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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Sutter)

BALDEV SINGH HUNDAL et al.,

Plaintiffs and Appellants,

v.

SATWANT SINGH et al.,

Defendants and Respondents.

C071873

(Super. Ct. No. CVCS092654)

In this auto accident case, plaintiffs Baldev and Ranver Hundal¹ sued defendants Satwant Singh and Sanjiv Midha after the Hundals' pickup truck collided with a water tank trailer being pulled by a tractor that Singh was driving in the course of his employment by Midha. At the time of the accident, which occurred before sunrise, the trailer did not have a reflective triangle on the back of it as required by California law. (See Veh. Code, § 24615.)

The jury found both defendants were negligent but their negligence was not a cause of damage to either plaintiff. The court subsequently awarded defendants over

¹ To avoid confusion, where necessary we will refer to the Hundals by their first names.

\$21,000 in costs, including over \$16,000 in expert witness fees because both plaintiffs had rejected Code of Civil Procedure² section 998 offers before trial and had failed to obtain better judgments than defendants had offered.

On appeal, plaintiffs contend the trial court abused its discretion in allowing Midha, who witnessed the accident, to offer lay opinion testimony that there was enough light for Baldev to have seen the trailer even without the required reflective triangle. In a similar vein, they contend the trial court also abused its discretion in allowing the California Highway Patrol officer who investigated the accident to testify about his observation of the lighting conditions at the scene the next day at the same time the accident had occurred and to express an opinion about the sufficiency of the lighting on the day of the accident based on that observation. Finally, they contend the trial court abused its discretion in finding the section 998 offers were reasonable and made in good faith and in refusing to require defendants to allocate their expert witness fees between the two plaintiffs.

Finding no merit in any of plaintiffs' arguments, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2009, Baldev and Ranver (husband and wife) were injured when the pickup truck Baldev was driving, and in which Ranver was a passenger, struck a water tank trailer being pulled by a tractor in front of them on Eager Road. The accident occurred before sunrise, at 5:37 a.m. At the time of the accident, the trailer did not have a reflective triangle on the back of it as required by California law.³

² Undesignated statutory references are to the Code of Civil Procedure.

³ With certain exceptions not applicable here, “[i]t is unlawful to operate upon a public highway any vehicle or combination of vehicles, which is designed to be and is operated at a speed of 25 miles per hour or less, unless the rearmost vehicle displays a ‘slow-moving vehicle emblem,’ . . . The emblem shall be mounted on the rear of the vehicle, base down, and at a height of not less than three nor more than five feet from

In November 2009, plaintiffs commenced this action for personal injuries and property damage against Singh, who was driving the tractor, and Midha, who owned the tractor and the trailer.

Midha's Lay Opinion Testimony

At trial in June 2012, in response to questions from plaintiffs' counsel, Midha testified that at the time of the accident he was standing on the north side of Eager Road about 250 feet to the east of where the accident occurred. He saw the pickup when it was about 400 or 500 feet from the tractor.

On examination by defense counsel, Midha testified that when he saw the pickup, it was not because of the pickup's headlights; instead, the lighting conditions were such that he could see the truck itself. He also had been able to see the tractor enter Eager Road, which occurred at a spot that was roughly 1,000 feet from where he was standing. When defense counsel asked if it was Midha's opinion, based on the lighting conditions, that the tractor and water tank would have been visible to Baldev as he approached, Midha responded, "Absolutely." Plaintiffs' counsel moved to strike the answer as "call[ing] for opinion of a lay witness." The court suggested that defense counsel "lay a better foundation." In response, defense counsel elicited Midha's testimony that he had been standing outside about 15 to 20 minutes and he could see Singh driving the tractor with the right tire on the shoulder and the left tire "kind of [in] the middle of the road," not because of the headlights on the tractor but because "[t]here was enough light." Plaintiffs' counsel objected for lack of foundation, and the court overruled the objection. Midha then testified again that he could see the tractor "independent of [its] headlights."

When defense counsel asked whether, based on his observations and the sight distance he had, Midha believed Baldev should have been able to see the tractor and

ground to base. Such emblem shall consist of a truncated equilateral triangle having a minimum height of 14 inches with a red reflective border not less than 1 3/4 inches in width and a fluorescent orange center." (Veh. Code, § 24615.)

water tank notwithstanding the absence of the reflective triangle, plaintiffs' counsel objected, asserting that Midha was "not qualified" to give an opinion, and his opinion was "improper" because the proper question should have been, "if the triangle [wa]s there, would Mr. Hundal have been able to see it."

