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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

PAMELA WORMAN,

Plaintiff and Respondent,

v.

INVESTMENT CO. OF SANTA
MONICA et al.,

Defendants and Appellants.

B275381

(Los Angeles County
Super. Ct. No. BS145802)

APPEAL from an order of the Superior Court of Los Angeles County. Mary H. Strobel, Judge. Affirmed.

Tangalakis & Tangalakis, Phillip L. Tangalakis and Christopher G. Hook; Davis Wright Tremaine, Everett W. Jack, Jr. and Jacob M. Harper for Defendants and Appellants.

Sheppard Mullin Richter & Hampton, Paul S. Malingagio, Karin Dougan Vogel, Paul L. Seeley, and Sarah A. K. Blitz, for Plaintiff and Respondent.

Appellants Investment Co. of Santa Monica, Pacific Systems, Thompson Industrial Properties (collectively, the Companies), and Robert Thompson (Thompson)¹ appeal from a postjudgment order awarding respondent Pamela Worman, also known as Pamela Wells (Worman) \$295,448.49 in attorney fees. Appellants’ sole basis for challenging the fee award is that Worman’s motion for attorney fees was untimely under rule 3.1702(b) of the California Rules of Court² and the trial court erroneously provided Worman a retroactive extension of time for “good cause” under rule 3.1702(d). We affirm the attorney fees award.

BACKGROUND³

The instant dispute arose when Worman, a 25 percent shareholder in the Companies, became concerned that she was not receiving dividend distributions but was nevertheless incurring tax liability for distributions attributed to her in IRS Schedule K-1 forms issued by the Companies. On August 20, 2013, Worman served statutory demands to inspect the Companies’ records. When the Companies failed to respond to the inspection demands, Worman filed a petition for writ of mandate in the superior court on November 1, 2013.

¹ Thompson and the Companies are referred to collectively as appellants.

² All further references to rules are to the California Rules of Court.

³ Much of the facts are set forth in our opinion addressing an order enforcing an inspection demand by Worman for the Companies’ corporate records. (*Worman v. Investment Co. of Santa Monica et al.* (July 19, 2017, B276710) [nonpub. opn.].) We restate the relevant facts as necessary.

After litigating the mandamus action and Worman's status as a shareholder for 18 months, the parties entered into a stipulated judgment on April 1, 2015. The stipulated judgment contains the following provisions governing attorney fees:

“The Court finds that [Worman] has reserved her right to bring a post-judgment motion seeking to recover her attorney's fees and costs pursuant to Nevada Revised Statute 78.257(5)(a), and the Court hereby retains jurisdiction under Code of Civil Procedure section 664.6 to hear and decide such motion and enter judgment thereon. [¶] . . . [Appellants] reserve the right to oppose any post-judgment motion filed by [Worman], including but not limited to any relating to her right to recover her attorneys' fees and costs.”

After entry of the stipulated judgment, the parties attempted to settle all of the pending disputes. They agreed to an accounting process and to a stay of discovery.

The settlement discussions collapsed in August 2015. Worman's counsel thereafter contacted the trial court to reserve a hearing date on a motion for attorney fees, reserved February 4, 2016, and filed and served a motion for attorney fees on January 12, 2016.

Shortly after the attorney fees motion was filed, Jeffrey Kramer, appellants' then counsel, requested a continuance of the hearing date on the motion, and Worman's counsel agreed to a short continuance. After consulting with the trial court, Kramer reported that the earliest hearing date was April 7, 2016, and told Worman's counsel that if that date was not agreeable, he would appear *ex parte* to continue the hearing date. Worman's counsel told Kramer that he did not want to continue the hearing date for two months, and that he too would appear at the *ex parte* hearing. Both counsel appeared at the January 20, 2016 *ex parte*

hearing at which the trial court set March 17, 2016, as the hearing date for Worman's attorney fees motion.

On March 4, 2016, appellants filed their opposition to Worman's attorney fees motion, arguing that the motion was untimely under rule 3.1702 and should be denied in its entirety. In response, Worman filed an ex parte application for (1) confirmation that the attorney fees motion as timely filed, or alternatively, (2) extending the deadline to file the motion pursuant rule 3.1702(d), or (3) relief from the deadline pursuant to Code of Civil Procedure section 473, or (4) continuing the hearing on the attorney fees motion and setting a hearing for relief under section 473. The trial court denied the ex parte application without prejudice, stating that Worman could assert arguments 1 through 3 in her reply brief and that she could file a motion under section 473 if and when an order warranting such relief was entered.

