Filed 3/7/12 Huantes v. Built Right Construction CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

OSCAR HUANTES, an Incompetent Person, etc., Plaintiff and Appellant, v. BUILT RIGHT CONSTRUCTION, INC., Defendant and Respondent.	E053259 (Super.Ct.No. SCVSS148067) OPINION

APPEAL from the Superior Court of San Bernardino County. Donald R. Alvarez, Judge. Reversed.

Michael Roofian & Associates, Michael Roofian and Genie Park for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Plaintiff and appellant Oscar Huantes (hereafter plaintiff) suffered a workplace injury which left him disabled and mentally incompetent. He was represented on his claim against the third party tortfeasor by attorney Michael Roofian (hereafter counsel).

Plaintiff's claim was settled, and counsel claimed a 40 percent contingency fee as attorney fees in the case. The trial court reduced the attorney fees claim and denied all litigation costs and fees in excess of 25 percent, based on a local court rule. Plaintiff appeals the court's orders on attorney fees and costs, contending that the trial court employed the wrong standard, and relied on a local rule which has no application to the case. We reverse.

FACTS AND PROCEDURAL HISTORY

Plaintiff was working as an assistant to the electrician on a construction project. On March 18, 2005, he was working on a theater room in one of the homes of the development, when a two-by-four joist or scaffolding member, constructed by defendant Built Right Construction, Inc., gave way. Plaintiff fell 15 feet to a concrete floor. He suffered permanent brain injury, resulting in dementia, seizure disorder, and other ongoing physical and mental impairments.

Counsel began representing plaintiff in 2005. Two other firms had declined to take plaintiff's case because of difficulties in proving liability. The Occupational Safety and Health Administration (OSHA) had initially issued a report finding plaintiff's employer solely at fault for the accident. The employer was cited for breaching various safety rules. The defendants also blamed plaintiff in large part for his own injury. Thus, from the outset, the case was risky to handle, and the prospects for recovery were not by any means certain.

Nevertheless, counsel accepted the case, after an extensive initial investigation, on a 40 percent contingency fee basis, and he was able to achieve a substantial result for his client: $4,900,000, which was just below the five million dollar policy limit of defendant. Other favorable concessions that counsel was able to achieve included an agreement with the State Compensation Insurance Fund (SCIF) to receive 10 percent of the gross settlement to assign the workers' compensation lien to plaintiff. In addition, SCIF would continue to pay workers' compensation medical benefits without reduction, despite the settlement with the third party. SCIF also waived its right to reimbursement for workers' compensation benefits already paid. Counsel himself agreed to waive over $100,000 in fees advanced, provided that the 40 percent contingency fee was approved.

Counsel himself has an extensive engineering background which made it possible for him to interpret blueprints and architectural plans, and to select and engage in detail with experts on possible theories of liability. Counsel hired a reputable expert, Kevin O'Neill, to evaluate drawings, documents and photographs, and to discuss various facts and theories in support of plaintiff's claims. O'Neill's initial opinion was that it would be extremely difficult for plaintiff to prevail at trial, because of the thorough OSHA investigation which blamed the employer, and other serious factual allegations that plaintiff had contributed to his own injury by performing his duties improperly. Counsel interviewed over 60 witnesses, investigated the scene of the accident, studied blueprints and other documents, consulted extensively with the expert, and developed many facts and theories of potential liability for the various entities involved in the project, including

the general contractor, developer, and various subcontractors. As a result of counsel's extensive development of facts, O'Neill was willing to provide testimony in support of liability against defendant Built Right Construction, Inc., the framer which had constructed the facility that gave way. O'Neill continued to warn, however, that a jury might well find the employer entirely liable for the accident, or that plaintiff contributed to his own injuries.