In response to the objection from plaintiffs' counsel, the court itself questioned Midha. In response to the court's questions, Midha testified that the sky was "bluish," "like daylight," and "[t]he sun was coming up." He did not think the stars were bright and visible, and there are very few street lights so they would not have been of particular help. The court then asked, "But in your recollection, you had no trouble making out the tractor as opposed to just seeing two lights in the dark, is that correct?" Plaintiffs' counsel objected without specifying a basis, and the court overruled the objection and told Midha he could answer. Midha responded affirmatively.

Plaintiffs' counsel then took the opportunity to ask Midha some further questions "with regard to [the] foundation as to [h]is prospective lay opinion." In response to those questions, Midha said he could see up to 2,000 feet to the east at the time of the accident. He could not recall the cloud conditions over the Sierra Nevada. Midha then testified that while there are big walnut trees along the south side of Eager Road, there were no trees where the accident happened. The first big walnut tree is 60 to 70 feet to the east of the accident site. Midha did not think that tree would cast a shadow given "whatever ambient light there was" at the time.

At this point, the court excused the jury. Plaintiffs' counsel argued "[i]t's not relevant as to what sight distance is without putting it in reference to mandated laws. Admittedly violated with respect to the signage on the tractor." The court stated that its "preliminary thinking" was that Midha's testimony as to "whether or not the pickup truck could have seen . . . the tractor [and] trailer under those conditions . . . is pretty much within the realm of common everyday experience that a lay person ought to be able to testify to that." Plaintiffs' counsel responded, "My guy has the right of the protection of

law when he's approaching there to have the law obeyed. . . . The proper question is, was it lit? And somebody says, 'I could see it.' That's not the question. Because the question is in this time frame my client is entitled to have that properly signed with a fluorescent deal." Defendants' counsel replied that the proposed opinion testimony was relevant because defendants were entitled to show comparative fault on the part of Baldev. Ultimately, the court ruled that Midha could offer his lay opinion.

When the jury returned, the court instructed the jury on lay opinion testimony. Midha then expressed his opinion that "[t]here was enough daylight or light that morning that [Baldev] could have seen certainly the tractor and trailer without the triangle."

Officer Kleinert's Expert Opinion Testimony

Before trial, plaintiffs filed a motion in limine to exclude any expert opinion testimony by California Highway Patrolman D. J. Kleinert, who investigated the accident -- particularly, his opinion "that in the ambient light [Baldev] should have seen the slow-moving agricultural implements which admittedly were neither properly signed nor lit." Plaintiffs argued there was "no case authority that the investigating officer may go the next day trying to equate the light conditions [let] alone redefine 'darkness' under the guise of being a[n] 'expert.'"⁴

At trial, in the course of stating his qualifications, Officer Kleinert testified that in investigating an accident to determine how it occurred and who was at fault, one of the things you do is look at the lighting conditions if there was an issue of lighting. The court later qualified the officer as an expert witness (presumably in the field of accident reconstruction).

Officer Kleinert then testified that, according to his report, the collision occurred at 5:37 a.m. He arrived at the scene at approximately 5:55 a.m. Upon his arrival, one of

⁴ " 'Darkness' is any time from one-half hour after sunset to one-half hour before sunrise and any other time when visibility is not sufficient to render clearly discernible any person or vehicle on the highway at a distance of 1,000 feet." (Veh. Code, § 280.)

the concerns he had was the level of ambient lighting at the time of the accident. When he arrived, there were early morning lighting conditions, but you could clearly see the collision scene. However, because he arrived 18 minutes after the time of the collision, what he did -- as he had always done in a case like this -- was return to the scene the next morning to observe the lighting conditions at the same time as the accident occurred.

When defense counsel asked if Officer Kleinert reached a conclusion, based on his observation of the lighting conditions the next day, as to whether the tractor and trailer would have been visible to Baldev as he approached, plaintiffs' counsel objected based on lack of foundation. The court sustained the objection. Plaintiffs' counsel then argued that because the accident occurred "within the legal definition of darkness . . . [a]nd that required the tractor and trailer to be properly signed, which the testimony so far is they weren't," Officer Kleinert was "not an expert to form a conclusion independent of the mandate of the statutes that [were not] complied with." The court overruled that objection.

