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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KYLE HILLIS,

Plaintiff and Appellant,

v.

CITY OF ALISO VIEJO,

Defendant and Respondent.

G051900

(Super. Ct. No. 30-2013-00688926)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Kim Garlin Dunning, Judge. Affirmed.

Robert A. Waller, Jr.; Feerick & Associates and Thomas F. Feerick for
Plaintiff and Appellant.

Best Best & Krieger and Thomas J. Eastmond for Defendant and
Respondent.

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Plaintiff and appellant Kyle Hillis (plaintiff) appeals from a postjudgment order denying him an award for attorney fees under Code of Civil Procedure section 1021.5 (section 1021.5). He argues he was entitled to recover attorney fees because his action was the “catalyst” that forced defendant and respondent City of Aliso Viejo (City) to remove a nonconforming traffic sign.

Plaintiff contends the court erred when it ruled attorney fees were not warranted because the general public did not receive a significant benefit from the action. We agree with the trial court and affirm the order.

FACTS AND PROCEDURAL HISTORY

After plaintiff stopped at a red light at an intersection within City’s limits, he made a right turn. He was cited by an Orange County sheriff for making an illegal turn on a red light. Posted at the intersection was a sign stating “RIGHT TURN ON GREEN [green light symbol] OR [green right arrow symbol] ONLY” (Sign).

Plaintiff posted the approximately \$234 fine and then challenged the citation in traffic court. He argued the Sign was not one of those approved by the California Department of Transportation or within those listed in the California Manual of Uniform Traffic Control Devices (MUTCD), and thus there was no legal basis for the citation. The traffic court dismissed the citation and refunded \$234 to plaintiff.

The way the intersection is situated makes it difficult to see oncoming traffic from the cross-street, and turning right on a red light is a potential safety hazard. Therefore, City originally erected a “No Right Turn On Red” sign. As a result drivers leaving the residential area had to wait sometimes three or four light sequences to get through the intersection. Certain drivers disregarded the sign and turned right on the red despite the prohibition. Working with a traffic engineering firm, and after considering at least one alternative sign, City erected the Sign.

After plaintiff was cited, plaintiff’s father asked City to remove the Sign and use one listed in the MUTCD. At one point City’s engineer and public works

director agreed the Sign was not included in the MUTCD but advised that a “typical ‘No Turn on Red’ sign” would be problematic. He further advised that the Sign avoided such a problem. He stated, “Should the court at some point disagree with this assessment we will certainly consider a change, but believe that our justification is valid.”

Plaintiff thereafter filed a putative class action against City and the County of Orange (not a party to this appeal) on behalf of himself and any other drivers who had been cited for violating the Sign, alleging causes of action for violation of the Vehicle Code and the California Constitution (deprivation of property without due process and excess fines), conversion, and unjust enrichment. He sought injunctive and declaratory relief as well as damages. Plaintiff also prayed for attorney fees under section 1021.5. City removed the Sign during the pendency of the action. The court subsequently granted City’s motion for judgment on the pleadings and entered judgment in its favor.

Thereafter, plaintiff filed a motion for attorney fees pursuant to section 1021.5, seeking just under \$70,000. He argued his action “enforced an important right affecting the broad public interest” because it forced City to comply with federal and state law by removing the Sign. He claimed this affected the general driving population. Plaintiff also argued his financial burden in forcing City to comply justified the award of attorney fees. He asserted he was the “successful party” even though he did not prevail in the action because his suit was the “catalyst for the City removing the Sign.”

The court denied the motion. It ruled that the lawsuit “appear[ed]” to be the “catalyst” for the Sign removal. It found there was “a closer question” whether removing the Sign “conferred a significant benefit.” Even if there was a benefit, however, the lodestar of 191 hours at \$350 per hour plaintiff requested was “grossly exaggerated.” The majority of the fees were incurred in prosecuting the action as to the County of Orange, against whom plaintiff did not prevail.

The court noted that before the hearing it had believed the amount of fees could have been worked out. Ultimately, however, it found that removal of the Sign,

plaintiff's only real success, "did not confer a significant benefit on the general public or public at large."

