Filed 5/25/16 Hughes v. Dept of Corrections and Rehab. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHARLES HUGHES, Plaintiff and Appellant, v. STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION et al., Defendants and Respondents.	B259492 (Los Angeles County Super. Ct. No. BC355143)

APPEAL from an order of the Superior Court of the County of Los Angeles, Terry Green, Judge. Affirmed.

Law Office of Stephen J. Horvath, Stephen J. Horvath and Marcus J. Berger, for Plaintiff and Appellant.

Benedon & Serlin, Douglas G. Benedon and Kelly R. Horwitz, for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Christopher Knudsen, Senior Assistant Attorney General, Gary S. Balekjian, Supervising Deputy Attorney General, Gabrielle H. Brumbach and Bruce Reynolds, Deputy Attorneys General, for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Charles Hughes (plaintiff) appeals from the trial court's order granting, in part, his motion for an award of attorney fees and costs incurred on appeal (fee motion). According to plaintiff, the trial court erred in determining the fee motion because it subjectively selected a total amount of fees to award instead of following the required lodestar adjustment method. Plaintiff further contends that the trial court abused its discretion by: arbitrarily reducing by 25 percent the number of hours expended by his attorneys on appeal; failing to select market hourly rates for his attorneys; and refusing to adjust the lodestar amount upward by the requested 1.5 multiplier. Plaintiff also contends that the trial court erred by failing to rule on his requests for paralegal fees and costs incurred on appeal.

We hold that the record of the hearing on the fee motion demonstrates that the trial court followed the lodestar adjustment method in determining the fee award and that the court did not abuse its discretion in selecting hourly rates for plaintiff's attorneys. We further hold that plaintiff waived his appellate contentions concerning the trial court's 25 percent reduction in the number of hours expended by his attorneys and the trial court's failure to rule on his requests for paralegal fees and costs. We therefore affirm the trial court's order granting, in part, the fee motion.

BACKGROUND

A. Department's Appeal from Judgment

Following the entry of judgment on a $1,670,393.37 jury verdict in favor of plaintiff, defendant and respondent the Department of Corrections and Rehabilitation (Department) filed an appeal from the judgment. The parties briefed the issues on appeal thoroughly, and, in January 2014, we issued an unpublished opinion affirming the judgment. On April 3, 2014, the remittitur was filed in the trial court.

B. Fee Motion

1. Motion and Supporting Evidence

Following remittitur, plaintiff filed the fee motion. The motion requested attorney fees, before adjustment, of $516,908.25, and a multiplier of 1.5, for a total fee award of $773,089.50. According to plaintiff, his two appellate specialists (attorneys Benedon and Serlin), his two trial counsel (attorneys Horvath and Berger), and his two paralegals had expended a total of 1010.1 hours responding to the appeal. Plaintiff sought a $650 hourly rate for his appellate specialists, a $400 hourly rate for his trial attorneys, and a $145 hourly rate for his paralegals. Plaintiff also sought $5,219.63 in costs incurred on appeal.

2. Opposition and Supporting Evidence

The Department filed an opposition to the fee motion supported by, inter alia, the expert declaration of attorney Andre Jardini. Jardini opined that plaintiff's attorneys had been fully compensated for their appellate work because they had agreed to accept $200 per hour for that work from plaintiff's union. In the alternative, based on his review of a market survey of attorney salaries, Jardini concluded that "an attorney rate of $350 would more than adequately compensate plaintiff's counsel for their appellate work."

Jardini also concluded that the attorney hours billed for the appeal were excessive. He calculated that of the 1000 hours billed, only 586.90 hours were appropriate. For example, he opined that appellate specialist Benedon appropriately billed 117 hours to review the record, but trial attorney Horvath inappropriately billed an additional 105 hours to review the same record.

Jardini further concluded that the requested multiplier was not warranted under the circumstances. According to Jardini, a multiplier was not warranted because plaintiff's attorneys were paid by the hour, not on a contingent basis, and because the "fee award [would] ultimately fall upon the taxpayers."

As for the requested costs, Jardini recommended that no costs be awarded because plaintiff had not submitted an itemized cost bill and the costs requested were not limited to "recoverable costs."

