Filed 3/20/17 Moore v. County of Orange CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GREGORY MOORE, Plaintiff and Appellant, v. COUNTY OF ORANGE et al., Defendants and Respondents.	G049974 (Super. Ct. No. 30-2011-00476941) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Gregory Moore, in pro. per, for Plaintiff and Appellant.

Woodruff, Spradlin & Smart, Daniel K. Spradlin and Roberta A. Krause for Defendants and Respondents.

I. BACKGROUND

In January 2010, J.M., then just over three years old, was taken into protective custody at the behest of county social workers. Their reason was mainly (but not entirely) the continued false allegations of child abuse lodged by J.M.'s mother, Melissa, against his father, Gregory. In May 2010, the juvenile court declared J.M. a dependent of the juvenile court and also made a dispositional order removing J.M. from the custody of *both* his parents. Gregory appealed from the dispositional order as it applied to him and won. In an opinion handed down by this court in late February 2011, we held the juvenile court lacked the necessary clear and convincing evidence of danger to J.M.'s physical health required to affirm his removal from his father's custody. As to J.M.'s emotional health, we noted that if Gregory was no longer required to interact with Melissa, the emotional distress created by his parents' open custody battle would be ameliorated, if not entirely eliminated.[1]

However, our opinion had a failsafe mechanism. We instructed the juvenile court to place J.M. with his father *unless* there were new facts arising after May

---

[1] California Rules of Court, rule 8.1115(a) provides that unpublished opinions may not be "cited or relied on by a court or a party in any other action," except that rule 8.1115(b) articulates an exception for an unpublished opinion that is "relevant under the doctrines of law of the case, res judicata, or collateral estoppel[.]" Our earlier unpublished opinion, *In re J.M.* (Feb. 25, 2011, G043723) [nonpub. opn.] (*J.M.*) is relevant to the instant action under the doctrines of law of both law of the case [establishing that social workers had insufficient evidence to sustain a dispositional order effectively removing J.M. from his father] and collateral estoppel [precluding the county in this action from asserting that J.M. was properly removed from his father at the dispositional hearing].

We face a more significant complication in regard to another unpublished opinion that figures prominently in the briefing in this case and was *itself* a focus of the trial, *Fogarty-Hardwick v. County of Orange* (June 14, 2010, G039045 [nonpub. opn.] (*Fogarty-Hardwick*). *Fogarty-Hardwick* was a case where a parent, like Gregory here, also sued the County of Orange for violation of civil rights in regard to social workers' conduct in a dependency proceeding. As we note below, civil rights violations *require* the plaintiff to show a policy, custom or practice on the part of a local government employer to violate civil rights. Gregory tried to use the *fact* of what happened in *Fogarty-Hardwick* to try to show Orange County had a *policy* of encouraging social workers to violate the rights of parents in dependency proceedings.

Our problem? How to handle the case in this proceeding given the court rule? Our solution: The court rule precludes *reliance on* or *citation of* unpublished opinions, and we will do neither. We will take judicial notice of it as a court record *qua* court record Gregory himself tried to invoke at trial, but not as an appellate decision *qua* appellate decision. In the case at bar, we will therefore be careful only to mention *Fogarty-Hardwick* in contexts where Gregory himself was trying to use it at the trial court level as a *fact* put before the jury, and not for any proposition of law. In the one instance in which Gregory tries to use it as authority for a proposition of law, we will of course reject any such use.

2010, demonstrating a need for "continued out-of-custody placement." This failsafe mechanism delayed the return of J.M. to his father. He was actually returned to Gregory in August 2011.

In the meanwhile – in May 2011, three months prior to J.M.'s actual return – Gregory filed this civil action against the county and certain of its social workers for violation of his and his son's federal and state civil rights, and also intentional infliction of emotional distress. He based his suit on the county social workers' recommendation to the juvenile court that J.M. not be placed with his father at the dispositional hearing.

This civil action came to jury trial in mid-December 2013, and lasted into the third week of January 2014. The jury found that the social workers had not acted outrageously. The jury further found the county had no official custom of allowing its social workers to provide either perjured evidence to the juvenile court or of failing to provide exculpatory evidence. Finally, the jury found the county had an adequate training program to prevent such abuses on the part of social workers. From the ensuing defense judgment Gregory now appeals.

