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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LANDWATCH SAN LUIS OBISPO CO.,

Plaintiff and Appellant,

v.

CAMBRIA COMMUNITY SERVICES
DISTRICT,

Defendant and Respondent.

2d Civil No. B229545
(Super. Ct. No. CV080991)
(San Luis Obispo County)

A nonprofit corporation brought a petition for writ of administrative mandate challenging a public entity's decision under the California Environmental Quality Act. (Pub. Resources Code, § 21000 et seq.) The corporation lost and the trial court awarded the public entity costs for preparing the administrative record. The corporation challenges the cost award. We affirm.

FACTS

Landwatch San Luis Obispo County (Landwatch) filed a petition for writ of administrative mandate against the Cambria Community Services District (District). The petition challenged the District's decision to certify an environmental impact report for its water master plan program.

On October 27, 2008, Landwatch requested that the District prepare the administrative record. The request stated, "[Landwatch] will pay the reasonable cost of preparation of the record upon receipt of notice of estimated cost of preparation." The District did not provide an estimated cost for preparation of the record. It simply prepared the record. Thereafter, Landwatch made motions to compel further production of documents, but never repeated its request for a cost estimate.

On October 6, 2010, a judgment was entered denying Landwatch's petition. The judgment awarded costs to the District, but left the amount of the costs blank.

On October 13, 2010, the District filed a memorandum of costs seeking \$23,294 for preparation of the administrative transcript. The memorandum included \$11,572.81 for time expended by the District's general manager, its engineer and its attorney in preparing the transcript. The balance of the costs was attributed to time spent preparing the administrative transcript by the District's clerk and three administrative assistants, plus \$2,101 copying costs for 6,292 pages of transcript.

On November 1, 2010, costs in the amount of \$23,294 were entered into the blank for costs on the judgment. On the same day, Landwatch filed a notice of motion in opposition to the District's cost memorandum.

On December 2, 2010, Landwatch filed a notice of appeal from the October 6, 2010 judgment.

On December 16, 2010, Landwatch filed points and authorities in support of its motion in opposition to the cost memorandum. In its points and authorities, Landwatch objected to the November 1, 2010 entry of costs while its opposition was pending. Landwatch also objected that the memorandum of costs lists the time and rate for each District employee without specifying what task the employee performed. Landwatch complained that without specifying the task performed by the employee, it is not possible to determine whether the time expended was reasonable. Landwatch also complained that it had not received a cost estimate from the District prior to the preparation of the transcript.

The trial court voided the costs award of \$23,294, ruling the award was premature. The court found that Landwatch had not requested an estimate of costs from the District. The court also found that it is not clear why the professional services of the District's engineer, general manager and attorney were necessary to the preparation of the administrative transcript. The court ordered the District's engineer, general manager and attorney to produce evidence to support their claims. The court did not order the District's clerk or administrative assistants to offer evidence to support their claims.

After the District's professional staff offered further evidence, the court reduced the \$11,572.81 claimed by the District's engineer, manager and attorney to \$2,894.22. The court did not reduce costs claimed by the District's clerk and administrative assistants or for copying costs. The final cost award was \$14,615.41, entered March 8, 2011.

DISCUSSION

I

The District contends that Landwatch did not appeal from the judgment it seeks to challenge.

The District points out the notice of appeal specifies it is from the judgment entered October 6, 2010. At the time, Landwatch filed the notice of appeal the judgment contained a cost award of \$23,294. The court vacated that cost award as premature. On March 8, 2011, the court entered judgment with a new cost award of \$14,615.21. The District argues Landwatch did not appeal the March 8, 2011 judgment.

But the October 6, 2010 judgment was entered with the amount of costs left blank. When a judgment awards costs to a prevailing party and provides for a later determination of the amount, the notice of appeal subsumes any later order setting the amount of the award. (*Grant v. List & Lothrop* (1992) 2 Cal.App.4th 993, 998.) That costs were entered on November 1, is irrelevant. Those costs were determined by the court not to have been properly entered. There was only one judgment. That judgment was entered on October 6, 2010. The judgment entered on March 8, 2011, adds nothing

more than an award of costs. That award is encompassed by the notice of appeal of the October 6, 2010 judgment.