Defense counsel then elicited Officer Kleinert's testimony that the weather was clear on the morning of the accident and on the following morning. Officer Kleinert noted that although 5:37 a.m. was legally during the hours of darkness, "twilight conditions existed at the time" and "there was enough ambient light to properly illuminate . . . the scene of the collision . . . that made observing traffic on Eager Road visible." When defense counsel asked if he determined whether the tractor and trailer would have been visible to Baldev as he was driving on the road despite the absence of a reflective triangle, plaintiffs' counsel objected, contending Officer Kleinert "didn't duplicate the situation" and it was "legally irrelevant for him to express an opinion based on a violation of the law." The court overruled the objection. The court then asked Officer Kleinert if he felt "comfortable" giving an opinion as to whether there was sufficient light to see another vehicle on the road. The officer responded that he did. He then testified that, in his opinion, the tractor and trailer would have been visible under the

ambient lighting conditions at a sufficient distance to allow Baldev to stop or avoid contact with the trailer.

Section 998 Offers

A month before trial, defendants served a section 998 offer on Baldev, offering to allow judgment for \$5,001 to be taken in his favor against them. At the same time, defendants served a separate section 998 offer on Ranver, offering to allow judgment for \$15,001 to be taken in her favor against them.

The jury returned special verdicts finding that Singh and Midha were both negligent but their negligence was not a cause of damage to either plaintiff. After the court entered judgment against plaintiffs on the jury verdicts, defendants filed a memorandum of costs (costs memo) claiming, among other things, \$13,100 in expert witness fees for Dr. Peter Sfakianos. In response, plaintiffs' counsel sent a letter to defense counsel, asserting that because defendants had made separate section 998 offers to each plaintiff, the costs memo should reflect this fact because plaintiffs were not jointly and severally liable for the section 998 costs sought (i.e., the expert witness fees). Plaintiffs' counsel requested that defendants file an amended costs memo.

Two days after that letter, apparently without waiting for an amended costs memo, plaintiffs filed a motion to tax costs. Among other things, plaintiffs contended the section 998 costs were "not properly allocated as to each plaintiff."

A day later, defendants filed an amended costs memo in which they now claimed \$21,650 in expert witness fees -- \$16,600 for Dr. Sfakianos and \$5,050 for Dr. E. Younger. Despite the letter from plaintiffs' counsel and the arguments in the original motion to tax costs, defendants still made no attempt to allocate the expert witness fees between the two plaintiffs. Plaintiffs' counsel sent another letter, noting that because Dr. Sfakianos did not examine Baldev, plaintiffs' counsel did not "know how his fees c[ould] be slipped over to [Baldev]."

Apparently receiving no response to this letter, plaintiffs filed a motion to tax the costs in the amended costs memo and again argued that defendants had failed to “segregate out the CCP 998 expert fees sought as to each plaintiff.” Plaintiffs argued that Baldev was not responsible for Dr. Sfakianos’s fees, liability for which arose solely “by virtue of a CCP 998 Offer directed to [Ranver].” Plaintiffs also complained that Dr. Younger had examined both plaintiffs, but defendants had not segregated the \$5,050 claimed for him between the two plaintiffs.

In moving to tax costs, plaintiffs also asserted that the section 998 offers were not made in good faith “given the nature of the liability, the medical damages suffered, the loss of wages suffered, the property damages, and the general damages to which each plaintiff was entitled.” As to Ranver, plaintiffs asserted that she had medical expenses of \$10,000, arguably had physical therapy expenses of over \$4,000, wage loss of \$500 or more, property loss of \$1,600, an unspecified amount of pain and suffering damages, and had incurred more than \$700 in costs herself. Also, she was not negligent, and defendants had admitted the trailer did not have proper signage. As to Baldev, plaintiffs asserted he had more than \$1,000 in medical damages, \$4,900 in wage loss, \$1,600 in property loss, unspecified general damages, and over \$600 in costs. And while defendants had asserted comparative negligence against him, defendants had admitted a lack of proper signage. Under these circumstances, plaintiffs claimed, the amounts of the respective section 998 offers (\$15,001 and \$5,001) were not reasonable and the offers were not made in good faith; thus, recovery of the expert witness fees ought to be denied.

