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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CITY OF EL CAJON,

Plaintiff and Appellant,

v.

COUNTY OF SAN DIEGO LOCAL  
AGENCY FORMATION COMMISSION  
et al.

Defendants and Respondents;

LAKESIDE FIRE PROTECTION  
DISTRICT,

Real Party in Interest.

G045021

(Super. Ct. No. 06CC13348)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Ronald L. Bauer, Judge. Motion for attorney fees on appeal. Order affirmed. Motion denied.

Procopio, Cory, Hargreaves & Savitch, Evelyn F. Heidelberg and Kendra J. Hall for Plaintiff and Appellant.

Colantuono & Levin, Michael G. Colantuono, Holly O. Whatley; Thomas Montgomery, County Counsel, and C. Ellen Pilsecker, Deputy County Counsel, for Defendants and Respondents.

Lounsbury Ferguson Altona & Peak, Helen Holmes Peak and Alena Shamos for Real Party in Interest Lakeside Fire Protection District.

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Plaintiff City of El Cajon (City) appeals from a postjudgment order denying its motion for attorney fees sought under the private attorney general doctrine. (Code Civ. Proc., § 1021.5; hereafter section 1021.5.) City has also moved for attorney fees incurred for this appeal on the same ground. We conclude City failed to establish its successful appeal from the prior adverse judgment satisfied the significant benefit requirement for a private attorney general attorney fee award and therefore affirm the trial court's denial of the postjudgment motion. As a consequence, we also deny City's motion for attorney fees on appeal.

#### FACTS AND PROCEDURAL BACKGROUND

This case arises from City's effort to annex a real property parcel owned by Home Depot, USA, Inc. (Home Depot). The parcel consists of 14.3 acres containing a commercial building, two residential units, and an access road. City's municipal boundary is coterminous with 68 percent of the parcel's perimeter, bordering it on three sides with the fourth side abutting a freeway. The property on the freeway's opposite side is under the jurisdiction of defendant County of San Diego (County).

After approving an addendum to a previously certified environmental impact report (EIR) and enacting a zoning change to allow the parcel to be used for retail

and commercial purposes, City initiated an annexation proceeding before defendant San Diego Local Agency Formation Commission (LAFCO) under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. (Gov. Code, § 56000 et seq.; the Act.) Citing its generally broad statutory authority to approve or disapprove annexation proposals (Gov. Code, § 56668), plus County’s concerns, which included the environmental effects of the proposed change, LAFCO denied City’s annexation petition.

City petitioned for a writ of mandate challenging LAFCO’s ruling. In part, it argued since the parcel was already substantially developed and substantially surrounded by its municipal boundary, the Act mandated LAFCO approve the request. Government Code sections 56375 and 56375.3 require a local agency formation commission to approve an annexation application when certain conditions are satisfied. These conditions include a territory “[s]urrounded or substantially surrounded by the city . . . or by th[e] city and a county boundary or the Pacific Ocean if the territory . . . is substantially developed or developing . . . .” (Gov. Code, §§ 56375, subd. (a)(4)(A), 56375.3, subds. (a)(1)(C), (b)(3) & (4).) City also argued LAFCO violated the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.; CEQA) by making findings that contradicted those contained in the previously approved EIR and addendum. Home Depot cross-complained seeking declaratory and injunctive relief and damages. The trial court entered judgment for defendants and Lakeside Fire Protection District, a real party in interest.

Both City and Home Depot appealed from the portion of the judgment denying the writ. In an unpublished decision, we reversed the judgment with directions to grant City’s writ and directed LAFCO to approve the annexation request. (*City of El Cajon v. County of San Diego Local Agency Formation Com.* (Aug. 11, 2010, G041793) [nonpub. opn].) We held “Home Depot’s property presents a paradigmatic example of a pocket of unincorporated territory to which [Government Code] sections 56375 and 56375.3 were intended to apply.” (*City of El Cajon v. County of San Diego Local Agency*

*Formation Com., supra*, G041793, at p. 13.) In addition, our opinion rejected LAFCO's claim it could rely on the factors listed in Government Code section 56668 to determine whether a territory is substantially surrounded. "The broad authority accorded to LAFCO must be construed along with the limitations imposed by [Government Code] sections 56375 and 56375.3." (*City of El Cajon v. County of San Diego Local Agency Formation Com., supra*, G041793, at p. 14.) Thus, "the evidence fails to support LAFCO's finding Home Depot's property" did not satisfy the requirements of Government Code sections 56375 and 56375.3. (*City of El Cajon v. County of San Diego Local Agency Formation Com., supra*, G041793, at p. 15.)