3. Reply Brief

In his reply brief, plaintiff agreed to a few of the time reductions identified in the opposition, seeking compensation for 951.70 hours rather than the 1010.1 hours requested in the motion. Plaintiff argued that his attorneys should be compensated for their work at a rate calculated under the lodestar method, not at the rate they agreed to accept from plaintiff's union. He also maintained that a reasonable hourly rate for his appellate specialists should be their normal and customary rate of $650 per hour and that a $400 per hour rate for his trial counsel was justified because of the higher market value of appellate work.

Plaintiff further argued that the multiplier was warranted because the payment by the union only partially reduced the risk to his attorneys. Plaintiff explained that if he had lost the appeal, his attorneys would have lost the value of their regular hourly rates above the $200 per hour paid by the union.

In addition, plaintiff argued that he had not waived his right to costs. According to plaintiff, because his costs were authorized under FEHA (Gov. Code § 12965, subd. (b)), his cost motion was an appropriate mechanism for recovering such costs.

C. Trial Court's Ruling

At the hearing on the fee motion, the trial court informed the parties that it had decided to award a number of attorney hours that was 25 percent below that sought by

plaintiff, a total of 713 hours.[1] The trial court then advised the parties that it had determined a reasonable hourly rate for each of the four attorneys: the appellate specialists, Benedon and Serlin, were each assigned an hourly rate of $300; trial attorney Horvath was also assigned a $300 rate; and trial attorney Berger was assigned a $250 rate. The trial court's comments indicated that it had multiplied each attorney's hours by his adjusted hourly rate; for example, the court noted that an increase in Benedon's hourly rate "would be a substantial upward adjustment [b]ecause he had 298 hours." Based on its determination of the reasonable hourly rates for plaintiff's attorneys and the reasonable number of hours expended in responding to the appeal, the trial court calculated a total reasonable fee award of $200,545.

In response to the trial court's calculation of the attorney fee award, plaintiff's appellate specialist stated that he "certainly under[stood the trial court's] 25 percent reduction of the fees. That's . . . squarely within [the trial court's] discretion. [¶] . . . [¶] Certainly, if you find we spent too [many] hours, that's understandable. There was [an] overlap of work." Plaintiff's trial counsel reaffirmed later in the hearing that plaintiff was not "arguing about [the trial court] cutting [the hours claimed by plaintiff by] 25 percent . . . ."

During argument, in response to plaintiff's counsel's contention that the appellate specialists were entitled to their standard hourly rate of $650, the trial court explained: "Well, then let's work backwards. . . . This is an appeal. I have to award reasonable attorney's fees, middle-of-the-bell curve attorney's fees. This is an appeal from a successful plaintiff's jury verdict. And it's a sophisticated matter. . . . [¶] But there's nothing new on appeal. I mean, the law hasn't changed, the facts haven't changed . . . .

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[1] According to the trial court, in its previous award of attorney fees for the work done in the trial court, it "cut about 25 percent of the hours [claimed for that trial work]; about 75 percent of [that] time was billable. I think that's [also] reasonable [for the work done on the appeal]."

Nothing's really changed. [¶] [W]orking backwards, . . . let's talk [about] the $200,000 [award]. [That] sum to me seemed like a reasonable sum of money, okay? Now you say I should go back and look at this in its component parts, but ultimately, I have to award a sum of money that I think is reasonable. [¶] [T]he . . . $200,545 is a sum of money that I think is reasonable. Now, for all the reasons I said, this is a sophisticated appeal. It had all kinds of efforts that went into it, but I don't know that a bigger sum would be justified."

Notwithstanding the trial court's assertion that the total amount of the award was a reasonable sum, the court confirmed at the end of the argument (as it had stated at the beginning) that it had arrived at that sum by determining the reasonable hourly rates for the attorneys involved and the reasonable amount of hours that should have been expended on the appeal. According to the trial court, it had "look[ed] at all the component [parts] — of course, I looked at the component parts. How else do you do it? But I just think $200,545 is a reasonable sum to expect somebody else to pay as attorney's fees for the appeal in this case, given the unique facts of this case, given the excellent competition you're up against . . . . [¶] I just think $200,000 is a lot of money for an appeal of a case."