Worman's reply in support of the attorney fees motion addressed the timeliness issue and was supported by the declaration of her attorney, Paul Seeley, who stated his understanding that no filing deadline applied to the attorney fees motion because the stipulated judgment had expressly reserved Worman's right to bring the motion and the trial court had expressly reserved jurisdiction to hear the motion.

At the March 17, 2016 hearing on the attorney fees motion, the trial court stated that it was inclined to continue the hearing to provide appellants with the opportunity to brief good cause under rule 3.1702(d) because the issue had been raised in Worman's reply brief. The trial court accorded appellants seven pages for their supplemental brief and Worman seven pages for a supplemental reply. After consulting with counsels' respective schedules, the trial court set the hearing date for April 28, 2016.

On April 28, 2016, after hearing argument from the parties, the trial court found good cause for granting Worman relief from the filing deadline pursuant to rule 3.1702(d). In a 16-page tentative ruling, adopted as its final order, the trial court stated:

“Here, [Worman’s] counsel mistakenly interpreted the Stipulated Judgment, which expressly referenced the right to bring an attorneys’ fees motion and the retention of jurisdiction by the court under [Code of Civil Procedure] section 664.6, as meaning no deadline was running. While this interpretation is mistaken, counsel’s interpretation seems to be an honest mistake, not caused by a negligent failure to make himself aware of the applicable statutes and rules of court. [¶] The court also considers the lack of prejudice to [appellants]. No showing has been made that the delay in filing the motion affected [appellants’] ability to oppose the motion in any way. While a lack of prejudice to [appellants] is not in and of itself sufficient to support a finding of good cause . . . it is an important factor for the court to consider. . . . [¶] Considering the totality of the circumstances, including that there is some ambiguity in paragraph 11 of the Stipulated Judgment, as discussed above, supporting the conclusion that counsel’s honest, albeit mistaken interpretation of that provision was excusable, and the lack of prejudice to [appellants], the court finds good cause to extend the time period in which the motion for attorneys’ fees could have been filed under Rule 3.1702(d), and reaches the merits of the motion.”

The trial court then awarded Worman \$295,448.49 in attorney fees. This appeal followed.

DISCUSSION

I. Applicable law and standard of review

Rule 3.1702(b)(1) provides that a motion for attorney fees “up to and including the rendition of judgment in the trial court .

. . must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case.” Pursuant to those rules, the “deadline ordinarily falls 60 days after notice of entry of judgment, or 180 days after entry of judgment, whichever is first. [Citation.]” (*Kaufman v. Diskeeper Corp.* (2014) 229 Cal.App.4th 1, 8.)

Rule 3.1702(d) provides: “For good cause, the trial judge may extend the time for filing a motion for attorney’s fees in the absence of a stipulation or for a longer period than allowed by stipulation.” “Rule 3.1702(d) is ‘remedial’ and is to be given a liberal, rather than strict interpretation. [Citation.]” (*Lewow v. Surfside III Condominium Owners Assn., Inc.* (2012) 203 Cal.App.4th 128, 135 (*Lewow*).) “A court may grant a request for extension of time to file a motion for attorney’s fees even if the motion is not filed until after the deadline for filing an attorney’s fees motion under rule 3.1702. [Citation.]” (*Robinson v. U-Haul Co. of California* (2016) 4 Cal.App.5th 304, 326 (*Robinson*).) A trial court’s finding of “good cause” under rule 3.1702(d) is reviewed under the deferential abuse of discretion standard. (*Robinson*, at p. 327.) A litigant therefore “faces a steep uphill battle in seeking to reverse a court’s finding of ‘good cause’ for an extension of time” under rule 3.1702(d). (*Robinson*, at p. 326.)

II. No abuse of discretion

The parties do not dispute that Worman’s January 12, 2016 motion for attorney fees, filed 286 days after entry of the stipulated judgment on April 1, 2015, was not timely filed under rule 3.1702(b). The sole issue on appeal is whether the trial court abused its discretion in finding good cause for extending the time for Worman to file her attorney fees motion.⁴

⁴ Appellants do not challenge the amount of the trial court’s fee award.

