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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BEVERLY WARREN et al.,

Plaintiffs and Respondents,

v.

CITY OF COMPTON,

Defendant and Appellant.

B235001

(Los Angeles County Super. Ct.
Nos. TC020865 & BC389182)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Office of the City Attorney of the City of Compton, Craig J. Cornwell, Anita O. Aviles and Jose R. Paz for Defendant and Appellant.

Leist Law Group and Jeffrey J. Leist for Plaintiffs and Respondents.

Defendant and appellant City of Compton appeals from a postjudgment order awarding attorney fees in favor of plaintiffs and respondents Irene Shandell and Beverly Warren in this inverse condemnation action. The City contends that the trial court abused its discretion by continuing the hearing on the attorney fees motion to allow the parties to file supplemental briefs and supporting documentation beyond the time allowed for filing the motion. However, the City failed to raise this argument in the trial court, and therefore, it is forfeited. Moreover, we find no abuse of discretion and affirm.

FACTS AND PROCEDURAL BACKGROUND

Shandell and Warren each filed an action against the City for property damage caused by a water leak. On September 27, 2010, the trial court consolidated the cases for a bench trial on the plaintiffs' causes of action for inverse condemnation. On January 27, 2011, the trial court entered judgment in favor of Shandell in the amount of \$286,450, plus prejudgment interest of \$37,852.06 and in favor of Warren in the amount of \$256,276, plus prejudgment interest of \$12,793.48. The City filed an appeal and this appellate court affirmed the judgment.

On February 7, 2011, Shandell and Warren served the City with a motion for an award of statutory attorney fees. They requested an award of 45 percent of the total judgment for each plaintiff based on their contingency fee agreements with their attorney. The hearing date provided was March 7, 2011. The City opposed the motion on the ground that the motion should have been served on or before February 4, 2011, in order to account for two court holidays in February, and therefore, the City had inadequate notice. The City also argued Shandell and Warren had failed to provide evidence that the fees requested were reasonable. The trial court denied the motion on the grounds of inadequate notice and information about reasonableness, without prejudice to filing a new motion.

Shandell and Warren filed a second motion for an attorney fees award on March 23, 2011, with additional information. The City opposed the motion on the

grounds that amount of the fees requested should have been calculated based on the amount of the judgments net of costs in accordance with the contingency fee agreements. The City continued to argue that there was insufficient evidence of the reasonableness of the fees requested. Shandell and Warren filed a reply.

A hearing was held on April 28, 2011. The City argued that Shandell and Warren needed to provide a record of the time expended by their attorney. Shandell and Warren argued there was no requirement to supply a billing record in a contingency fee case. The trial court continued the hearing and required Shandell and Warren to submit a calculation of attorney fees based on the amount of the judgments after deducting costs and evidence of the hours expended. The court provided a briefing schedule and a new hearing date. The City objected to continuing the hearing.

Shandell and Warren provided additional information. The City filed an opposition arguing the amount was still calculated incorrectly and there was insufficient evidence of reasonableness. A hearing was held on June 8, 2011. The trial court concluded that \$400 per hour was a reasonable hourly fee and the attorneys involved in the case had performed with a high level of skill and competence. In addition, the court found evidence that plaintiffs' attorney expended 509 hours was a reasonable amount of time. Based on these findings, the court awarded attorney fees of \$109,900 to Shandell and \$93,619 to Warren. The City filed a timely notice of appeal from the court's order awarding attorney fees.

DISCUSSION

The City contends the trial court abused its discretion by continuing the hearing to allow supplemental briefing and documentation. The City did not raise this issue in the trial court. In general, arguments cannot be raised for the first time on appeal. (*Ward v. Taggart* (1959) 51 Cal.2d 736, 742.) Moreover, no abuse of discretion has been shown.

Code of Civil Procedure section 1036 authorizes an award of attorney fees in an inverse condemnation action. A party claiming statutory attorney fees in an unlimited

civil case must file a motion requesting an award of fees “within the time for filing a notice of appeal under [California Rules of Court,] rules 8.104 and 8.108[.]” (Cal. Rules of Court, rule 3.1702(b)(1).) California Rules of Court, rule 8.104 provides that the time for filing a notice of appeal is 60 days after the superior court clerk serves a notice of entry of judgment, 60 days after the party filing the notice of appeal serves or is served a notice of entry of judgment, or 180 days, whichever is earliest. Therefore, in this case, Shandell and Warren would normally have had 60 days to file a motion for an award of attorney fees after they served a notice of entry of judgment on February 8, 2011. However, “[f]or 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.” (Cal. Rules of Court, rule 3.1702(d).)

“[California Rules of Court r]ule 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.) The trial court has broad discretion to allow relief for good cause from a failure to timely file a motion for an award of attorney fees. (Cf. *Pollard v. Saxe & Yolles Dev. Co.* (1974) 12 Cal.3d 374, 381 [“In the absence of prejudice, the trial court has broad discretion in allowing relief on grounds of inadvertence from a failure to timely file a cost bill.”].) Upon a showing of good cause, the trial court can even grant an extension of time to file a motion for attorney fees that is requested for the first time after the expiration of the time for filing a notice of appeal. (*Lewow v. Surfside III Condominium Owners Assn., Inc.*, *supra*, at p. 135.)

Shandell and Warren filed their motion for attorney fees within the 60-day time limit. California Rules of Court, rule 3.1702 does not require the motion to be heard and ruled upon within the time limit. The attorney for Shandell and Warren believed that time records were not required under the case law for an award of statutory attorney fees based on a contingency fee agreement. The City has not shown that the plaintiffs’ position was unreasonable. The trial court did not abuse its discretion in finding good cause existed to continue the hearing and require submission of additional evidence.

DISPOSITION

The postjudgment order awarding attorney fees is affirmed. Respondents Irene Shandell and Beverly Warren are awarded their costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.