We also concluded LAFCO's ruling on the annexation's environmental impacts violated CEQA. Its "staff report . . . questioned the EIR's and addendum's conclusions about the project's impacts," and, contrary to the findings in those documents, LAFCO's "resolution denying annexation . . . found '[s]erious cumulative environmental impacts . . . result[ing] from the Home Depot project.' Thus, the record reflects LAFCO did in fact dispute some of the environmental findings contained in the EIR and the addendum approved by City." (*City of El Cajon v. County of San Diego Local Agency Formation Com., supra*, G041793 at pp. 17-18.)

LAFCO and County jointly petitioned for review by the California Supreme Court. The California Association of Local Agency Formation Commissions filed an amicus curiae brief in support of the petition. The Supreme Court denied the petition. (*City of El Cajon v. County of San Diego Local Agency Formation Com.* (Nov. 10, 2010, S186512).)

After remand, City filed a motion in the superior court seeking an award of attorney fees under section 1021.5. In support of the motion, City lodged numerous documents, including letters filed by organizations, businesses, and private citizens supporting its approval of the Home Depot project and its application to annex the parcel. LAFCO and County jointly opposed the request. City's reply to defendants' opposition

included a declaration signed by its city manager. She stated that, while Home Depot agreed to pay City’s legal expenses during the underlying action’s trial proceedings, after the superior court entered its initial judgment denying the writ, “representatives of Home Depot advised me that due to changed economic circumstances, Home Depot did not intend to develop new home improvement stores in California and would not pay for the City’s legal expenses should the City decide to appeal . . . .” Thus, City paid the attorney fees to prosecute the prior appeal.

## DISCUSSION

### *1. Introduction*

“[T]he Legislature adopted . . . section 1021.5 as a codification of the “private attorney general” attorney fee doctrine that had been developed in numerous prior judicial decisions.’ [Citation.]” (*People ex rel. Brown v. Tehama County Bd. of Supervisors* (2007) 149 Cal.App.4th 422, 448.) “To qualify for an attorney fee award under section 1021.5, the party seeking attorney fees must show: (1) He or she is a successful party in an action brought to enforce an important right affecting the public interest; (2) a significant benefit (pecuniary or nonpecuniary) has been conferred on the general public or a broad class of persons; and (3) the necessity and financial burden of private enforcement transcends the litigant’s personal interest in the controversy. [Citation.]” (*Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 401.)

Where these elements are satisfied, the statute applies to an action “by one public entity against another public entity . . . .” (§ 1021.5.) But “each of the statutory criteria must be met to justify a fee award. [Citations.]” (*County of Colusa v. California Wildlife Conservation Bd.* (2006) 145 Cal.App.4th 637, 648.) Thus, “[a] trial court may

deny a section 1021.5 fee request if one of these three criteria is not met. [Citation.]” (*Arnold v. California Exposition and State Fair* (2004) 125 Cal.App.4th 498, 510.)

There is no dispute City satisfied the first requirement. In light of our prior opinion, petitioner unquestionably prevailed in the underlying litigation. That action also resulted in the enforcement of important rights that affect the public interest. “In assessing whether an action has enforced an important right, ‘courts should generally realistically assess the significance of that right in terms of its relationship to the achievement of fundamental legislative goals.’ [Citation.]” (*Choi v. Orange County Great Park Corp.* (2009) 175 Cal.App.4th 524, 531, quoting *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 936.) Government Code section 56001 explicitly declares the legislative “policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state” and “the logical formation and determination of local agency boundaries is an important factor in promoting orderly development . . . and efficiently extending government services.” In addition, “‘It is well settled that the private attorney general theory applies to an action to enforce provisions of CEQA.’ [Citations.]” (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 612.)

