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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOSEPH L. SHALANT et al.,

Plaintiffs and Appellants,

v.

ROBERT MACKSTON,

Defendant and Respondent.

B271189

(Los Angeles County
Super. Ct. No. SC116968)

APPEAL from an order of the Superior Court of Los Angeles County. Nancy Newman, Judge. Affirmed.

Joseph L. Shalant and Wendy Kronick, in pro. per., for Plaintiffs and Appellants.

Doherty & Catlow, John Doherty and Susan Rousier for Defendant and Respondent.

* * * * *

This appeal is another in a series of appeals arising from a long-running dispute between plaintiffs and appellants Joseph L. Shalant and Wendy Kronick (plaintiffs), and defendant and respondent Robert Mackston (defendant).¹ In one of our prior opinions (*Shalant v. Mackston* (Dec. 8, 2014, B250208) [nonpub. opn.]), we affirmed the trial court's award of statutory attorney fees to defendant pursuant to Code of Civil Procedure section 425.16, subdivision (c).² We also awarded defendant costs of appeal. Following issuance of the remittitur, defendant filed, in the trial court, a cost bill and a motion for appellate fees. The trial court granted defendant's motion and awarded appellate fees and costs in the aggregate amount of \$98,186.97.

In this appeal, plaintiffs now challenge the trial court's award of appellate fees and costs to defendant pursuant to section 425.16, subdivision (c). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In an earlier civil action, Ms. Kronick sued defendant for an incident that took place in a neighborhood dog park. In that

¹ In addition to this appeal, plaintiffs have pursued four other related appellate proceedings: *Shalant v. Mackston* (Dec. 8, 2014; B250208), an unpublished opinion affirming the trial court award of statutory fees and dismissing an interlocutory appeal of a sanction order; *Shalant v. Mackston* (June 30, 2017; B265685), an unpublished opinion reversing summary judgment on one cause of action; *Shalant v. Superior Court* (B247918), a petition for writ of mandate summarily denied April 19, 2013; and *Shalant v. Mackston* (B271026), appeal filed February 16, 2016, and abandoned by appellants.

² All further undesignated section references are to the Code of Civil Procedure.

underlying action, defendant was represented by two attorneys, Thomas Feeley and Thomas Dempsey. Defendant answered and filed a cross-complaint against Ms. Kronick, as well as her husband, Mr. Shalant. The underlying action was resolved with no party obtaining any affirmative relief. (*Shalant v. Mackston, supra*, B250208.)

Plaintiffs, representing themselves, then filed this action against defendant and his attorneys for malicious prosecution of the previously filed cross-complaint. Plaintiffs also stated a cause of action for intentional infliction of emotional distress against defendant only. (*Shalant v. Mackston, supra*, B250208.)

Defendant, represented by new counsel (Doherty & Catlow), filed a special motion to strike plaintiffs' malicious prosecution cause of action pursuant to section 425.16, the anti-SLAPP statute.³ Defendant's motion was not directed to the separate intentional infliction of emotional distress claim. Defendant's former attorneys, represented by Nemecek & Cole, also filed a special motion to strike. (*Shalant v. Mackston, supra*, B250208.) Both anti-SLAPP motions were granted, and plaintiffs' motion for reconsideration was denied. (*Ibid.*)

Defendant then filed a motion for statutory attorney fees pursuant to section 425.16, subdivision (c), as did his former attorneys. Both fee motions were granted. (*Shalant v. Mackston, supra*, B250208.) Plaintiffs did not timely appeal the court's orders granting the SLAPP motions, but did timely appeal the June 28, 2013 order granting statutory attorney fees. We

³ SLAPP is an acronym for "strategic lawsuit against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.)

affirmed the award of statutory fees. (*Ibid.*) We also awarded fees and costs on appeal to defendant as the prevailing party. (*Ibid.*)

After issuance of the remittitur, defendant filed his motion for appellate fees and costs pursuant to section 425.16, subdivision (c) in the trial court in accordance with California Rules of Court, rule 8.278(c). Defendant sought \$87,073.88 in appellate fees. The motion was supported by a declaration of attorney John Doherty attesting to the work performed and his hourly rate, as well as the rates and experience of the other attorneys and paralegal who assisted him in handling the defense of plaintiffs' appeal. Defendant also filed a memorandum of costs seeking appellate costs of \$1,903.88.

Plaintiffs filed opposition to the fee motion and a motion to strike and tax costs. Other than alleging that defense counsel artificially inflated the fee request and was not credible, plaintiffs primarily argued that defendant was improperly seeking fees for time spent on matters unrelated to the defense of the appeal, mainly that defendant had included fees for work related to the prosecution of the intentional infliction cause of action which had not been at issue in the SLAPP motion.