Counsel estimated that he had about 2,200 hours of his time invested, over four years, in the case, and was able to achieve a substantial result in plaintiff's favor, under circumstances where other attorneys and experts had believed the chance for recovery was low. Counsel is a sole practitioner who took a substantial risk on the case, and declined other work, to devote full attention to plaintiff's case. Therefore, with the compromise of plaintiff's claim, counsel requested a 40 percent contingency fee, or $1,960,000.

At the hearing initially set for court approval of the compromise of the disabled person's claim, the courtroom clerk to Judge Donald Alvarez spoke up, saying, "There is two things. Your attorney fees were too high . . . that you requested. Per Rule of Court 1431, it was reduced to one million two hundred twenty-five thousand [$1,225,000]. There was other fees that you requested for . . . $20,000 to two different law firms. I guess you can allocate that out of the one million that you're supposed to get. There was no proof of time spent other than the additional request that you're asking for the attorney fees. There is no breakdown. And I don't think we have any real medicals attached.

"There is also a notice of lien filed. . . . But there is a notice of lien filed but it doesn't state how much the notice of lien is actually. I notice in your paperwork you had a notice of lien stated as, I think, $490,000, but there is nothing from the State or nothing attached showing how you derived at [*sic*] that amount. . . ." The clerk inquired whether counsel wished to continue the matter.

Counsel explained about the assignment agreement with SCIF, and stated that he could provide a copy of that agreement; there were no other liens, and workers' compensation had "paid for everything."

The clerk announced, "We put it under 'meds.' That's what we put it under. But it's whatever you owe, the lien for the services provided to the conservatee."

Counsel stated that, "We have performed legal services for about four years on this case, and it has been a very difficult case. We have already waived over $100,000 in our litigation costs in order to accommodate the plaintiff. And what additional proof does the Court need so that we can receive entitlement to our attorney's fees?"

The clerk, rather than the court, responded: "If you're asking what the law allows, you're supposed to submit a breakdown of hours spent and how you derived at [*sic*] the one million nine hundred thousand that you're requesting because --

"THE COURT: What I usually get – see, I have – my clerk basically knows what we need in all these petitions, so she – I usually let her run interference and try to talk with the attorneys to get everything handled first.

"What we do – if you want the excessive fees, what I usually would like to see is a declaration regarding the fees. And if you have – many times they will submit, like, a billing statement which is reflecting the work done on the case, just to support and substantiate the request for the additional fees. The normal rule is you get one million two hundred twenty-five thousand. I think you're looking for 1.9."

After putting on evidence to substantiate all the other elements of the proposed compromise, the court approved the compromise, "subject to the attorney's fees issue."

At the next appearance on the issue, although counsel had filed a declaration and several attachments, the documents had not yet been transmitted to the courtroom. The clerk announced, "Your Honor, he submitted that declaration regarding the excessive attorney fees miscalculation . . . , but the clerk's office filed it in. We don't have a copy of it." Counsel explained the status of the case: "[T]his Court has approved the compromise of the disabled adult, and the Court requested that I submit a declaration in support of my fees, which I have, and, apparently, the clerk indicates that the Court doesn't have it." The court indicated that it would continue the matter. It stated, "Looks like you're asking for 1.9 million dollars . . . in attorney's fees?" Counsel agreed, "That's correct, your Honor." The clerk then stated, "Pursuant to Local Rule 1431, the most allowed is 1,225,000." The matter was put over for 30 days.

The supporting papers submitted by counsel discussed the difficulty of the case, the OSHA report and other barriers to establishing liability, the hours devoted to discovery, negotiations, obtaining treatment for plaintiff, developing facts and theories

which arguably could support liability, and other efforts. Counsel included a declaration from the guardian ad litem, requesting approval of the fees as claimed (40 percent), and a declaration from an attorney expert, to the effect that a 40 percent contingency was reasonable and appropriate to the risks and the difficulty of the case.