The District's reliance on *California Machinery & Supply Co. v. University City Syndicate* (1934) 3 Cal.App.2d 425, 426, is misplaced. There in ruling on a motion for a new trial, the court changed and added to its findings and conclusions in a material respect and entered a modified judgment. Here there was no ruling on a motion for a new trial that substantially changed the judgment. Here there was only one proper entry of an award of costs. That award is encompassed in Landwatch's notice of appeal.

II

Landwatch contends the trial court abused its discretion in failing to consider its request for a cost estimate in awarding costs.

The trial court found that Landwatch did not ask for a cost estimate. It appears from the record, however, that the trial court was in error. Landwatch's request that the District prepare the administrative record stated in part, "[Landwatch] will pay the reasonable cost of preparation of the record upon receipt of notice of estimated cost of preparation."

Public Resources Code section 21167.6, subdivision (b)(1) requires a public agency to prepare and certify the administrative record within 60 days of the request. Subdivision (b)(2) provides that the plaintiff or petitioner may elect to prepare the record or the parties may agree to an alternative method of preparation. Nothing in the section, however, requires the public agency to provide a cost estimate for preparing the record.

Landwatch relies on *Hayward Area Planning Association v. City of Hayward* (2005) 128 Cal.App.4th 176. There plaintiffs asked the city to prepare the administrative record, but reserved the right to prepare the record themselves after receiving the city's cost estimate. The city informed plaintiffs of the approximate number of pages in the record and listed the tasks necessary to prepare the record but did not provide a dollar amount. Plaintiffs elected to have the city prepare the record. The city delegated the task to a law firm representing the real party in interest. The City prevailed

in the action and sought costs consisting largely of the cost of preparing the record. The Court of Appeal held the city had no authority to delegate the task of preparing the record without the consent of the plaintiffs. In so holding, the Court said: "When the agency prepares the record under section 21167.6, subdivision (b)(1), costs are controlled in three ways. First, as occurred in this case, the petitioner may request an initial cost estimate to inform its decision whether to prepare the record itself. That cost estimate serves as a restraint on the agency's ultimate recovery of costs." (*Hayward, supra.*, at p. 183.)

To the extent *Hayward* may be read as standing for the proposition that a public agency is required to provide a cost estimate on request, it cites no authority. *Saint Vincent School for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1016, follows *Hayward* but cites only *Hayward* as authority. Nor does Landwatch cite any statutory authority for such a proposition. We presume that had the Legislature intended to require a public agency to provide a cost estimate, it would have said so. We decline to follow *Hayward* in adding to section 21167.6 what the Legislature did not.

The trial court did not err in refusing to consider the District's failure to provide a cost estimate.

III

Landwatch contends the award of \$9,620.09 for costs incurred by the District's clerical and administrative employees must be reversed. Landwatch claims the trial court failed to apply Code of Civil Procedure section 1033.5, subdivision (c), requiring that the costs be both necessary and reasonable. It appears Landwatch's argument is simply that the trial court should have required the District's clerical and administrative staff to segregate the costs by task.

The trial court required the District to justify costs claimed by its manager, engineer and counsel because it was not clear what tasks they performed in preparing the administrative record. The trial court did not require a similar justification for the time spent by the District's clerical and administrative employees because it is obvious what

tasks they performed. They had to gather, copy, collate, bind and distribute the administrative record.

The trial court was well aware of the requirements of Code of Civil Procedure section 1033.5, subdivision (c), that any item of cost awarded must be both necessary and reasonable. It simply decided that \$9,620.09 was a reasonable and necessary cost for the clerical and administrative tasks involved in preparing a record of over 6,000 pages. The trial court is perfectly capable of estimating the reasonable and necessary costs involved in such an effort without the aid of additional evidence. Landwatch cites to nothing that shows the trial court was not accurate in its estimate.

The judgment is affirmed. Costs are awarded to respondent.

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GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.*

* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Martin Tangeman, Judge

Superior Court County of San Luis Obispo

Cynthia Hawley for Plaintiff and Appellant.

Carmel & Naccasha, Timothy Carmel and Michel M. McMahon for
Defendant and Respondent.