However, the trial judge’s comments at the hearing on the fee request indicate he concluded plaintiff failed to establish the other two requirements for a private attorney general fee recovery. The parties disagree over the appropriate standard of review for these elements. City argues it is de novo. Defendants argue we should apply an abuse of discretion standard.

Generally, “we review the trial court’s decision for abuse of discretion. [Citation.]” (*County of Colusa v. California Wildlife Conservation Bd., supra*, 145 Cal.App.4th at p. 648.) In *Serrano v. Stefan Merli Plastering Co., Inc.* (2011) 52 Cal.4th 1018, the Supreme Court recognized an exception to the general rule and held “‘de novo review . . . is warranted where the determination of whether the criteria for an

award of attorney fees . . . in this context have been satisfied amounts to statutory construction and a question of law.” [Citations.]” (*Id.* at pp. 1025-1026.)

We conclude the abuse of discretion standard applies to this case. Cases have held that where the basis for an attorney fee award request under section 1021.5 is a prior published appellate decision, the trial court’s ruling on the request can be reviewed under a “de novo” standard of review. (*Wilson v. San Luis Obispo County Democratic Central Com.* (2011) 192 Cal.App.4th 918, 924.) But the basis for City’s private attorney general attorney fees request was our prior *unpublished* decision. Furthermore, City acknowledges “[t]he issue is whether [it] satisfied the statutory criteria of section 1021.5.” Consequently, this case concerns an *application* rather than an *interpretation* of the statute.

In reviewing the ruling “we must pay “particular attention to the trial court’s stated reasons in denying or awarding fees and [see] whether it applied the proper standards of law in reaching its decision.” [Citation.] ‘The pertinent question is whether the grounds given by the court . . . are consistent with the substantive law of section 1021.5 and, if so, whether their application to the facts of this case is within the range of discretion conferred upon the trial courts under section 1021.5, read in light of the purposes and policy of the statute.’ [Citation.]” (*County of Colusa v. California Wildlife Conservation Bd., supra*, 145 Cal.App.4th at p. 648.) “The trial court’s determination may not be disturbed on appeal absent a showing that there is no reasonable basis in the record for the award. [Citation.]” (*Ibid.*)

## 2. *Significant Benefit*

To prevail, City needed to show it bestowed a significant benefit on the general public or a large group of people. The trial court impliedly found it failed to satisfy this element. In response to City’s assertion “the residents of San Diego County . . . will benefit because LAFCO has presumably been educated as to the proper

analysis under the . . . Act and under CEQA,” the court stated “the next time they run into a situation where 68 percent of the island is circumscribed by the city that wishes to annex that property and the other border is abutting a freeway, they’ll know what to do.”

The record supports the trial court’s conclusion the underlying action did not impart a significant benefit on the general public or a broad class of persons. “The benefit must inure primarily to the public. [Citation.] [¶] Thus, “the statute directs the judiciary to exercise judgment in attempting to ascertain the ‘strength’ or ‘societal importance’ of the right involved.” [Citation.] An effect upon the public interest is generally considered to require an impact on those other than persons directly involved. [Citation.] [Citation.]” (*Choi v. Orange County Great Park Corp., supra*, 175 Cal.App.4th at p. 531.)

While “the public always has a significant interest in seeing that legal strictures are properly enforced and thus, in a real sense, the public always derives a ‘benefit’ when illegal private or public conduct is rectified . . . the statutory language . . . and prior case law . . . indicate that the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. We believe rather that the Legislature contemplated . . . a trial court would determine the significance of the benefit, as well as the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case. [Citation.]” (*Woodland Hills Residents Assn., Inc. v. City Council, supra*, 23 Cal.3d at pp. 939-940.)