II. DISCUSSION

Not surprisingly, successfully suing social workers and their counties for actions in child dependency cases is not easy. It is, in fact, like threading a needle – there is only a tiny opening for liability. Arrogance and a bad attitude on the part of social workers are not enough. (E.g., *Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371 [upholding summary judgment in favor of county even where social workers were alleged to have removed a child out of arrogance or to punish mother].) Negligence is certainly not enough. (E.g., *Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456, 465 [collecting cases].) Even egregiously bad decisions are not enough. In one extreme case, a child was stabbed after social workers returned her to a parent and the social workers were nonetheless held to be immune for their decision.

(*Ortega v. Sacramento County Dept. of Health & Human Services* (2008) 161 Cal.App.4th 713.)

What tiny opening exists under state law to successfully sue social workers for their actions in dependency cases is found in section 820.21 of the Government Code.[2] Section 820.21 states a rule that might be described as "malice plus." Malice alone is not enough. There must be malice *plus* perjury, or malice *plus* fabrication of evidence, or malice *plus* failure to disclose known exculpatory evidence, or malice *plus* testimony obtained by duress.

Likewise, suing the government entity which employs social workers for violation of a plaintiff's civil rights presents a miniscule target. The basic rule was articulated in *Monell v. Department of Social Services* (1978) 436 U.S. 658 (*Monell*). The rule is: Local governments are not liable for federal civil rights violations perpetrated by their employees under the doctrine of respondeat superior unless those violations were the result of the local government's policy, custom, or practice. (*Id*. at p. 694.) The policy, custom or practice, however, can be unwritten. (See *Johnson v. California* (2005) 543 U.S. 499.)[3]

---

2 All further statutory references are to the Government Code unless otherwise indicated.

3 Gregory is correct to argue that the relevant *state* law on social worker liability as such does not require a plaintiff to show both perjury *and* failure to disclose exculpatory evidence. Section 820.21 provides: "(a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:

"(1) Perjury.

"(2) Fabrication of evidence.

"(3) Failure to disclose known exculpatory evidence.

"(4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code.

"(b) As used in this section, 'malice' means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others." (§ 820.21)

However, as we explain in part II.6. of this opinion *post*, the context of the jury instruction about which Moore complains was not about social worker liability under state law, but about social worker liability under federal law and specifically the *Monell* case, and in that context there was no error.

With these difficulties in mind, we confront Gregory's arguments on appeal, keeping in mind that, in the aftermath of a full jury trial, the losing appellant bears the burden of demonstrating either prejudicial abuse of discretion, or prejudicial error, on the part of the trial judge. (E.g., *Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348; see *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187 ["a judgment or order of the trial court is presumed correct and prejudicial error must be affirmatively shown"].) Concomitantly, appellate briefing rules require appellants to identify the reasons supporting such claims of error or abuse of discretion in separate headings in the opening brief, and in addition identify where in the record such error or abuse of discretion took place. (Cal. Rules of Court, rule 8.204(a)(1)(B).[4]) Gregory presents 10 separate arguments, which we will now take seriatim.

1. *Denial of a Continuance*:

Gregory retained his own attorney in the juvenile dependency proceeding and that same attorney filed this civil complaint on Gregory's behalf. He represented Gregory continuously through the end of the trial.

However, in March 2013, Gregory's juvenile court attorney sought a continuance of the trial, then set for April 2013. The attorney's basic plea was, to use the trial judge's characterization of the motion, that he had "screwed up" because he had forgotten to allege the *individual* social workers were liable for violation of Gregory and

---

[4] The rule currently provides:
"(a) Contents
"(1) Each brief must:
"(A) Begin with a table of contents and a table of authorities separately listing cases, constitutions, statutes, court rules, and other authorities cited;
"(B) State each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority; and
"(C) Support any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears. If any part of the record is submitted in an electronic format, citations to that part must identify, with the same specificity required for the printed record, the place in the record where the matter appears."

J.M.'s civil rights. The juvenile court attorney asked for a continuance to August 2013, to allow another attorney, experienced in federal civil rights claims, to take over the case. In addition, the juvenile court attorney worried that he might be necessary as a witness, given that the underlying events of the case arose out of a dependency action in which he was the father's counsel. The judge *granted* the request for a continuance. He postponed trial to May 2013, in order to allow the new civil rights attorney a chance to "get up to speed." *But* – the court did not reopen discovery. That deadline had already expired and the trial court declined Gregory's request to reopen it.