In his supporting papers, counsel addressed Local Rule 1424, "Computation of Fees," urging that it did not appear applicable to the instant case. Local Rule 1424 provides: "In computing fees the Court will require parents claiming reimbursement for medical expenses, etc. to pay their proportionate share of the counsel fees except in cases of hardship. Reasonable costs incurred or paid by the counsel that are itemized and accompanied by appropriate vouchers, or other supporting evidence, will be allowed except they shall not be included in the amount of the settlement of judgment on which fees are computed." (Super. Ct. San Bernardino County, Local Rules, rule 1424.) Rule 1424 appears to address the issue of reimbursing medical fees in juvenile or family law cases, and is not a general provision applicable to all cases. Further, it contains no 25 percent cap or limitation on fees. Counsel later filed another memorandum of points and authorities in support of the claim for attorney fees, which addressed Local Rule 1431, which was expressly cited by the clerk. Rule 1431 is entitled, "Action for Judicial Declaration of Abandonment of Mobile Home," and provides: "For the purposes of determining attorney's fees in an action for judicial determination of abandonment of a mobile home, the Court shall use the following schedule:

"25 percent of the first $1,000 in damages with minimum attorney's fees of $75.00;

"10 percent of next $14,000 in damages;

"3 percent of next $35,000 in damages;

"2 percent of next $50,000 in damages; and

"1 percent of the amount of damages over $100,000." (Super. Ct. San Bernardino County, Local Rules, rule 1431.)

Again, the present action had no relation to any declaration of abandonment of a mobilehome, and did not proceed by default. Thus, counsel argued, the rule had no applicability to the present claim for attorney fees.

Counsel argued that (1) the local rules cited were inapplicable, (2) no local rule placed a strict 25 percent cap on attorney fees, (3) neither statutory nor case law required counsel to submit a detailed billing statement, and (4) the fee request was reasonable, and the product of arm's-length negotiation. The result counsel achieved was attributable to extraordinary skill, in a case in which the chances of recovery were problematic, given the highly adverse OSHA report and plaintiff's alleged contributory negligence.

Despite counsel's submissions, the court granted the petition for approval of the compromise of plaintiff's claim, allowing only 25 percent, or $1,225,000 as and for attorney fees. The court's order expressly stated, "Litigation costs and attorneys fees in excess of twenty five percent are denied per local rule."

Counsel thereafter filed a notice of appeal under Code of Civil Procedure section 904.1, subdivision (a)(2) (order after judgment).

ANALYSIS

I. The Trial Court Erred in Reducing the Claim for Attorney Fees

A. *Standard of Review*

The first issue on appeal is whether the trial court properly relied on a local rule to limit the attorney fees claim. This question is a legal one, involving the interpretation of the rule and other applicable statutes. We therefore exercise de novo review as to that question. (See *Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 81.) Otherwise, the reasonableness of an award of attorney fees is within the trial court's discretion; the appellate court employs the abuse of discretion standard on review of such an award. (See *SC Manufactured Homes, Inc. v. Canyon View Estates, Inc*. (2007) 148 Cal.App.4th 663, 673 [an order granting or denying an award of attorney fees is generally reviewed under an abuse of discretion standard of review, but determination of whether the criteria for an award of attorney fees and costs have been met is a question of law].)

B. *As a Matter of Law, the Local Rules the Court Purported to Apply Were Inapplicable*

The trial court purported to apply rule 1431 of the local rules, ostensibly to limit the recovery of counsel's attorney fees to 25 percent of the gross settlement amount. A careful examination of rule 1431 (and rule 1424, which was also apparently referenced at some point) discloses that these local rules have no applicability to the calculation of

attorney fees in the instant case; in addition, no local rule purports to set a 25 percent maximum contingency fee.

As noted in the factual and procedural statement, above, rule 1424 of the local rules pertains to the payment by parents of a proportion of attorney fees, in actions claiming reimbursement for medical payments (presumably to minors). Rule 1431 applies to actions for a judicial determination that a mobilehome has been abandoned. Rule 1431 provides for graduated attorney fees in such cases, based on 25 percent of the first $1,000 in damages recovered, and lesser percentages of additional increments of damages recovered.

