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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

R. DAVID VERDUGO et al.,

Plaintiffs and Appellants et al.,

v.

SOUTHWESTERN YACHT CLUB et al.,

Defendants and Respondents.

D060602

(Super. Ct. No.
37-2010-00100031-CU-DF-CTL)

APPEALS from orders of the Superior Court of San Diego County, Judith F. Hayes, Judge. Affirmed in part and reversed in part.

Plaintiffs R. David and Carolyn Verdugo (together the Verdugos) filed an action against numerous defendants, including defendants Gregg Ward and Orlando-Ward & Associates (together Ward), alleging claims for defamation, intentional infliction of emotional distress, tortious interference with contract, and breach of contract. Ward

moved to strike, under Code of Civil Procedure¹ section 425.16—commonly referred to as the anti-SLAPP (strategic lawsuit against public participation) statute—(*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57), all claims asserted against Ward. The trial court granted Ward's motion to strike and found it was entitled to attorney fees pursuant to section 425.16, subdivision (c), and, in posttrial proceedings, awarded them \$32,000 in attorney fees. The Verdugos appeal the attorney fees order in favor of Ward, asserting the amount awarded was an abuse of discretion because the evidence did not adequately document the amount of fees incurred by Ward.

The remaining defendants also moved to strike the claims under the anti-SLAPP statute. The court granted their motion to strike and found they were also entitled to attorney fees, and in posttrial proceedings awarded them \$58,000 in attorney fees. The Verdugos' appeal also challenges the attorney fees awarded to the remaining defendants. In the related appeal (*Verdugo v. Southwestern Yacht Club, et al.* (Jul. 19, 2012, D059542 [nonpub. opn.] (*Verdugo I*)), we concluded the trial court erred when it granted the anti-SLAPP motion in favor of these remaining defendants, and therefore reversed the order granting the remaining defendants' special motion to strike under section 425.16. Because the predicate to the award of attorney fees in favor of the remaining defendants is reversed, we also reverse the trial court's order insofar as it awarded attorney fees in favor of those defendants.

¹ All statutory references are to the Code of Civil Procedure unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND²

Ward brought a special motion to strike under section 425.16 and sought attorney fees. After the court entered its order granting the motion to strike and found Ward was entitled to attorney fees under section 425.16, subdivision (c), Ward submitted a motion seeking attorney fees in the amount of \$39,917.80. In support of the motion, it filed declarations from counsel specifying the billing rates for each counsel involved in the action, the total amount of time spent by each counsel, and summarizing the types of tasks undertaken during those hours.

The Verdugos opposed the requested fees, asserting the absence of invoices itemizing which work was related to the anti-SLAPP motion rather than to other services on the case was fatal to *any* award of fees. The Verdugos also argued the amount sought was excessive. The trial court's order awarded \$32,000, and the Verdugos appeal that order.

DISCUSSION

A. Applicable Law*Principles Governing Trial Court Award of Attorney Fees*

The anti-SLAPP statute provides for an award of attorney fees and costs to the prevailing defendant on a special motion to strike. (§ 425.16, subd. (c).) The defendant may recover fees and costs only for the motion to strike, not the entire litigation. (*S. B.*

² The genesis of the dispute, and the history of the underlying anti-SLAPP motion brought by Ward, is fully explicated in *Verdugo I.*

Beach Properties v. Berti (2006) 39 Cal.4th 374, 381; *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383.) The defendant may claim fees and costs either as part of the anti-SLAPP motion itself or more commonly, as here, through the filing of a subsequent motion or cost memorandum. (*American Humane Assn. v. Los Angeles Times Communications* (2001) 92 Cal.App.4th 1095, 1097.)

Because the Legislature specified the prevailing defendant "shall be entitled to recover his or her attorney's fees and costs" (§ 425.16, subd. (c)(1)), an award is usually mandatory (see *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (*Ketchum*)), although the amount of the award is vested in the sound discretion of the trial court. (*Id.* at pp. 1131-1132.) As the moving party, the prevailing defendant seeking fees and costs "bear[s] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020.) The evidence should allow the court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended. (*Ibid.*) "The law is clear . . . that an award of attorney fees may be based on counsel's declarations, without production of detailed time records." (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375; see also *G. R. v. Intelligator* (2010) 185 Cal.App.4th 606, 620.)

A trial court "assessing attorney fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.'" (*Ketchum, supra*, 24 Cal.4th at pp. 1131-1132.) The court tabulates the attorney fee lodestar by multiplying

the number of hours reasonably expended by the reasonable hourly rate prevailing in the community for similar work, although the court has discretion to increase or decrease that lodestar amount depending on a variety of factors. (*Id.* at p. 1134.) Trial judges are entrusted with this discretionary determination because they are in the best position to assess the value of the professional services rendered in their courts. (*Id.* at p. 1132; accord, *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096.)