In opposition to the motion to tax costs, defendants argued they did not have to apportion their costs bill “when there are multiple plaintiffs suing under a single theory.” They further asserted, “there is no declaration or other admissible evidence demonstrating that any portion of the cost bill somehow applies to one Plaintiff but not the other.” Defendants also argued that because plaintiffs were a married couple, “any cost bill assessed against either of them would become a community debt.”

On the issue of good faith and reasonableness, defendants contended their offers were “well within the ballpark.”

Among the documents attached to the declaration of defense counsel filed in support of the opposition to the motion to tax costs were the two invoices of Dr. Younger related to the action -- one for \$2,900 relating to Ranver and one for \$2,150 relating to Baldev.⁵

In ruling on the motion to tax costs, the trial court concluded it was “not necessary for defense counsel to apportion costs among plaintiffs. Where, as here, 1) defendants are sued by several plaintiffs and prevail[] against all of them; and 2) plaintiffs are represented by the same attorney; and 3) the cause of action against defendants is the same; and 4) there has been a joint trial; and 5) plaintiffs are now and were at the time of the incident married to each other; this court finds that the defendants need not apportion costs between plaintiffs or file separate cost memos, even though their claims for damages were individual.”

On the issue of reasonableness and good faith, the court concluded that “[t]he medical evidence presented at trial showed these offers to be quite reasonable.” The court further stated that the defense verdict constituted “prima facie evidence that the 998 offers were reasonable.”

Based on other arguments, however, the trial court taxed \$5,000 of the fees claimed for Dr. Sfakianos, reducing the total costs award to \$21,770.

The Appeals

The trial court entered judgment against plaintiffs on June 22, 2012, and served the parties with notice of entry of judgment on June 25. Plaintiffs timely appealed on August 23.

⁵ A file name appears on each invoice. These file names show that one invoice related to Baldev and one invoice related to Ranver.

The trial court issued its ruling on the motion to tax costs on August 24. Defendants served plaintiffs with notice of entry of the court's order on October 4. The court filed an amended judgment that included the costs award on October 22. Plaintiffs timely appealed on December 4.

DISCUSSION

I

Midha's Lay Opinion Testimony

Plaintiffs contend the trial court abused its discretion in allowing Midha to express his lay opinion that the ambient lighting at the time of the accident allowed visibility up to 1,000 feet because “[i]t cannot be gainsaid that the sought opinion was irrelevant to the issue as defined by governing laws.” Plaintiffs are sorely mistaken.

Evidence is relevant if it has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) One of the issues in this case was whether Baldev was contributorily negligent in causing the accident because he failed to see the trailer and avoid hitting it. Evidence that the visibility in the area was such that Baldev could have seen the trailer even without the reflective triangle was unquestionably relevant because that evidence had a tendency in reason to prove such contributory negligence on the part of Baldev.

Plaintiffs' argument against the admission of Midha's lay opinion rests on the fact that Vehicle Code section 24615 required a reflective triangle on the back of the trailer, which was admittedly lacking. Essentially, plaintiffs argue that because Midha's tractor and trailer were being operated in violation of this law, that was the end of the matter, and defendants were not entitled to offer any evidence that Baldev could have seen the trailer even without the required reflective emblem. Frankly, this argument makes no sense. As we have shown, Midha's lay opinion testimony was relevant to the issue of contributory negligence because the evidence had a tendency in reason to show that plaintiffs' injuries were caused, either in part or in full (as the jury apparently found) by

Baldev's own negligence in failing to see and avoid the trailer, which he could have done even though the reflective emblem was missing. The admitted violation of Vehicle Code section 24615 simply has no bearing on this theory of relevance.

II

Officer Kleinert's Expert Opinion Testimony

Plaintiffs contend the trial court abused its discretion in allowing Officer Kleinert to testify about his observation of the lighting conditions at the scene the next day at the same time the accident occurred. They contend the observation the next day was irrelevant "given the admitted Vehicle Code [section] 24615 violation" and was not conducted under substantially similar conditions as the day of the accident.

On the first point, our conclusion is the same as expressed above regarding plaintiffs' objection to Midha's lay opinion testimony. The fact that the tractor/trailer combination lacked the required reflective triangle did not render irrelevant testimony relating to the lighting conditions at the time of the accident because such testimony had a tendency in reason, notwithstanding the statutory violation, to show that Baldev was contributorily negligent in causing the collision.