Continuances – and their denials – are reviewed under an abuse of discretion standard. (See *Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621, 630 [articulating standard]; e.g., *Womack v. Lovell* (2015) 237 Cal.App.4th 772, 781 [because continuance could "could hardly be said to be unreasonable" under circumstances, no basis for reversal existed].) In the case before us, the denial of Gregory's requested continuance was within the trial judge's discretion. The request came late in the case's history, after the case had been going on for years and after discovery had already been closed. The fact Gregory lost the potential services of an attorney in whom he now, in hindsight, vests more confidence than the attorney he actually had at trial does not show an abuse of discretion on the trial judge's part. He had to decide the case on the facts before him, not on what might happen in the future.

It appears Gregory's real complaint is that the trial judge did not reopen discovery so that the supposedly better, experienced civil rights attorney would feel comfortable taking over Gregory's case. But, as the trial judge noted, there was no separate motion to reopen, and reopening required such a separate motion. (See Code Civ. Proc., § 2024.050 [authority to reopen discovery on properly noticed motion accompanied by declaring showing meet and confer].) We thus find there was no error in not reopening discovery.

2. *Denial of Motion to Amend*:

Apropos the juvenile court counsel's allusion to the need to add the individual social workers to his federal civil rights claim, Gregory filed a motion to amend his complaint to do just that. The motion was filed in early July 2013, in anticipation of a trial then set for early September 2013. Ironically then, the motion to amend reflected fortuitous extra time Gregory's attorney had to prepare for trial. The motion was denied.

Motions to amend, like motions to continue, are tested on an abuse of discretion standard. (E.g., *City of Stanton v. Cox* (1989) 207 Cal.App.3d 1557, 1563.) Gregory's only argument that the trial judge abused his discretion in denying the motion amounts to little more than saying it was desirable to bring "corrupt social workers" to justice – that is, his argument is that he should have won. But the trial judge's call was reasonable in light of the obvious prejudice to the *defendants* if it had been granted. (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-487 [no abuse of discretion to deny motion to amend filed on eve of trial where significant delay and the defendant prejudiced].) Put another way, Gregory would not have been pleased if the shoe had been on the other foot and the county and social workers had been seeking to amend their defenses at the last minute.

3. *Purported Misleading of the Jury*

Just as prospective jurors were assembling (and before the jury had actually been picked), the trial judge told those prospective jurors a number of things – including telling them to put away their twitter accounts. He then gave them this short summary of the case some of them were about to decide: "The case involves Mr. Moore's allegations that his son J.M. was wrongfully removed from his custody after the Irvine Police Department brought the child into protective custody." On appeal, Gregory asserts the statement was misleading because, by mentioning the police, it conveyed the false first

impression that J.M. was removed from the custody of his father "for neglect or in the interest of safety."

The error in Gregory's argument is that it was undisputed J.M. was in fact detained by Irvine police officers. Gregory's own attorney told the jury the same thing in Gregory's opening statement to the jury. After explaining that Melissa had a "long history of bringing" J.M. to the emergency room and making false and unfounded allegations of abuse against Mr. Moore," Gregory's attorney then said, "The Irvine Police took [J.M.] into custody for a brief period of time to allow [him] to be interviewed and examined by CAST [child abuse services team] personnel." Moreover, the trial judge did not give a specific reason police were involved in the first detention, so we may not conclude, as Gregory would have it, that the jury necessarily assumed the worst. Gregory subsequently had plenty of chances to explain to the jurors in the actual trial that it was social workers who were the instigators of the actual detention and availed himself of those opportunities. And we must finally note that Gregory *agreed* to the establishment of juvenile dependency jurisdiction over J.M. based on possible harm to J.M.'s safety, which takes the wind out of any argument that police unfairly detained J.M. at the beginning of the dependency case. (See *J.M., supra,* G043723, p. 10.) The trial judge's summary of the case was accurate and harmless.

4. *Exclusion of Evidence*

Gregory's next argument involves sustained relevancy objections to two questions asked of Gregory on direct examination: (1) did Gregory do any "volunteer work"? and (2) had he held any "leadership positions in the community"?

Once again we deal with an abuse of discretion standard. (See *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 147.) Here, there was no abuse of discretion in sustaining objections to these two questions, because both questions were irrelevant. They weren't closely connected to any specific issue in the case. Gregory's good works had only the most tenuous relationship to the reasons social workers'

proffered for recommending against him at the disposition hearing. Those reasons centered not on his good character, but on his – as perceived by social workers – overzealous concern for protecting his son from Melissa and his inability to get along with her. (See *J.M.*, *supra*, G043723, pp. 8-9.) And finally, there was no prejudice because the nature of Gregory's case necessarily required him to focus on alleged bad acts and motives of the social workers' themselves. His "leadership positions in the community" simply had no bearing on the case.

