar; found that the class action settlement agreement capped her costs at $114,000; rejected many of Sklar's claimed costs as not recoverable under the law; pointed out that most of Sklar's claimed costs did not relate to the merits of the class action, but to the protracted attorney fee litigation; and described her evidence of costs as

suspect and confusing. Faced by "a lack of credible evidence of valid costs," the court estimated costs during the merits phase (between October 2004 and April 2006) to be $3,200, which was "generous in view of Ms. Sklar's behavior during the pendency of this action," and awarded costs in that amount to Sklar. Sklar filed a timely appeal.

We review the award of costs for abuse of discretion, and may reverse only when there is no substantial evidence to support the trial court's findings or when there has been a miscarriage of justice. (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 545.)

While Sklar's brief is difficult to decipher, we will attempt to identify her specific arguments and address each in turn. We will not, however, address her attacks on our opinion in *Ellis I*. Sklar petitioned for rehearing and we denied her petition. She petitioned for review and the California Supreme Court denied her petition. She filed a petition for certiorari and the United States Supreme Court denied her petition. (*Ellis I*, *supra*, 218 Cal.App.4th 853, rehg. den. Sept. 10, 2013, review den. Nov. 26, 2013, cert. denied (2014) 134 S.Ct. 2692.) Our opinion is final.

Sklar first contends that the trial judge should have recused himself, because before he issued the cost order, the State Bar interviewed him in connection with its investigation of Sklar. We earlier denied Sklar's request for judicial notice of documents supporting this argument, and we therefore do not address it. We note that California Code of Judicial Ethics, canon 2B(2)(c) allows a judge to "provide factual information in State Bar disciplinary proceedings."

Sklar argues that she was entitled to seek costs of more than $114,900. As we stated in *Ellis I*, *supra*, 218 Cal.App.4th 853, the settlement agreement provided that Sklar would be entitled to seek fees up to a maximum amount to be set forth in the class notice, and the class notice stated that she would seek costs of $114,900. (*Id.* at p. 887.) The trial court was correct in limiting Sklar to no more than $114,900 in costs. We also conclude the trial court did not abuse its discretion in refusing to award costs to Sklar for her unsuccessful attempt to recover millions of dollars in attorney fees. The class notice (in compliance with the settlement agreement) stated that Sklar would request a maximum of $114,900 in costs, and no reasonable reading of the notice would

contemplate that Sklar could recover a much larger amount for the future costs of her scorched-earth fee litigation.

Sklar charges Toshiba with violations of discovery statutes in the underlying litigation, but on this appeal we determine only whether the court's award of costs on remand is an abuse of discretion. Sklar argues the trial court should have awarded her costs related to her deposition as a nonparty witness pursuant to Evidence Code section 1563, subdivision (b). Sklar was not a nonparty witness.

Finally, we disagree with Sklar that "the trial court abused its discretion by failing to even address the reasonableness and necessity of [her] costs." To the contrary, the court carefully excluded claimed costs not authorized by Code of Civil Procedure section 1033.5 and explained that Sklar did not provide sufficient detail for the court to evaluate other costs. The trial court called Sklar's evidence of costs "suspect," noted that Sklar gave wildly varying numbers for categories of costs, and concluded: "[W]hat we have before us is a lack of credible evidence of valid costs incurred by Sklar in connection with the underlying case." Nevertheless, assuming that Sklar incurred some costs during the merits phase, the court awarded $3,200 for filing fees, service of process, and depositions.

The trial court did not abuse its discretion. Sklar requested costs nearly eight times greater than the maximum she was entitled to under the settlement agreement and class notice, and submitted confusing and contradictory evidence of those costs. The trial court reasonably concluded that it could not separate the wheat from the chaff. Further, the court found that Sklar's evidence of costs was not credible, and "a credibility determination is uniquely the province of the trial court." (*Ellis I, supra*, 218 Cal.App.4th at p. 884.) Rather than attempting to show how $3,200 for the merits phase constitutes an abuse of discretion, Sklar continues to assert that she is entitled to the outsized cost amount she requested. The amount the court awarded was not a miscarriage of justice.

We deny Sklar's motion to strike Toshiba's brief and portions of its appendix.

DISPOSITION

The order is affirmed. Toshiba America Information Systems, Inc., shall recover its costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.