In conjunction with their opposition, plaintiffs also filed a motion asking the court for an order allowing them to take discovery related to the appellate fees being sought by defendant, including the deposition of the person most knowledgeable at Doherty & Catlow. Defendant filed opposition.

Following briefing and oral argument, the court denied plaintiffs' motion for discovery. The court allowed defendant to submit supplemental documentation regarding the fees incurred in opposing plaintiffs' motion. Defendant submitted a

supplemental declaration requesting an additional \$18,740 in fees.

At the original hearing on the fee motion, the court continued the hearing, explaining “I would like to see itemized billings on this from the defendant. I know it’s not required for these types of motions, but this is a lot of money that is being requested and I would prefer to see itemized billings.” Defendant agreed to provide supplemental papers, and the motion was continued to October 29, 2015.

On October 5, 2015, defendant presented supplemental documentation further explaining the nature of the work performed for which appellate fees were being requested. The supplemental papers stated that since the original hearing, additional fees of \$2,865 had been incurred, and an additional \$9,000 in fees were anticipated for the continued oral argument and work necessary to finalize defendant’s request for fees.

On October 29, 2015, the court heard lengthy oral argument on defendant’s fee motion. The reporter’s transcript of the hearing is 58 pages. At the hearing, the court allowed plaintiffs the opportunity to identify each item of allegedly improper billing. Plaintiffs again focused on pointing out billing entries they believed were unrelated to the SLAPP fee appeal. Plaintiffs also pointed out an apparent math error in the court’s tentative ruling.⁴ During the proceedings, defendant stipulated to reduce the requested amount of fees by 23.8 hours (\$10,710),

⁴ The court’s tentative indicated an intent to award fees to defendant “in the amount of \$110,910.00 (\$85,170.00 + \$18,740.00).” However, the total of the two numbers in the parenthetical is \$103,910.

conceding the work indicated may not have been directly related to the defense of the SLAPP fee appeal.

The court took the motion under submission and stated its intent to review the parties' papers again and specifically the billing entries disputed by plaintiffs. On November 13, 2015, the court granted defendant's motion. The court reduced the total fees awarded to defendant to \$96,420, and adopted its tentative as to the award of appellate costs in the amount of \$1,766.97.

Plaintiffs filed another motion, asking for clarification of the court's fee award. Defendant filed opposition. The court heard and denied plaintiffs' motion on December 21, 2015. In denying the motion, the court reiterated in its minute order that the fees had been calculated using the lodestar method.

This appeal followed.⁵

Mr. Shalant has previously been declared a vexatious litigant. (§ 391.7.) However, this appeal was initially filed and pursued on behalf of plaintiffs by an attorney, and we therefore declined defendant's invitation to dismiss the appeal on the ground that plaintiffs did not submit a pre-filing r to proceed with the appeal. We granted plaintiffs' two requests and defendant's one request to augment the appellate record with various documents from the trial court record that had been erroneously omitted.

⁵ We deem this appeal properly entertained under the collateral order doctrine with respect only to the court's award of attorney fees and costs *on appeal* pursuant to section 425.16, subdivision (c). (See, e.g., *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 781; *Krikorian Premiere Theatres, LLC v. Westminster Central, LLC* (2011) 193 Cal.App.4th 1075, 1078.)

DISCUSSION

“We review an anti-SLAPP attorney fee award under the deferential abuse of discretion standard. [Citations.] The trial court’s fee determination ‘ “ ‘will not be disturbed unless the appellate court is convinced that it is clearly wrong.’ ” ’ [Citation.] . . . ‘The 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 v. Alnor* (2008) 165 Cal.App.4th 1315, 1322 (*Christian Research*).)

As our Supreme Court has explained, “under . . . section 425.16, subdivision (c), any SLAPP defendant who brings a successful motion to strike is entitled to *mandatory* attorney fees.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131, italics added (*Ketchum*); see also § 425.16, subd. (c)(1), italics added [“a prevailing defendant on a special motion to strike *shall* be entitled to recover his or her attorney’s fees and costs”].) The purpose of the statute’s mandatory fee language is to discourage SLAPP suits by imposing the litigation costs on the party bringing the SLAPP action. (*Ketchum*, at p. 1131.) The statutory right to fees extends to successful defense on appeal. (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785.)

In our prior decision, we concluded defendant was entitled to an award of appellate fees and costs as prevailing party. The only issue before us now is whether plaintiffs have shown the trial court abused its discretion in setting the amount of those fees and costs. We conclude they have not.