DISCUSSSION

A. Standard of Review

The parties disagree on the standard of review that governs our disposition of this appeal. Citing to our decision in *Chodos v. Borman* (2014) 227 Cal.App.4th 76, 91 (*Chodos*), plaintiff contends that whether the legal criteria for an attorney fee award have been met is a question of law that is reviewed de novo, as is the issue of whether an

attorney is entitled to a multiplier.[2] According to plaintiff, if the law has been followed by the trial court in making its determination on an attorney fee award, then the amount of the award is reviewed for abuse of discretion. The Department contends that each of plaintiff's challenges to the attorney fee award is governed by an abuse of discretion standard of review, i.e., the trial court's award can only be reversed if it is shown that it exceeded the bounds of reason.

In this case, there is no dispute that plaintiff, as the prevailing party on the appeal from the judgment, was entitled to an award of attorney fees under the applicable FEHA statute and that the proper method for determining the amount of the award under that statute was the lodestar adjustment method. As a result, this appeal does not concern whether the legal criteria for an award of attorney fees under the statute have been met, such as whether plaintiff was the prevailing party or whether the lodestar adjustment method applies. Therefore, with the exception of plaintiff's contention that the trial court failed to follow the lodestar adjustment method—which, if supported by the record, raises an issue of law that we review de novo—the appropriate standard of review for plaintiff's challenges to the amount of the award is abuse of discretion.

When reviewing the amount of an attorney fee award for abuse of discretion, we presume the trial court considered and applied all appropriate factors in making its determination. "This is in keeping with the overall review standard of abuse of discretion, which is found only where no reasonable basis for the court's action can be shown. (*Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213,

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[2] Plaintiff is mistaken in contending that our decision in *Chodos, supra*, 227 Cal.App.4th 76 held that a trial court's discretionary decision to refuse to award a multiplier is reviewed de novo. In *Chodos*, the issue was not whether the trial court abused its discretion in awarding the plaintiff a multiplier. The issue there was whether the trial court's jury instruction allowing the jury to consider and award a multiplier was legally erroneous based on the facts of that case, including the fact that it was not a fee shifting case or a contingency matter and the plaintiff had alleged the existence of a fee for service agreement with his client to be compensated for legal services rendered at $1000 per hour. (*Id*. at pp. 98-99.)

233 [226 Cal.Rptr. 265].)" *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 621.) "The 'burden is on the party seeking attorney fees to prove that the fees it seeks are reasonable. [Citation.] It is also plaintiffs' burden on appeal to prove that the court abused its discretion in awarding fees.' [Citation.] '"Under the abuse of discretion standard, 'a trial court's ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation.]"' [Citation.] '"The abuse of discretion standard is 'deferential,' but it 'is not empty.' [Citation.] '[I]t asks in substance whether the ruling in question "falls outside the bounds of reason" under the applicable law and the relevant facts [citations].' [Citation.]"' (*Ibid*.) When we are reviewing an award of attorney fees for appellate work, we need not accord the same degree of deference we would give to rulings that involve the trial court's firsthand knowledge. [Citation.] Further, when, as here, the fee order under review was rendered by a judge other than the trial judge, we may exercise '"somewhat more latitude in determining whether there has been an abuse of discretion than would be true in the usual case."' [Citation.]" (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 615-616.)

B. Trial Court's Use of Lodestar Method

1. Legal Principles

Plaintiff claims that the trial court did not use the so-called lodestar adjustment method to calculate the fee award. We discussed in detail that methodology in our opinion in *Chodos, supra,* 227 Cal.App.4th 76, quoting at length from *Ketchum v. Moses* (2001) 24 Cal.4th 1122. "The lodestar adjustment method contemplates a preliminary determination of the amount of the lodestar—the reasonable number of hours expended multiplied by a reasonable hourly rate—and then the possibility of an adjustment of 'that figure up or down depending upon a variety of factors.' (*Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 973.) [¶] 'Under *Serrano* [*v.*

Priest (1977) 20 Cal.3d 25, [141 Cal. Rptr. 315, 569 P.2d 1303] (*Serrano III*)], the lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award. (*Serrano III*, *supra*, 20 Cal.3d at p. 49.) The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, *whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.*'" (*Chodos, supra*, 227 Cal.App.4th at pp. 91-92, fn. omitted.)

