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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

STEVEN PAPPAS,

Plaintiff and Appellant,

v.

DOREEN FARR,

Defendant and Respondent.

2d Civil No. B237030
(Super. Ct. No. 1304851)
(Santa Barbara County)

The losing candidate in a race for county supervisor filed an election contest, naming the successful candidate as the sole defendant. After the trial court denied the petition contesting the election, the defendant moved for attorney fees. The fee request was made under Code of Civil Procedure section 1021.5,¹ the private attorney general statute, and section 1973l(e) of the Voting Rights Act (42 U.S.C. § 1971 et seq.) The trial court denied the motion. We reversed the denial of fees under section 1021.5. On remand, the trial court awarded the prevailing defendant \$528,657.50 against the plaintiff. Plaintiff appeals. We affirm.

¹ All statutory references are to the Code of Civil Procedure unless otherwise stated.

FACTS

In November 2008, Doreen Farr defeated Steven Pappas in an election for Santa Barbara County Supervisor. Pappas brought an election contest. Although Pappas did not accuse Farr of any personal wrongdoing, she was named a defendant pursuant to Elections Code section 16002. Pappas lost the contest. We affirmed.

Farr moved for attorney fees pursuant to section 1021.5. The trial court denied the motion. The trial court agreed with Farr that her defense of the contest resulted in the vindication of important public rights and in a significant benefit to the public at large. But the court found that Farr's personal, nonpecuniary interest transcended the cost of litigation. Pursuant to *In re Conservatorship of Whitley* (Whitley) (2010) 50 Cal.4th 1206, we reversed. (*Pappas v. Farr* (B219570).) Whitley held it is error to consider a party's nonpecuniary interest in determining eligibility for fees under section 1021.5.

On remand, the trial court awarded Farr \$528,657.50 in attorney fees. We affirm.

DISCUSSION

I

Section 1021.5 provides in part: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessary and financial burden of private enforcement, . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any." The section applies whether the successful party is a plaintiff or defendant. (*Hull v. Rossi* (1993) 13 Cal.App.4th 1763, 1768.)

We review an attorney fee award for an abuse of discretion. (*Whitley, supra*, 50 Cal.4th at p. 1213.) To the extent, however, the appropriateness of a fee award involves statutory construction or other question of law, our review is de novo. (*Ibid.*)

II

Pappas contends the trial court abused its discretion in refusing to reduce the amount of fees to account for Farr's own pecuniary interests.

Pappas cites *Woodland Hills Residents Association, Inc. v. City Council* (1979) 23 Cal.3d 917, for the proposition that a party's personal pecuniary interests are relevant in determining the amount of fees to be awarded. There the court stated: "[I]f the trial court concludes that plaintiffs' potential financial gain in this case is such as to warrant placing upon them a portion of the attorney fee burden, [section 1021.5's] broad language and the theory underlying the private attorney general concept would permit the court to shift only an appropriate portion of the fees to the losing party or parties. [Citation.]" (*Id.* at p. 942.)

Pappas argues that *Whitley* did not disapprove the portion of *Woodland Hills* on which he relies. He calculates Farr's total personal financial benefit from holding office for one term to be \$504,034. This amount consists of \$337,956 in gross salary over four years; a pension of \$6,800 per year over a life span of twenty-one years for a gross payment of \$143,000; plus \$23,034 in medical and dental benefits. Pappas ignores taxes, discounting the pension payments to their present value, and personal costs of campaigning and holding office. Pappas also ignores that Farr must work at her official duties and forgo other employment opportunities. It is obvious \$504,034 greatly exceeds the actual financial benefit Farr will receive. Pappas makes no effort to provide a more realistic calculation.

In any event, the trial court agreed with Pappas that it has the discretion to consider the financial benefit to Farr in awarding fees. The court, however, determined that it would not do so. The court did not abuse its discretion.

Pappas acknowledges that had Farr not defended the election contest, he, not Farr, would be county supervisor today. What Pappas does not acknowledge is that he failed to prove even a single vote was unlawfully cast in the election. The public has a profound interest in making sure those who lawfully win elections are able to take the office to which they were elected. This public interest extends to ensuring that those

elected to office are not forced to withdraw because they cannot afford to defend a meritless election contest. The trial court could reasonably conclude that the public interest so overwhelms whatever compensation Farr might derive from her office that no deduction from the fee award is warranted.