5. *Interruptions*

Gregory next points to a series of statements by the trial judge, which he claims amounted to cumulatively prejudicial interruptions:

(1) A statement by the judge to Gregory while Gregory was testifying to the effect that it might not "be fair" to Gregory to keep him on the stand without taking a break, giving Gregory a chance to "recompose" himself. As an appellate court, we cannot conclude this statement was prejudicial to Gregory at all. The record does not reflect that the comment was a gratuitous interruption. Having examined the record, all we can see is the trial judge's genuine solicitude and kindness for a witness who appeared to the judge to be in some distress while testifying. If there was more to it than that, it does not appear in the record.

(2) A statement by the judge to Gregory's trial counsel to "finish up" his examination of Gregory at the beginning of an afternoon session of trial. We find no abuse in this statement because, again, having examined the record in context, the words "finish up" did not mean "hurry up" in the context the judge was using them. They only meant the trial judge was letting Gregory's counsel know he could now complete his examination of Gregory.

(3) A similar "finish up" statement made by the judge to Gregory's trial counsel, which Gregory's brief says can be found on page 1593 of the reporter's

transcript. This appears to be some sort of mistake on Gregory's part, since we cannot find any such admonition on that page.

(4) An interruption of the examination of Gregory on direct which Gregory now asserts amounted to a statement by the trial judge he was not being truthful. An examination of that part of the record shows the trial judge asked Gregory about how a certain social worker responded to his complaints about the location of his visits. Gregory said he would go for walks with his son and have some "outdoor time." But Gregory then added the stinger that Melissa "wasn't able to control" his son as part of his answer. The judge noted, as the judge should have, that Gregory had strayed off topic, and tried to steer Gregory back to the judge's precise question about the social worker's response to Gregory's complaints about the location of visitation. The context of the interruption thus shows the trial judge was not accusing Gregory of untruthfulness, but simply trying to steer Gregory into answering the actual question put to him.

(5) An interruption during the examination of the social services director which appears to have centered on the five-month time-lag between this court's decision in *J.M.* and J.M.'s actual return. Gregory's counsel had just asked a question about whether "the trial delayed his son being returned by at least five months." The court then asked, "Which juvenile trial? You told me there [have] been several."

Again, an examination of the context of this portion of the record shows Gregory is mistaken in assigning prejudice to the interruption. What appears to us is that the trial judge was merely trying to pin down the witness as to which particular "trial" was being referred to. The problem was one of ambiguity. Dependency law involves numerous *hearings*, which are sometimes more informally referred to as *trials* (and certainly can seem like trials to the litigants). The judge was just trying to clear up the ambiguity in Gregory's counsel's use of the word "trial."

(6) An interruption by the judge during Gregory's counsel's closing argument that centered on how the director of social services had "acknowledged" that

one of the social workers involved in the *Fogarty-Hardwick* case had been found by the jury "to have committed perjury with malice." Defense counsel objected, saying the statement was a "misstatement of fact," and the trial judge agreed. So must we.

The judge had to be careful, in this context, not to violate the basic strictures limiting character evidence as set forth in section 1101 of the Evidence Code by imputing perjury to individuals not even before the court.[5] While the social services director had indeed acknowledged that the jury in the *Fogarty-Hardwick* case had found social workers to have acted "maliciously, oppressively, and fraudulently," we have not found, and Gregory has not cited us to, any acknowledgement that they committed *perjury*, as distinct from one of the other "malice-plus" offenses under section 820.21. Moreover, in this same exchange the trial judge appears to have exercised a bit of judicial brinkmanship in Gregory's *favor* when he remarked in front of the jury that the charge that the particular social workers in *Fogarty-Hardwick* had perjured themselves with malice "may be true." In fine, none of the interruptions Gregory refers to constituted error, much less reversible error.

6. *Jury Instructions*

Gregory complains the trial judge was supposedly editing jury instructions, to use Gregory's phrase, "on the fly." His cited passage merely shows that the trial judge was looking down and editing jury instructions as he was reading them to the jury. We do not think that was any sort of error. Rather, to us it shows a conscientious judge paying attention to what he was doing at the time.