Our prior opinion recognized the Act generally accords local agency formation commissions wide discretion in deciding whether to grant or deny applications for territorial annexation or reorganization. (Gov. Code, § 56375, subd. (a); *Tillie Lewis Foods, Inc. v. City of Pittsburg* (1975) 52 Cal.App.3d 983, 1004 [considering an earlier version of the Act, noted the Legislature intended to “vest[ local agency formation commissions] with substantial authority and discretion to review annexation proposals

[citation] in keeping with specified public purposes”].) Government Code sections 56375, subdivision (a)(4) and 56375.3, subdivision (a)(1) create an exception to a local agency formation commission’s generally broad authority. Each statute applies only where specific requirements are satisfied. Under Government Code section 56375, subdivision (a)(4), “A commission shall not disapprove an annexation to a city, initiated by resolution, of contiguous territory that the commission finds is any of the following: [¶] (A) Surrounded or substantially surrounded by the city to which the annexation is proposed or by that city and a county boundary or the Pacific Ocean if the territory to be annexed is substantially developed or developing, is not prime agricultural land . . . , is designated for urban growth by the general plan of the annexing city, and is not within the sphere of influence of another city.” Thus, in addition to being substantially surrounded and substantially developed or developing, the territory in question must be “designated for urban growth by the general plan of the annexing city” and does not constitute “prime agricultural land” or fall “within the sphere of influence of another city.”

Government Code section 56375 also applies to the “annexation or reorganization of unincorporated islands meeting the requirements of [Government Code] section 56375.3.” (Gov. Code, § 56375, subd. (a)(4)(C).) The latter statute requires a local agency formation commission to approve “the change of organization” of a “territory that meets” the foregoing “requirements,” plus “does not exceed 150 acres in area, and that area constitutes the entire island” and “constitutes an entire unincorporated island located within the limits of a city . . . .” (Gov. Code, § 56375.3, subs. (a)(1), (b)(1) & (2).)

The trial court recognized these statutes apply in very limited circumstances. Our unpublished opinion merely recognized the foregoing statutory requirements were met in this case and the trial court’s judgment for defendants was not supported by the evidence. As noted, the Supreme Court declined to accept review of the

matter even though a statewide association supported LAFCO's petition. Further, City fails to cite any evidence suggesting the island exception presents a statewide or even countywide concern.

As for the CEQA claim, LAFCO did not assert it could ignore the environmental findings contained in City's EIR and the addendum to it. LAFCO merely claimed, albeit erroneously, that its findings considered, but did not contradict, those reached in the earlier environmental reviews conducted by City.

In *Angelheart v. City of Burbank* (1991) 232 Cal.App.3d 460, the plaintiffs successfully challenged a city ordinance regulating large family day care homes. The trial court awarded the plaintiffs attorney fees under section 1021.5, but the Court of Appeal reversed. Agreeing "the trial court reasonably could have determined that the action involved an important right affecting the public interest" (*Angelheart v. City of Burbank, supra*, 232 Cal.App.3d at p. 468), the appellate court held the significant benefit requirement had not been met. "[T]here is no evidence in the record to support the trial court's conclusion that all of the residents of Burbank seeking child care benefited from the action. In fact, there is no evidence that there was any other person in Burbank, like the Angelhearts, who sought a permit for more than the 10 children allowed in a family day-care home under the former municipal ordinance. There is no evidence that the Angelhearts' action, although successful and involving an important public policy, affected a large class of persons." (*Ibid.*)

The same is true here. Thus, we conclude the record supports the trial court's implied finding the significant benefit requirement was not met.

As noted, because "section 1021.5 states the criteria in the conjunctive, each of the statutory criteria must be met to justify a fee award. [Citations.]" (*County of Colusa v. California Wildlife Conservation Bd., supra*, 145 Cal.App.4th at p. 648.) Since we conclude the record supports a finding City failed to establish the significant benefit

requirement, we need not reach the merits of the third requirement; whether the cost of City's victory in the prior appeal transcended its personal interest in the action.

*3. City's Motion for Attorney Fees on Appeal*

While this appeal was pending, City filed a motion to recover its fees for prosecuting the appeal under the private attorney general doctrine. We issued an order declaring the motion would be decided in conjunction with the merits of the appeal.

Since we conclude the trial court properly denied City's motion for attorney fees under section 1021.5, we also deny its request for an additional fee award on appeal.

DISPOSITION

The order denying attorney fees is affirmed. The motion for attorney fees on appeal is denied. Respondents shall recover their costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.