On the second point, plaintiffs argue that Officer Kleinert did not know exactly where he was on the day after the accident at exactly 5:37 a.m. The officer testified that he was "at the scene" of the collision, but he could not recall whether he was driving through the scene or standing next to his car at 5:37 a.m.⁶

"It is settled that a trial court has discretion to admit 'experimental' evidence," but, among other things, "[t]he experiment . . . must have been conducted under at least substantially similar, although not necessarily absolutely identical, conditions as those of

⁶ To the extent plaintiffs offer two other criticisms of Officer Kleinert's "experiment," they fail to cite to the record in support of those criticisms, and therefore we do not address them.

the actual occurrence.’ ” (*People v. Bradford* (1997) 15 Cal.4th 1229, 1326.) Here, the trial court acted within the bounds of its discretion in determining that the conditions on the two days were sufficiently similar to allow Officer Kleinert to testify as to his observation of the lighting conditions the next day. The fact that Officer Kleinert could not identify *exactly* where he was at *exactly* 5:37 a.m. is immaterial. He testified he was “at the scene” around the same time, and he testified that the weather conditions were the same on both days. That was enough to allow him to testify as to the lighting conditions the next day. Any issue as to whether Officer Kleinert was at the *exact* location of the accident at the *exact* time it had occurred went to the weight of the evidence, not its admissibility.

Plaintiffs next contend the trial court abused its discretion in allowing Officer Kleinert to express an opinion about the sufficiency of the lighting on the day of the accident based on his observation the next day. Their argument on this point is the same as their argument with respect to Midha’s lay opinion testimony. They contend Officer Kleinert “had no right to ignore the two Vehicle Code violations he himself had found in his calculus that the ambient lighting was such that [Baldev] could have stopped.”⁷ As we have explained already, however, the fact that the Vehicle Code was violated does not render evidence about the lighting conditions irrelevant. Notwithstanding any statutory violations, evidence that Baldev could have seen the tractor and trailer notwithstanding their lack of a reflective triangle or a rear-facing red light had a tendency in reason to prove he was contributorily negligent in causing the collision. Accordingly, the trial court properly overruled plaintiffs’ objections to Officer Kleinert’s opinion testimony.

⁷ The second Vehicle Code violation related to the lack of a red light on the rear of the tractor, which apparently violated Vehicle Code section 25803, subdivision (a).

III

Section 998

Plaintiffs advance two arguments relating to the section 998 offers. First, plaintiffs contend the trial court abused its discretion in refusing to require defendants to allocate the expert witness fees between the two plaintiffs. Second, plaintiffs contend the trial court abused its discretion in determining that the offers were reasonable and made in good faith. We address the second issue first.

A

Reasonableness And Good Faith

Section 998 “is a cost-shifting statute which encourages the settlement of actions, by penalizing parties who fail to accept reasonable pretrial settlement offers.” (*Heritage Engineering Construction, Inc. v. City of Industry* (1998) 65 Cal.App.4th 1435, 1439.) Under section 998, “[n]ot less than 10 days prior to commencement of trial . . . , any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time.” (§ 998, subd. (b).) “If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment . . . , the plaintiff shall not recover his or her postoffer costs and shall pay the defendant’s costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court . . . , in its discretion, may require the plaintiff to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial . . . or during trial . . . of the case by the defendant.” (*Id.*, subd. (c)(1).)

“The courts have uniformly rejected an interpretation of section 998 that would allow offering parties to ‘game the system.’” [Citation.] A section 998 offer must be made in good faith and be ‘realistically reasonable under the circumstances of the particular case,’ and carry with it some reasonable prospect of acceptance. [Citations.]

The reasonableness of the offer depends upon the information available to the parties as of the date the offer was served.” (*Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 129-130.)

“ ‘[W]hether a section 998 offer was reasonable and made in good faith is a matter left to the sound discretion of the trial court.’ [Citation.] ‘However, when a party obtains a judgment more favorable than its pretrial offer, it is presumed to have been reasonable and the opposing party bears the burden of showing otherwise.’ [Citation.] An appellate court reviewing a section 998 offer may not substitute its opinion for that of the trial court unless there has been a clear abuse of discretion, resulting in a miscarriage of justice.” (*Arno v. Helinet Corp.* (2005) 130 Cal.App.4th 1019, 1025.)