We also in *Chodos* explained the theory behind a lodestar enhancement. A """'contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable.'" *The purpose of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives for attorneys enforcing important constitutional rights . . . into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis.* [¶] The economic rationale for fee enhancement in contingency cases has been explained as follows: "A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans." [Citation.] "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." [Citations.]' (*Ketchum, supra*, 24 Cal.4th at pp. 1132-1133, italics added.)" (*Chodos, supra*, 227 Cal.App.4th at pp. 92-93.)

"'*Such fee enhancements are intended to compensate for the risk of loss generally in contingency cases as a class*. [Citation.] In cases involving enforcement of constitutional rights, but little or no damages, such fee enhancements may make such cases economically feasible to competent private attorneys. [Citation.] "[M]ost lawyers of this quality do seem to consider the prospects of success and the fee recoverable before adding to their crowded calendars a case in which payment is contingent." [Citation.]' (*Ketchum, supra*, 24 Cal.4th at p. 1133, italics added.)" (*Chodos, supra*, 227 Cal.App.4th at p. 93.)

2. Analysis

Plaintiff contends that the transcript of the hearing on plaintiff's fee motion demonstrates that the trial court did not follow the lodestar adjustment method in calculating the fee award. According to plaintiff, the trial court arbitrarily selected an amount of fees to award and then worked "backwards" to arrive at the reasonable hourly rates for plaintiff's attorneys and the reasonable number of hours that those attorneys should have expended.

In *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, the court explained that because we presume that the trial court considered all appropriate factors in calculating a reasonable fee under the lodestar adjustment method, there is no requirement that a trial court make a detailed record demonstrating that it followed all of the requirements of that method. "'We find no California case law . . . requiring trial courts to explain their decisions on all motions for attorney fees and costs, or even requiring an express acknowledgment of the lodestar amount. The absence of an explanation of a ruling may make it more difficult for an appellate court to uphold it as reasonable, but we will not presume error based on such an omission. . . . """All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown."' (*Denham v. Superior Court* [(1970)] 2 Cal.3d 557, 564 . . . .)" In the absence of evidence to the contrary, we presume that the trial court considered the relevant factors. [Citation.]'" (*Id.* at p. 1250.)

Contrary to plaintiff's assertion, the record of the hearing on the fee motion does not show that the trial court subjectively selected a total sum for the fee award and then worked "backwards" to develop the hourly rates for his attorneys and the number of hours they should have expended. Instead, the record reflects that, at the outset of the hearing, the trial court stated that it had considered the total number of hours expended as claimed by plaintiff's attorneys and reduced that amount by 25 percent, awarding compensation for 713 hours. (This is in fact approximately 25 percent below the 951.7 hours for which plaintiff sought compensation in his reply brief). The trial court next articulated the hourly rates it had found for each of the four plaintiff's attorneys. It was clear that the court had multiplied those rates by the adjusted hours expended to arrive at the total amount of the fee award.

Although the trial court explained during the course of the hearing its view that the total amount of the fee award seemed reasonable on its face for an appeal of this type, this does not mean that the court did not use the lodestar adjustment method to calculate the award. Indeed, the court confirmed at the end of the hearing that it had initially arrived at that total award by "look[ing] at all . . . the component parts", i.e., the rates and total number of hours expended, and then asked rhetorically, "How else do you do it?"

Fairly construed, the transcript of the hearing suggests, consistent with the presumption of correctness on appeal, that the trial court was aware of the lodestar adjustment method and utilized it in calculating the fee award. We therefore conclude that the trial court followed the requisite methodology in calculating a lodestar amount.

C. Waiver of Challenge to Trial Court's Reasonable Number of Hours Finding

Plaintiff challenges the trial court's 25 percent reduction of the total number of hours his attorneys claimed they expended in responding to the appeal. The Department, however, contends that plaintiff waived that challenge when his attorney agreed at oral argument that such a reduction was within the trial court's discretion.

A litigant can by his affirmative conduct or failure to object create the basis for a finding of waiver. "One who by his conduct accepts a ruling of the court under circumstances amounting to acquiescence therein, may not complain of it on appeal." (*Allin v. Internat. etc. Stage Employes* (1952) 113 Cal.App.2d 135, 138.) "'An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the lower court by some appropriate method . . . . The circumstances may involve such intentional acts or acquiescence as to be appropriately classified under the headings of estoppel or waiver . . . . Often, however, the explanation is simply that it is *unfair to the trial judge and to the adverse party* to take advantage of an error on appeal when it could easily have been corrected at the trial.' [Citation.]" (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.)