Principles Governing Appellate Review of Attorney Fees Award

We review an anti-SLAPP attorney fee award under the deferential abuse of discretion standard. (*Ketchum, supra*, 24 Cal.4th at p. 1130.) The trial court's fee determination " "will not be disturbed unless the appellate court is convinced that it is clearly wrong." " (*Id.* at p. 1132.) 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.) 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) and it is for the trial court "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." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479, fn. omitted.)

B. The Verdugos Have Failed to Demonstrate the Trial Court's Award Was an Abuse of Discretion

The Verdugos argue the amount of the fee award was an abuse of discretion because Ward supported their fee request with a declaration from their counsel specifying the total amount of time spent by each counsel, and summarizing the types of tasks undertaken during those hours. The Verdugos contend, under *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315 (*Christian Research*) and *Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772 (*Platypus Wear*), that the trial court could make no award until Ward submitted itemized billing records and statements segregating the time spent on the anti-SLAPP motion from time spent on other matters.

However, an analogous argument was rejected in *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363. In rejecting the challenge by Barrenechea to the attorney fees awarded to Raining Data following Raining Data's successful anti-SLAPP motion, the court explained:

" . . . Barrenechea contends Raining Data failed to meet its initial burden to establish the reasonableness of the fees incurred because it did not submit its attorneys' billing statements. Barrenechea claims the declarations from Raining Data's attorneys 'do not provide any basis for determining how much time was spent by any one attorney on any particular claims. Rather, the declarations give broad descriptions to the work provided by each attorney. The declarations are devoid of any information to allow the trial court to determine whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended.' The law is clear, however, that an award of attorney fees

may be based on counsel's declarations, *without production of detailed time records*. [Citations.] *Raining Data's attorneys provided declarations detailing their experience and expertise supporting their billing rates, and explained the work provided to Raining Data.*" (*Id.* at p. 1375, italics added.)

Similarly, in *G. R. v. Intelligator, supra*, 185 Cal.App.4th 606, the party whose claim was stricken challenged the attorney fees award contending, in part, that "the attorney declaration filed in support of the request for fees and costs was insufficiently detailed for the court to determine whether the time spent and work performed were reasonable and whether part of the time might actually have been spent [on matters unrelated to the anti-SLAPP motion]." (*Id.* at p. 620.) The court, rejecting this challenge, explained "the trial court chose to accept the declaration of Intelligator's attorney as sufficient proof of the attorney's hourly rate, the time spent, and the reasonableness of the time spent. 'We may not reweigh on appeal a trial court's assessment of an attorney's declaration[,] [citation]' [quoting *Christian Research, supra*, 165 Cal.App.4th at p. 1323] and we see no abuse of discretion under the circumstances of this case in the court's decision not to require Intelligator's attorney to supply time records in support of her declaration." (*Ibid.*)

The Verdugos' reliance on *Christian Research, supra*, 165 Cal.App.4th 1315 and *Platypus Wear, supra*, 166 Cal.App.4th 772, provides no assistance here. In *Christian Research*, the appellate court (although noting a trial court *may* require the movant to produce additional records and may reduce compensation on account of any failure to maintain appropriate time records) specifically affirmed that the trial court's discretion in calculating a fee award is broad (*Christian Research*, at p. 1321) and that an appellate

court "may not reweigh on appeal a trial court's assessment of an attorney's declaration [in support of the fee award]." (*Id.* at p. 1323.) The court's statement of what a trial court *may* require is not the equivalent of a holding that a trial court *must* seek additional documentation before making a fee award. The trial court here was satisfied with the detail provided by counsel's declaration and, paraphrasing the *G. R. v. Intelligator* court, "we see no abuse of discretion under the circumstances of this case in the court's decision not to require [Ward's] attorney to supply time records in support of [the attorney's] declaration." (*G. R. v. Intelligator, supra*, 185 Cal.App.4th at 620.)

The Verdugos' reliance on *Platypus Wear, supra*, 166 Cal.App.4th 772, provides less support for their arguments. *Platypus Wear* merely stated, in dicta, the Legislature intended that a prevailing defendant on an anti-SLAPP motion be allowed to recover attorney fees and costs only on the anti-SLAPP motion, not the entire suit, citing *Lafayette Morehouse, Inc. v. Chronicle Publishing Co., supra*, 39 Cal.App.4th at p. 1383. (*Platypus Wear*, at p. 785.) However, *Lafayette Morehouse* reversed a trial court order awarding attorney fees for defense of the entire suit, which consisted of seven causes of action, only one of which was subject to the section 425.16 motion. (*Lafayette Morehouse*, at p. 1384.) All of the Verdugos' claims against Ward were subject to, and were dismissed pursuant to, section 425.16, and therefore *Lafayette Morehouse* has no relevance here.

We conclude the Verdugos have not clearly shown the court's award to Ward was an abuse of discretion, and therefore affirm the order awarding Ward \$32,000 in attorney fees.

DISPOSITION

The order granting \$32,000 in attorney fees to Ward is affirmed. It is entitled to costs on appeal against the Verdugos. The order granting attorney fees to the remaining defendants is reversed. The Verdugos are entitled to costs on appeal against the remaining defendants.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.