Here, plaintiffs have failed to carry their burden of showing that the trial court abused its discretion in finding that the section 998 offers were reasonable and made in good faith. Plaintiffs place great emphasis on the fact that when they received the offers, they knew Officer Kleinert had concluded in his investigation of the accident that the trailer had no reflective triangle in violation of Vehicle Code section 24615 and the tractor had no rear light in violation of Vehicle Code section 25803, subdivision (a). They further argue that they should not have had to take into account, in evaluating the offers, that the trial court would allow Midha and Officer Kleinert to both express their opinions that, despite these violations, there was enough light at the time of the accident for Baldev to have seen and avoided the trailer.

Despite the vehemence with which plaintiffs argue it was an abuse of discretion to admit the opinion testimony of Midha and Officer Kleinert, we do not find even a slight degree of merit in their argument that those opinions should not have been admitted. Furthermore, because plaintiffs have failed to show that they did not know of these opinions (through pretrial discovery) at the time of the offers, we must presume they did know of them. Thus, at the time of the section 998 offers, plaintiffs should have known that two different witnesses, including the investigating officer, were going to testify that

there was enough light for Baldev to have avoided the trailer, notwithstanding the lack of a reflective emblem on the trailer and the lack of rear lighting on the tractor. Given this evidence, the amount of the offers as compared to the damages claimed, and the fact that the offers must be presumed reasonable because defendants obtained a judgment based on a defense verdict, we cannot say the trial court abused its discretion in finding the offers were reasonable and made in good faith.

B

Allocation Of Expert Witness Fees

As for plaintiffs' argument that the trial court abused its discretion by failing to require defendants to allocate the expert witness fees between the two plaintiffs, we find no merit in that argument either. It is true there is some evidence in the record to show that, at the very least, Dr. Younger's fees could have been allocated -- \$2,900 relating to Ranver and \$2,150 relating to Baldev.⁸ What is missing, however, is any convincing argument or authority that the failure to require such an allocation was an abuse of discretion.

As we have noted, section 998 provides that if the plaintiff fails to obtain a judgment more favorable than that offered by a defendant, the trial court may require the plaintiff "to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial . . . or during trial . . . of the case by the defendant." (§ 998, subd. (c)(1).) Nothing in the language of the statute suggests that where, as here,

⁸ It may be, as plaintiffs' counsel asserted in one of his letters to defense counsel, that all of Dr. Sfakianos's fees related to Ranver, but plaintiffs fail to point to any evidence in the record, nor have we found any such evidence ourselves, to support that conclusion. We might have been able to draw that conclusion from Dr. Sfakianos's trial testimony, but in designating the reporter's transcript for this appeal, plaintiffs specifically requested that the "medical testimony" *not* be included.

one or more defendants prevail against multiple plaintiffs in a single case, the trial court must require the defendants to allocate their recoverable expert witness fees between the plaintiffs. The statute provides that the fees that may be recovered are those reasonably necessary fees that the defendants actually incurred in preparation for and during the trial of “*the case.*” (*Ibid.*, italics added.) This unitary reference to “the case” suggests the Legislature intended to allow the recovery from a plaintiff of *all* reasonably necessary expert witness fees a defendant actually incurs in preparation for and during the trial, without regard to whether those fees were specifically related to the claims made by that particular plaintiff. A similar conclusion was reached with respect to an ordinary cost award under section 1032 in *Acosta v. SI Corp.* (2005) 129 Cal.App.4th 1370. There, the appellate court “found no California authority to support the proposition that a defendant who is sued by several plaintiffs and who fully prevails against all of them bears the burden of apportioning costs where the plaintiffs were represented by the same law firm and pursued a single cause of action in a joint trial.” (*Id.* at p. 1376.)

Plaintiffs contend the decision in *Randles v. Lowry* (1970) 4 Cal.App.3d 68, which involved former section 997,⁹ “suggested that the failure to segregate offers was contrary to the purposes of the statutes.” Plaintiffs contend “[t]here is a rough analogy between [sections] 997 and 998” such that segregation should be required “as a matter of public policy” in both instances.