“The amount of an attorney fee award under the anti-SLAPP statute is computed by the trial court in accordance with the familiar ‘lodestar’ method. [Citation.] Under that method, 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.]’ ” (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 491, citation & fn. omitted.) “ ‘The reasonable market value of the attorney’s services is the measure of a reasonable hourly rate. [Citations.] This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represent the client on a straight contingent fee basis, or are in-house counsel. [Citations.]’ [Citation.]” (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1260; accord, *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 701, and *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 651-652.) The reasonable market rate is that amount “ ‘to which attorneys of like skill in the area would typically be entitled.’ ” [Citations.]” (*Ketchum, supra*, 24 Cal.4th at p. 1133.)

Trial courts are vested with broad discretion in setting a reasonable fee “because they are in the best position to assess the value of the professional services rendered in their courts.” (*Christian Research, supra*, 165 Cal.App.4th at p. 1321.) “ ‘[A]bsent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for *all* the hours *reasonably spent*, including those relating solely to the fee.’ [Citation.]” (*Ibid.*) The fee provision in the SLAPP statute is to be “broadly construed” to effectuate its legislature purpose. (*Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446; accord,

Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi (2006) 141 Cal.App.4th 15, 22.)

Moreover, while the party seeking fees bears the burden of providing the court with credible evidence in support of the request, it is well established that detailed time sheets and billing statements are not required to support a fee award. (See, e.g., *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 784-785; *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587.)

Based on the records and declarations of counsel presented, including the supplemental papers submitted by defendant on October 5, 2015, the trial court had substantial information on which it could evaluate the reasonableness of the work performed by defense counsel on the SLAPP fee appeal. Plaintiffs have failed to affirmatively show any basis for finding that defendant submitted “exaggerated” or “fanciful” billings or otherwise lacked veracity in justifying the requested fees. The trial court stated it was “not buying into that” and it was in the best position to judge the credibility of counsel. We also do not find any basis for questioning defense counsel’s veracity.

As for the apparent math error noted by plaintiffs, it does not support a finding the trial court abused its discretion in arriving at the final award of appellate fees in the amount of \$96,420. The math error was based on the original amount requested in defendant’s motion filed in April 2015, plus the amount requested by defendant with respect to opposing plaintiffs’ motion to obtain fee-related discovery. The court’s total for those two amounts was in error by several thousand dollars. However, subsequent to those two submissions, defendant was required to engage in additional work, including opposing plaintiffs’ motion for clarification, and making several additional

court appearances. Defense counsel prepared and submitted supplemental documentation regarding those additional hours. If the corrected amount is used as the base calculation (instead of the one containing the math error), the court could still reasonably arrive at the final amount of fees that it awarded (after having deducted the full amount of fees that defense counsel stipulated could be withdrawn), based on the additional work that was necessary. The record demonstrates the court gave this matter careful consideration, asking defendant for additional supporting papers, allowing extensive argument by plaintiffs at the hearing, and taking the matter under submission to review the papers an additional time before ruling. Plaintiffs have wholly failed to show any abuse of discretion by the trial court.

With respect to the reasonableness of the hourly rates charged by defense counsel, we previously concluded that plaintiffs failed to demonstrate any abuse of discretion by the trial court in finding the rates charged were reasonable. (*Shalant v. Mackston, supra*, B250208.) Defense counsel is seeking the same hourly rate for his work, and the rate assigned to the associate who assisted him was raised to equal his rate. There is no basis for a finding the hourly rates are not reasonable.

Plaintiffs assert error in the award of fees for corresponding with the carrier about the insured's case. Plaintiffs have not shown it was error to award fees for communications with the client about the status of the appeal. Likewise, we are unable to assess plaintiffs' claim of error in the award of \$585 in fees which plaintiffs contend were awarded for reviewing a report from our court. There is no citation anywhere

in the briefing to the record to determine to what part of the fee award appellant is referring. We have found no such request for fees in the record, and we do not know of any “report” issued by our court. Given the lack of record citations to the claimed error, we are in no position to further address this claim.

As for the court’s denial of plaintiffs’ motion for discovery, plaintiffs have not cited any authority, nor have we found any, that suggests the trial court erred in denying plaintiffs’ broad request for postjudgment, postappeal discovery directed to defense counsel in an effort to challenge the fee request.

DISPOSITION

The trial court’s order awarding attorney fees and costs on appeal in the total amount of \$98,186.97 to defendant and respondent Robert Mackston is affirmed.

Defendant and respondent Robert Mackston is awarded costs on appeal.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.