Appellants contend the trial court abused its discretion in granting relief under rule 3.1702(d) because Worman failed to request such relief in a formal noticed motion, thereby impairing their due process right to oppose the motion, and because Worman's counsel's "honest mistake of law" did not excuse the missed filing deadline. Appellants further contend the standard for granting discretionary relief under Code of Civil Procedure section 473 (section 473), subdivision (b) should be applied in determining whether the trial court abused its discretion in granting Worman relief under rule 3.1702(d).

Appellate courts are divided as to whether the standard for relief under rule 3.1702(d) is the same as that under section 473, subdivision (b). (Compare *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1444 [court may, on a proper showing under section 473, extend the time for filing a motion for attorney fees under rule 3.1702(d)] and *Lewow, supra*, 203 Cal.App.4th at p. 135, with *Robinson, supra*, 4 Cal.App.5th at pp. 326-327 ["trial court has considerably more latitude in ruling on an extension of time to file an attorney's fees motion under the 'good cause' standard of Rule 3.1702(d) than it does in granting relief . . . under Code of Civil Procedure section 473, subdivision (b)"].) The trial court here appropriately bridged this division in the case authority by concluding "that 'good cause' under Rule 3.1702(d) requires a showing similar to that required for relief under . . . Section 473" while at the same time noting "that in determining whether good cause exists for extending the deadline (including retroactively) to file an attorneys' fees motion, Rule 3.1702(d) 'is to be given a liberal rather than strict interpretation.' [Citation.]"

Neither rule 3.1702(d) nor section 473, subdivision (b) requires a formally noticed motion as a prerequisite for relief. Section 473, subdivision (b) requires an application for relief from

“a judgment, dismissal, order, or other proceeding”, but no similar requirement appears in rule 3.1702(d).

Appellants’ claim that the absence of a formally noticed motion deprived them of due process and sufficient opportunity to oppose Worman’s request for attorney fees is unfounded. The record shows that shortly after Worman filed her attorney fees motion on January 12, 2016, appellants’ counsel requested and obtained a continuance of the hearing date on the motion to March 17, 2016. On March 4, 2016, appellants filed a lengthy opposition to the attorney fees motion, in which they argued for the first time that the motion was untimely under rule 3.1702(b), prompting Worman to request relief under rule 3.1702(d) in an *ex parte* application and in her reply. At the originally scheduled March 17, 2016 hearing on the attorney fees motion, the trial court accorded appellants the opportunity to brief good cause under rule 3.1702(d) in a seven-page supplemental brief. Appellants did not argue that the scope of the supplemental briefing was too narrow or that the seven-page limit was insufficient. The trial court also extended counsel some latitude in scheduling the hearing date on the continued motion, accommodating both counsels’ travel plans and ultimately setting the hearing for April 28, 2016. Counsel for both parties appeared at that hearing and argued the good cause issue at length. Appellants failed to show that they suffered any impairment of their due process right to oppose the attorney fees motion.

The trial court found that an honest mistake of law by Worman’s counsel warranted relief under rule 3.1702(d). That factual finding was supported by the declaration of Worman’s counsel. An honest mistake of law may constitute good cause for relief under both rule 3.1702(d) and section 473, subdivision (b), depending on the reasonableness of the misconception. (*Robinson, supra*, 4 Cal.App.5th at pp. 327-328 [rule 3.1702(d)];

State Farm Fire & Casualty Co. v. Pietak (2001) 90 Cal.App.4th 600, 611 (*State Farm*) [section 473].) The reasonableness of counsel's mistake turned on his interpretation of the stipulated judgment, which expressly referenced the right to bring an attorney fees motion and retention of jurisdiction by the trial court under Code of Civil Procedure section 664.6. The trial court found that the relevant provisions of the stipulated judgment were sufficiently ambiguous to support counsel's mistaken interpretation that no deadline was running on Worman's right to recover her attorney fees. The trial court also considered the lack of prejudice to appellants, who had made "[n]o showing . . . that the delay in filing the motion [had] affected [their] ability to oppose the motion in any way." The record discloses no abuse of discretion by the trial court in extending the time for Worman to file her attorney fees motion under rule 3.1702(d) based on her counsel's honest mistake of law and the absence of prejudice to appellants.⁵

⁵ Because we affirm the trial court's order granting relief under rule 3.1702(d) on the basis of counsel's honest and reasonable mistake of law, we do not address appellants' arguments regarding alternate grounds for relief on which the trial court did not rely as the basis for its order.

DISPOSITION

The order awarding Worman her attorney fees is affirmed.
Worman shall recover her costs on appeal.

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_____, Acting P. J.
CHAVEZ

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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