The decision in *Randles* is completely inapposite here. At the time of the trial in *Randles*, former section 997 provided in pertinent part (much as subdivision (c)(1) of section 998 provides now) as follows: “The defendant may, at any time before the trial or judgment, serve upon the plaintiff and offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. . . . [I]f the plaintiff fail to

⁹ Former section 997, from which section 998 was derived, was repealed when section 998 was enacted. (See Stats. 1971, ch. 1679, p. 3605.)

obtain a more favorable judgment, he cannot recover costs, but must pay the defendant's costs from the time of the offer.' ” In *Randles*, three plaintiffs sued a single defendant for damages arising from a car accident. (*Randles v. Lowry, supra*, 4 Cal.App.3d at p. 74, fn. 1.) Before trial, the defendant offered to allow the plaintiffs “to take judgment against him for the sum of \$2,300, each of the parties to bear their own costs. The offer to compromise did not designate the amount offered to each plaintiff and none of them accepted.” (*Id.* at p. 70.) The jury ultimately returned three verdicts: a verdict in favor of one plaintiff for \$1,840.49, a verdict in favor of another plaintiff for \$40.50, and a verdict in favor of the defendant as to the third plaintiff. (*Ibid.*) Pursuant to former section 997, the trial court “ruled that the successful plaintiffs were not entitled to recover their costs incurred after receipt of [the] defendant's offer of compromise because they had not received a judgment more favorable than the compromise offer. The court accordingly taxed costs in favor of [one of the successful plaintiffs] in the sum of \$98.40, the amount she had expended prior to receipt of the offer, and ruled that [the] defendant was entitled to costs incurred after the offer was made.” (*Randles*, at p. 74.)

On appeal, the appellate court agreed with the plaintiffs “that section 997 is inapplicable because the offer of compromise was a nullity. The offer was made jointly to all plaintiffs, without designating how it should be divided between them. It is therefore impossible to say that any one plaintiff received a less favorable result than he would have under the offer of compromise.” (*Randles v. Lowry, supra*, 4 Cal.App.3d at p. 74.)

It is clear from the foregoing that the allocation issue in *Randles* was completely different than the allocation issue here. There what needed to be allocated was *the amount of the judgment the defendant offered to have entered against him*. Such allocation was necessary because otherwise it was “impossible to say that any one plaintiff received a less favorable result than he would have under the offer of compromise.” (*Randles v. Lowry, supra*, 4 Cal.App.3d at p. 74.) In other words, without

an allocation of the amount of the proposed judgment between the three plaintiffs, there was simply no way to determine whether the defendant was entitled to the benefit of the statute.

Here, in contrast, allocation is not necessary to determine if the statute applies. Defendants made two separate section 998 offers, one to each plaintiff, and each plaintiff failed to achieve a more favorable result than the offer he or she rejected. Under these facts, the statute clearly applies, and the only question is whether, in seeking recovery of the expert witness fees they incurred, defendants were required to allocate those fees between the two unsuccessful plaintiffs. *Randles* does not provide any assistance in answering that question. Beyond *Randles*, however, plaintiffs offer no authority and no argument as to why such allocation of expert witness fees should be required.

“When construing a statute, we must ‘ascertain the intent of the Legislature so as to effectuate the purpose of the law.’ ” (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977.) As we have noted, the purpose of section 998 is to encourage the settlement of actions by penalizing parties who fail to accept reasonable pretrial settlement offers. (*Heritage Engineering Construction, Inc. v. City of Industry, supra*, 65 Cal.App.4th at p. 1439.) Section 998 achieves that purpose by allowing the trial court, “in its discretion,” to require a plaintiff who failed to achieve a result better than the judgment the defendant offered to have entered against him “to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial . . . or during trial . . . of the case by the defendant.” (§ 998, subd. (c)(1).) This statutory language evidences the Legislature’s intent to allow the trial court the discretion to determine whether expert witness fees should be awarded as costs in a given case and also to determine what constitutes a reasonable sum to cover those costs. Under certain circumstances, a trial court might determine that *all* of the expert witness fees a defendant incurred in a case brought by multiple plaintiffs should not be imposed on a particular

plaintiff who refused a section 998 offer, then failed to achieve a better result than that offer. Such a determination, however, would have to be made on the specific facts of the case. Here, plaintiffs argue essentially that in *every* case involving multiple plaintiffs who fail to do better than the section 998 offers they rejected, the successful defendants are *bound* to allocate their expert witness fees between the plaintiffs. But neither the language of the statute, nor its underlying purpose, compels that result. Accordingly, we conclude that it lies in the trial court's discretion, based on the particular facts of the case, whether to require the allocation of expert witness fees between multiple unsuccessful plaintiffs. Having failed to show an abuse of that discretion here, plaintiffs have failed to establish any error in the trial court's award of costs.

DISPOSITION

The judgment and the costs order are affirmed. Defendants shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

ROBIE, J.

We concur:

HULL, Acting P. J.

MAURO, J.