We have examined the local rules in detail, concerning attorney fees, and find nothing which purports to limit private contracts for attorney fees to 25 percent, if on a contingency basis. The local rules on attorney fees deal generally with cases in which public funds are expended for attorney fees, either on behalf of indigent criminal defendants, or in other cases where counsel has been appointed. The payment of attorney fees to counsel in this case, however, is to be made from the proceeds of the compromise settlement, and not from public funds.

As a matter of law, we conclude that there was no justification or authorization in the San Bernardino County Local Rules to limit or cap the award of attorney fees at 25 percent.

C. *The Trial Court Abused Its Discretion in Failing to Award a Reasonable Amount for Attorney Fees Under Probate Code Section 3601*

Probate Code section 3601 provides that a court approving a compromise of claims of a disabled person, "shall make a further order authorizing and directing that reasonable expenses, . . . costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other property to be paid or delivered for the benefit of the . . . person with a disability." Statutory law thus mandates the award of a reasonable fee in this case, which was a compromise of an adult disabled person's claim. "The court is required, despite any agreement to the contrary, to determine reasonable fees of counsel," under the statute. (*Hernandez v. Fujioka* (1974) 40 Cal.App.3d 294, 302 [citing former Prob. Code, § 1510, the predecessor to § 3601].)

Here, counsel provided ample evidence of the reasonableness of his requested 40 percent contingency fee. He set forth a description of the hours he had devoted to the matter over the previous four years. He had special expertise which enabled him to evaluate pertinent documents (e.g., blueprints and architectural drawings). His expertise, and his close working with the consulting expert, helped counsel to develop a theory of liability against the party which had constructed the member which gave way, causing the injury. The case had significant risks, including adverse reports and witnesses, which initially inclined lawyers and expert witnesses to opine that recovery would be extremely unlikely. Counsel invested considerable sums of his own money, and committed the services of his staff (including an investigator/interpreter) to this case, to the exclusion of

other opportunities. Despite great risks and difficulties, he was able to achieve a positive outcome for plaintiff, almost up to the policy limits of $5 million. In addition, he satisfied the workers' compensation lien for a payment of $490,000, and without any reduction in the payment of plaintiff's ongoing workers' compensation treatment benefits. Counsel also obtained the opinion of a neutral attorney to support the reasonableness of the 40 percent contingency fee. The guardian ad litem fully supported and agreed to the payment of the 40 percent contingency fee as requested. Counsel had waived over $100,000 in reimbursement for costs and fees, based in part on the approval of the requested 40 percent contingency fee.

There was no evidence to establish that the requested fee was unreasonable. The trial court's pro forma reduction of the fees as "excessive," was based on the notion of a nonexistent "local rule" limiting such fees to 25 percent. The local rules concerning attorney fees payments dealt primarily with payments for court-appointed counsel (i.e., attorney fees paid from public funds) and not with attorney fees payments negotiated as a matter of private contract. Probate Code section 3601 mandates that the trial court must award a reasonable fee.

In light of all the evidence and circumstances, which were uncontested, the claimed 40 percent contingency fee ($1,960,000) was reasonable. The trial court erred as a matter of law in applying nonexistent or otherwise inapplicable rules to arbitrarily reduce the requested fee; it necessarily also abused its discretion in selecting the amount

of attorney fees awarded. The requested amount, $1,960,000, was amply supported by all the evidence as reasonable in this particular case.

The portion of the order approving the disabled person's compromise, awarding only $1,225,000 in attorney fees, is reversed. The matter is remanded with directions to the trial court to grant counsel's application for reasonable attorney fees of $1,960,000.

DISPOSITION

The attorney fees award portion of the order below is reversed. The matter is remanded with directions to the trial court to grant the petition for an award of reasonable attorney fees of $1,960,000. Plaintiff is awarded costs on appeal.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.

RICHLI
J.