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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

DEBORAH ELLIS,

Plaintiff and Appellant,

v.

MERCURY INSURANCE COMPANY,

Defendant and Respondent.

E064749

(Super.Ct.No. RIC1300252)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Affirmed.

Deborah Ellis, in pro. per., for Plaintiff and Appellant.

O'Connor, Schmeltzer & O'Connor, Lee P. O'Connor and Timothy J. O'Connor  
for Defendant and Respondent.

## I

### INTRODUCTION

Plaintiff Deborah Ellis appeals from an order granting defendants a postjudgment award of attorney's fees and costs in the amount of \$8,797.50. Ellis argues the trial court abused its discretion in determining the amount of fees to award to defendants. We hold there was no abuse of discretion and we affirm the postjudgment order.

## II

### FACTUAL AND PROCEDURAL BACKGROUND

The underlying action was addressed by this court in a previous appeal. (*Ellis v. Mercury Ins. Co.* (Apr. 22, 2015, E059990) [nonpub. opn.].) Defendant Mercury Insurance Company (Mercury) issued Ellis an automobile insurance policy, providing medical expense coverage of \$2,000. After Ellis was involved in a minor motor vehicle accident, Mercury paid Ellis \$2,000 and Ellis recovered \$4,100 from the other driver. When Ellis refused to reimburse Mercury for \$2,000, Mercury filed a subrogation lawsuit against her which was eventually dismissed. Ellis then sued Mercury and its employee, defendant June Lee, for breach of contract, bad faith, fraud, and other claims, alleging that the subrogation action was wrongful. The trial court granted Mercury's special motion to strike (Code Civ. Proc., § 4215.16) and this court affirmed the trial court on

appeal.<sup>1</sup> Subsequently, the trial court granted Mercury's motion to recover attorney's fees and costs on appeal of \$8,797.50.

### III

#### DISCUSSION

In reviewing a trial court's decision to award attorney fees, the standard of review is abuse of discretion. It is presumed the trial judge is in the best position to determine the value of the services rendered by counsel. The appellate court will not disturb the judge's decision unless it is convinced it was clearly wrong. (*Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1418.) Abuse of discretion occurs when the trial court makes a ruling that is absurd, arbitrary, or beyond "the bounds of reason." (See, e.g., *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)

Here Mercury brought the motion to recover its appellate attorney's fees and costs, pursuant to Code of Civil Procedure section 425.16, subdivision (c). Section 425.16, subdivision (c), provides: "(1) Except as provided in paragraph (2), in any action subject to paragraph (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. . . ." Ellis concedes that Mercury is entitled to an award of attorney's fees and costs. But she contends the amount should be \$5,279.50 — not \$8,797.50 as awarded by the trial court.

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<sup>1</sup> Ellis has now filed another action and appeal against Mercury.

The evidence supporting Mercury's motion included bills reflecting 52.90 hours of legal work from December 2013 through June 2015. The initial billing rate was \$200 per hour, increasing on January 1, 2015, to \$210 per hour. The total sum was \$12,168.

Mercury also filed a cost memorandum in the amount of \$338.88. The only costs identified by Mercury in the cost memorandum were for the clerk's transcript (\$139.50), reporter's transcript (\$61.69) and printing of briefs (\$137.69). These costs are recoverable under Code of Civil Procedure section 1033.50.

At the hearing on the motion for attorney's fees and costs, the trial court awarded fees of \$8,797.50 as follows: 1) 5.7 hours preparing the record for appeal; 2) 17.3 hours preparing the briefs; 3) 16 hours for oral argument and postappeal matters; and 4) 4.5 hours communication with the clients, an average of .3 hours per month during the time that the case was on appeal. The trial court allotted a total of 43.5 hours with an hourly rate of only \$202.24. The trial court eliminated the items it identified as not related to the appeal. The amount awarded was about 72 percent of what Mercury requested.

The trial court's allocation was entirely reasonable for the preparation of an appeal, which included responding to Ellis's petition for rehearing and petition for review before the California Supreme Court. Billing only 16 hours of work for preparation for oral argument and for the petitions is entirely reasonable.

IV

DISPOSITION

The trial court did not abuse its discretion by allowing only 43.5 hours at an average rate of \$202 per hour for the defense of the appeal initiated by Ellis. We affirm the trial court's ruling on the motion for attorney's fees and costs. Defendants shall recover their costs on appeal.

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CODRINGTON  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.