As set forth above, at oral argument, plaintiff's counsel candidly advised the trial court that plaintiff understood and accepted the trial court's 25 percent reduction in the total number of attorney hours claimed by plaintiff because such a reduction was "squarely within" the trial court's discretion. That unequivocal concession operated to remove that issue from further dispute during argument. Had plaintiff not made the concession and instead made at the hearing the arguments he now makes on appeal concerning the reduction in hours expended, both the trial court and the Department's counsel would have had a full and fair opportunity to address them. Thus, because it would be unfair to the trial court and defense counsel to allow plaintiff to raise the issue on appeal, we deem it waived.

D. Trial Court's Hourly Rate Determinations Were Supported by Record

Plaintiff contends that the trial court's determinations of the hourly rates for his attorneys are not supported by the record. According to plaintiff, his evidence in support of the fee motion demonstrated that the rates selected by the trial court in calculating the lodestar were well below the prevailing market rates.

"'The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.' [Citation.]" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

"An attorney fee dispute is not exempt from generally applicable appellate principles: '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.' (*In re Marriage of Zimmerman* (1993) 16 Cal.App.4th 556, 561-562 [20 Cal.Rptr.2d 132].) [¶] When the trial court substantially reduces a fee or cost request, we infer the court has determined the request was inflated. (*Levy v. Toyota Motor Sales, U.S.A., Inc.* (1992) 4 Cal.App.4th 807, 817 [5 Cal.Rptr.2d 770] (*Levy*).) The trial court is not required to issue a statement of decision. (*Ketchum, supra*, 24 Cal.4th at p. 1140; *Maughan* [*Google Technology, Inc.* (2006)] 143 Cal.App.4th [1242,] 1252; see *In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040 [102 Cal.Rptr.2d 662] [§ 632, providing for statements of decision, does not apply to orders on a motion].) We may not reweigh on appeal a trial court's assessment of an attorney's declaration. (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622-623 [34 Cal.Rptr.2d 26].) 'The trial court, with declarations and supporting affidavits, [is] able to assess credibility and resolve any conflicts in the evidence. Its findings . . . are entitled to great weight. Even though contrary findings *could* have been made, an appellate court should defer to the factual determinations made by the trial court when the evidence is in conflict. This is true whether the trial court's ruling is based on oral testimony or declarations. [Fn. omitted.]'

(*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479 [243 Cal.Rptr. 902, 749 P.2d 339].)" (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322-1323.)

Plaintiff's arguments concerning the trial court's rate determinations ask us to disregard or discount the Department's evidence in opposition to the fee motion and to give greater weight to his evidence. As explained above, however, we cannot on appeal reweigh the evidence or substitute our credibility determinations and assessments of declarations for those of the trial court. Those are matters committed to the sound discretion of the trial court.

Here, the record on the fee motion contained ample evidence that supported the trial court's hourly rate determinations. Jardini's expert declaration provided at least two different factual bases for the trial court's rate determinations. First, he opined that the $200 per hour rate plaintiff's counsel agreed to accept from his union "should be considered as the appropriate rate established in this case based upon an economic relationship between the parties concerning the handling of the litigation. Because the rate has been agreed, it should set the maximum rate to be considered reasonable." In addition, based on a market survey of attorney salaries in the community, he concluded that "an attorney rate of $350 would more than adequately compensate plaintiff's counsel for their appellate work." That testimony supported a reasonable inference that the $300 and $250 per hour rates selected by the trial court were within the range of market rates charged in the community for similar legal work. The trial court therefore did not abuse its discretion in determining the reasonable hourly rates for plaintiff's attorneys.