Gregory's next complaint is more substantive. He asserts the jury was instructed incorrectly in light of section 820.21, because the trial judge's use of "and" instead of "or" in a jury instruction. (As we saw in footnote 3 above, the statute itself

---

[5] Evidence Code section 1101, subdivision (a) provides: "Except as provided in this section and in Sections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion."

allows liability based on malice plus one thing *or* malice plus another.) Again, checking the context shows there was no error or abuse of discretion. The context of the instruction was the civil rights claims against the county based on the *Monell* "policy, custom or practice" rule.[6] In regard to *that* rule, the United States Supreme Court has held that unless a policy to encourage unconstitutional activity is shown, a single incident of violation is insufficient to establish liability on the part of the government employer. (*Oklahoma City v. Tuttle* (1985) 471 U.S. 808, 823-824 (*Tuttle*).)[7] The instruction about which Gregory now complains appears to have tried to reflect that rule. Moreover, any deficiency in the instruction was harmless, since Gregory, on appeal, points us to nothing in the record that establishes the county actually had an "official custom" of allowing social workers to perjure themselves *or* fabricate evidence *or* withhold exculpatory evidence.

Gregory's next jury instruction argument is based on the judge's instructing the jury that a single past incident of alleged misconduct by a county employee is insufficient to hold the county responsible. This argument is directly contrary to a United States Supreme Court decision in *Tuttle*. Gregory's argument that the unpublished *Fogarty-Hardwick* decision stands for a contrary rule is likewise unavailing. If the California rules governing unpublished appellate decisions are clear on one thing, it is that a litigant such as Gregory, or even this court, cannot use an unpublished decision for a *proposition of law*. That is precisely what he is trying to do here and it cannot be considered.

---

[6] The jury was told that to establish liability on their civil rights claims, the plaintiffs had to establish: "That the County of Orange had an official custom allowing for social workers and their supervisors to provide material information to the juvenile court that was perjured or fabricated and to fail to provide exculpatory evidence."

[7] A "practice" or "custom," as distinct from a "policy," would involve, by definition, multiple incidents.

7. *Allowing Attorney Misconduct*

Gregory next argues the trial judge erred in allowing opposing counsel to mislead the jury by "presenting a fraud to the Jury." He points to statements made by witnesses which he now claims were inaccurate, and a few similar statements from opposing counsel in closing argument. This assertion fails because Gregory's counsel had the opportunity to cross-examine the same witnesses and bring out any falsity in their testimony, and further to argue to the jury why any of the county lawyer's arguments were incorrect. How well or poorly he did so is not a matter of judicial error.

8. *Specific Attorney Misconduct Involving One of Plaintiff's Witnesses*

One of Gregory's witnesses was a marriage and family counselor named Helton. In cross-examination, counselor Helton was asked whether it was "correct" that Gregory had told Helton that Melissa had, two weeks after the birth of J.M., "thrust" J.M. to Gregory's "chest and told him to breast feed the child himself," and whether that was the "extent" of what Gregory told her about that "incident." Gregory now claims this question was attorney misconduct. We disagree. It may have been an ungainly, poorly constructed and compound question, but it violated no rule of professional ethics.

A similar claim is based on what happened moments later. The county's counsel began asking questions as to whether counselor Helton had sought out "other information" about Gregory's veracity concerning events in 2007 and things he had said to the effect that Melissa was "the source of all the problems." The county counsel followed that question with a question concerning something counselor Helton had previously testified to.[8] Counselor Helton responded to the confusing question this way:

---

[8] Here is what led up to counselor Helton's complaint:

"Q And yet did you seek out any other information to confirm whether he was actually being truthful about what had happened even back in 2007 with any of those other issues that he was complaining about saying that Ms. Garner was the source of all the problems?

"A The work that I was – first of all, the client/therapist relationship – there has to be a rapport. If I am going to keep – accuse him of not being truthful in every visit, he is not going to, a, come back, or he is not going to give information to me.

"I – I just feel like this line of questioning, sir, and the time line is very confusing and is – and the purpose is to make me look incompetent."

Like the first question, this question *was* confusing (it isn't even clear *to us*, with the benefit of a transcript, precisely what was being asked). But again, asking a poorly constructed, convoluted question is not, by itself, attorney misconduct. It's just asking a bad question, and lawyers do that all the time. Moreover, we conclude there was no basis to reverse for prejudicial error because not only did Gregory's counsel have the opportunity to object to the question, but the trial judge, on his own, went out of his way to reassure the counselor her competence was not being questioned.[9]

9. *Time Limits on Closing Argument*

Gregory asserts the trial judge prejudicially limited his counsel's closing argument and "mocked" his counsel's time estimate. An examination of the record does not bear out these charges.