III

Pappas contends the trial court erred in concluding it is not proper to consider Farr's nonpecuniary interests in awarding attorney fees.

Pappas concedes *Whitley* holds nonpecuniary interests cannot be used to deny a party's eligibility for an award of attorney fees. He argues, however, a party's nonpecuniary interests should be considered in determining the amount of fees that are awarded.

Nothing in the language of section 1021.5 requires or even authorizes a court to consider a party's nonpecuniary interests in awarding fees. Instead, the statute requires the court to consider "the necessity and financial burden of private enforcement"

In determining the "necessity" of private enforcement, the court looks to whether enforcement by a governmental entity is adequate to vindicate public interest. (*Whitley, supra*, 50 Cal.4th at p. 1215.) Here Elections Code section 16002 required Pappas to name Farr as the defendant in the election contest. No public entity was named or came forward to defend her. Thus private enforcement was necessary.

As to the "financial burden" requirement, our Supreme Court in *Whitley* stated: "The statute requires a court to consider the 'financial burden of private enforcement.' As a logical matter, a strong nonfinancial motivation does not change or alleviate the 'financial burden' that a litigant bears." (*Whitley, supra*, 50 Cal.4th at p. 1217.)

Because Farr's nonpecuniary interests affected neither the necessity for private enforcement nor the financial burden of private enforcement, the trial court was correct in refusing to consider it.

Nevertheless, Pappas cites language from *Whitley* that he claims supports his point. The court stated, "the court may legitimately restrict the award to only that portion of the attorneys' efforts that furthered the litigation of issues of public importance. [Citations and fn. omitted.]" (*Whitley, supra*, 50 Cal.4th at p. 1226.)

But Pappas quotes the court out of context. In *Whitley*, the only issue plaintiff claimed was of public importance was whether the superior court had jurisdiction. The Supreme Court was simply pointing out that any award of fees would be limited to that issue. The Court was not stating that the trial court may consider plaintiff's nonpecuniary interest in determining the amount of fees to award.

In contrast, here the issues of public interest were not limited to a preliminary procedural matter. Instead, the issue was whether Farr should be able to take the office to which she was elected. Thus Farr's nonpecuniary interest and the public's interest was the same throughout the litigation. There is no basis for separating Farr's private nonpecuniary interest from the public interest.

Pappas's reliance on *Serrano v. Priest* (1977) 20 Cal.3d 25, 49, is also misplaced. There the court listed a number of factors the trial court could consider in adjusting the fee award. Plaintiff's nonpecuniary interest is not listed as a factor.

IV

Finally, Pappas contends the trial court abused its discretion in failing to reduce the fees because Farr's attorneys used block billing.

By block billing Pappas means the practice of assigning a block of time to multiple tasks, rather than itemizing the time spent on each task. Farr requested the court to reduce the fees by \$83,640.30 due to block billing.

Pappas cites no California statutory or case authority prohibiting or even disapproving of block billing. Instead, he relies on *Bell v. Vista United School District* (2000) 82 Cal.App.4th 672. There the Court of Appeal reversed an attorney fee award because the trial court failed to apportion the fees between a cause of action alleging a Brown Act violation for which statutory fees are allowed and other causes of action. In reversing, the court noted that plaintiff's block billing entries made it impossible to

properly apportion the fees. The court stated: "If counsel cannot further define his billing entries so as to meaningfully enlighten the court of those related to the Brown Act violation, then the trial court should exercise its discretion in assigning a reasonable percentage to the entries, or simply cast them aside." (*Id.* at p. 689.) This case is easily distinguished from *Bell*. Here block billing did not make apportionment impossible. No apportionment was necessary.

Whatever form of billing is used, the question is whether the billing provides the trial court with a reasonable basis for awarding attorney fees. Here the trial court had no difficulty with Farr's attorneys' billing. The court stated: "I think that it is clear from the entries overall what was done during the time periods. . . . I don't think that there were any hours that were able to be identified that were not reasonably spent in this case, and in fact, I do agree with the argument raised by [Farr's attorneys] that in a certain sense they were conservative and restrained themselves in terms of their billing in this matter."

The judgment is affirmed. Costs on appeal are awarded to respondent.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Colleen K. Sterne, Judge
William McLafferty, Judge
Superior Court County of Santa Barbara

Stanley H. Green and Glenn D. Hamovitz for Plaintiff and Appellant.

Strumwasser & Woocher, Fredric D. Woocher; and Philip A. Seymour for
Defendant and Respondent.