E. Denial of Request for Multiplier

As we explained in *Chodos, supra*, 227 Cal.App.4th 76, the primary rational for awarding a multiplier, in addition to the lodestar amount, is to compensate the attorney for the risk he or she undertakes when accepting representation on a contingent basis, i.e., the risk that the attorney will be paid *nothing* if he or she loses, and to compensate the attorney for the loan of his or her services. Here, there was never any loan of services or risk that plaintiff's appellate counsel would receive nothing for their services because

they were guaranteed at least $200 per hour for those services under an agreement with the union, even if plaintiff lost on appeal. Although plaintiff contends that his attorneys undertook the risk of receiving *less* than their customary rates, that type of hybrid or substantially reduced risk is not the same risk upon which the multiplier rationale is based. As explained above, the cases justifying a multiplier are based on true contingency agreements under which the attorney takes nothing if not successful, and plaintiff does not cite any case where a multiplier was awarded to attorneys who were guaranteed some payment, regardless of the outcome of their representation.

Because a true contingent risk was not undertaken by the attorneys in this case, there was no compelling rationale for awarding a multiplier. Therefore, the trial court did not abuse its discretion in refusing to award the requested multiplier, in addition to the lodestar amount.

F. Paralegal Fees

Plaintiff contends that the trial court erred by not making a ruling on his request for paralegal fees. According to plaintiff, because there was no legal basis upon which to deny his request for paralegal fees, the trial court should have awarded them.

"'In California, the trial court has no sua sponte duty to make specific factual findings explaining its calculation of the fee award and the appellate courts will infer all findings exist to support the trial court's determination. [Citations.] California courts have stated a disinclination to review the amount of an award when specific findings were not requested. [Citation.] . . . [¶] Thus, in California, it is incumbent on the party who is dissatisfied with the court's calculation of the number of allowable hours to request specific findings.' (*California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, 754-755 [246 Cal.Rptr. 285].) [The a]ppellant 'did not request specific findings and therefore may not now complain on appeal that [it does] not know which particular hours the court eliminated.' (*Id*., at p. 755.)" (*Taylor v. Nabors Drilling USA, LP*, *supra*, 222 Cal.App.4th at pp. 1250-1251.)

Plaintiff's request for paralegal fees was not discussed during the hearing on the fee motion and, although the trial court advised the parties of the specific amount of *attorney* fees it was awarding, plaintiff's counsel did not ask the court for a ruling on a specific amount of *paralegal* fees. Contrary to plaintiff's claim here, however, it appears likely that the trial court did award paralegal fees. Plaintiff's request for 951.7 hours included paralegal fees, and the trial court stated that it awarded fees for 713 hours of work, which is a 25 percent reduction from that amount.[3] Regardless, plaintiff's failure to adequately address the issue with the trial court prevents him from now complaining about it on appeal.

G. Costs

Plaintiff maintains that the trial court erred by not including an award of costs as requested in its order on the fee motion. According to plaintiff, as the prevailing party on appeal, he had an absolute entitlement to a cost award under Government Code section 12965, subdivision (b).

We conclude that plaintiff cannot raise a claim of error on appeal based on the trial court's failure to make a cost award. Although plaintiff requested a total amount of costs in the fee motion, he never addressed his entitlement to costs at the hearing, even though

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[3] Plaintiff did not ask the trial court to explain its particular calculation for each attorney. The following is an example of a calculation that yields the trial court's total award by assuming a $110 hourly rate for paralegals and using the following amounts as the requested hours from plaintiff's reply brief reduced by 25 percent: Horvath (180 hours for $54,000), Berger (179.1 hours for $44,775), Benedon (297.8 hours for $89,340), Serlin (33 hours for $9,900), and paralegals (23 hours for $2,530). The total is 712.9 hours and $200,545. The trial court may have rounded the hourly numbers differently and used a different paralegal rate, and thus may not have used this precise calculation, but the calculation demonstrates that there is no reason to assume that the trial court did not award fees for paralegal time.

the Department opposed the request in its opposition papers on timeliness grounds.[4] Plaintiff then offered to prepare the written order on the fee motion, and did so, but made no provision in that order for an award of costs. Plaintiff's failure to address this issue prevents him from now complaining about the cost issue on appeal.

DISPOSITION

The order granting, in part, the fee motion is affirmed. The Department is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

RAPHAEL, J. *

We concur:

TURNER, P. J.

BAKER, J.

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[4] Plaintiff did not file a verified memorandum of costs as required by California Rules of Court, rule 8.278(c)(1), so he never detailed his costs in such a manner that it could be determined whether they are reasonable under California Rules of Court, rule 8.278(d).

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