On January 21, 2014, the penultimate day of trial, Gregory's counsel gave an estimate of one hour to an hour and fifteen minutes for his closing argument. Gregory's counsel then said he would "try to finish it today." The judge pointed out that gave him 58 minutes, then had the jury brought in, saying "we'll get it wrapped up."

Gregory's counsel began his closing argument, and, as the day drew to a close, the counsel stated, absent any interruption from the trial judge, "I have quite a bit

---

"So my approach with Mr. Moore was to receive him as he is, or was at that moment, and let him express to me what was going on in his own thought process, in his own inner world. And by doing that, I can – I am able to gain information and maybe educate and teach him certain things about his responsibility in relationship with Ms. Garner. And that was my approach.

"Q But as you testified earlier, when you started trying to help him sometime after August 19, at least up until you testified in January or February of 2011 – we talked about this before lunch – when you testified when answering the questions, he had not made any progress whatsoever in accepting responsibility. Do you recall that testimony that you gave in the hearing in 2011?"

[9] After the last question asked and Helton complained county counsel was trying to make her look incompetent, the judge said:

"The court: The purpose is not for you to worry about. And don't think that your competency is being questioned. The question is, though, you have information that is relevant to the claim of Mr. Moore against the social services administration. And we need that testimony.

"So you don't need to feel like you have to defend yourself. You're not at issue here. Your competency is not at issue. Your – at least in terms of the lawsuit itself. We just need you to answer the questions."

to go, your honor." The judge asked, "How much more?" and Gregory's counsel answered, "probably another 45 minutes or so." The judge noted "that's a different estimate than you gave me an hour ago, an hour and ten minutes ago, which suggests you would be done by about now." The judge asked, "Are we sure of that estimate?" Gregory's counsel answered "yes," and the judge said, "Okay. Is there a particular reason that your previous estimate was so off?" Gregory's counsel answered, "I don't have a reason." The judge stated he was going to "trust" Gregory's counsel that the closing would be over in 45 minutes and then set the rest of the argument for 9 a.m. the next day.

That next day began by the judge noting to the jury "we're in the middle of closing arguments" and letting Gregory's counsel resume. Gregory's counsel then proceeded for about half an hour, when the judge said, "you've got 15 minutes." Gregory's counsel responded, "thank you, your honor" and resumed his argument, which he appears to have finished in the 15-minute time frame.

As this recounting shows, the judge was quite solicitous of Gregory's position, giving his counsel almost twice the time his counsel had asked for. We find no pressure nor mockery in the actual record on appeal.

10. *The Cost Award*

Gregory challenges the cost award against him, arguing that county counsel used "ridiculously large and unnecessary blown up whiteboards to present the same information that could have been displayed on the overhead projectors" that Gregory himself had used. But Gregory gives us no law indicating defense counsel were required to use the cheapest possible displays in presenting their case.[10] Nor does he point to any objection based on that argument made to the trial court, or any attempt to contend in the trial court that respondents' costs were unreasonable.

---

[10] Gregory's authorities on the cost award issue all involved attorney misconduct, and we have already addressed and rejected Gregory's arguments in that regard.

III. DISPOSITION

We find no prejudicial error or abuse of discretion. Indeed, we find a trial judge who presided over a difficult case doing his best to be fair to Gregory.

The judgment is affirmed.[11] Respondents will recover their costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.

---

[11] We now must take care of some housekeeping details in this voluminous matter: As to Gregory's January 7, 2015, request to take judicial notice of *Fogarty-Hardwick*, *supra*, G039045, and *J.M.*, *supra*, G0437723, the request is granted, since they are relevant to the facts of the case as presented to the jury. For the same reason, his motion to take judicial notice of another manifestation of the dependency case, *In re J.M.* (May 17, 2011) G045262 is also granted. (See in general fn. 1, *ante*.) His request to take judicial notice of two other unpublished matters (items 4 and 5 in the request for judicial notice filed January 7, 2015) is denied for lack of relevance.

His second motion, filed October 28, 2015, to take judicial notice of various matters which Gregory admits were not considered at trial, is denied in its entirety.