DISCUSSION

Section 1021.5 provides for an award of attorney fees "to a successful party" "in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

"The moving party bears '[t]he burden [of] establish[ing] each prerequisite to an award of attorney fees under section 1021.5. [Citation.]' [Citations.]" (*Bui v. Nguyen* (2014) 230 Cal.App.4th 1357, 1365 (*Bui*)). We review a denial of attorney fees under section 1021.5 for abuse of discretion and do not overturn the decision unless we are "convinced that it is clearly wrong and constitutes an abuse of discretion." [Citations.]" (*Summit Media, LLC v. City of Los Angeles* (2015) 240 Cal.App.4th 171, 187.) "[W]e give considerable deference to the trial court." (*Carian v. Department of Fish & Wildlife* (2015) 235 Cal.App.4th 806, 815.)

Plaintiff argues he is entitled to attorney fees because he forced City to comply with the Vehicle Code and the MUTCD. He contends that based on Vehicle Code section 21, subdivision (a) the state has "preempted the field of motor vehicle traffic regulation" and City lacks any authority to regulate traffic unless the Legislature allows it. On that basis he concludes enforcement of the Vehicle Code, and the derivative MUTCD, is an "important legislative goal[]" to ensure uniform traffic regulation and safe driving. As a result, he asserts, his action to force City to comply with the sign regulation "implicate[d] important public statutory rights." We disagree.

“[T]he 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.” (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 939 (*Woodland*); *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 737.) But “section 1021.5 does not afford relief for ‘the enforcement of “any” or “all” statutory rights.’” (*Bui, supra*, 230 Cal.App.4th at p. 1366.) Rather, “the Legislature obviously intended that there be some selectivity, on a qualitative basis, in the award of attorney fees under the statute” (*Woodland*, p. 935.) “[T]he statute directs the judiciary to exercise judgment in attempting to ascertain the “strength” or “societal importance” of the right involved.’ [Citations.]” (*Bui*, at p. 1366.)

“It is the duty of the trial court, exercising ‘its traditional equitable discretion . . . [to] realistically assess the litigation and determine, from a practical perspective, whether or not the action served to vindicate an important right so as to justify an attorney fee award under a private attorney general theory.’ [Citation.] The type of “important rights” that may be the subject of litigation in which private attorney general fees may be awarded include ‘racial discrimination, the rights of mental patients, legislative reapportionment and . . . environmental protection.’ [Citation.]” (*Bui, supra*, 230 Cal.App.4th at p. 1366.)

While traffic control and flow are important they cannot be described as the equivalent of an “important public statutory right” in the same category as those listed above. As noted, the trial court must “realistically assess” the nature of the litigation and the goal achieved “from a practical perspective.” It did so here when it found, contrary to plaintiff’s emphasis otherwise, this case really does concern only one traffic sign.

Plaintiff argues City disregarded the Vehicle Code and its own municipal code when it erected the nonapproved Sign. He insists his action became necessary when City refused to replace the Sign, knowing it was noncompliant. He asserts City

employees must be held “to account for their violations of the law.” Plaintiff reiterates his trial court argument that “we are a nation of rules” and the government is not allowed to violate laws by putting up a sign “to control the flow of traffic that [it] want[s].”

The actual events, however, do not support that version of what occurred. There was no evidence City was wholesale violating traffic sign laws or had erected nonapproved signs throughout its limits. Nor does the record show City was acting recklessly or arrogantly. It had a well-thought-out rationale for use of that one Sign and was trying to solve an unusual traffic problem. The fact City refused to take down the Sign until it was forced to do so, as plaintiff emphasizes, does not negate that.

““The possibility that his lawsuit may have conveyed a cautionary message to the [public entity] about [its] conduct, or that it might cause [the public entity] to change [its] practices in the future, is insufficient to satisfy the significant public benefit requirement. [Citations.]’ [Citation.]” (*Norberg v. California Coastal Com.* (2013) 221 Cal.App.4th 535, 543.)

Plaintiff takes issue with the court’s reliance on *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, which, he argues, is inapposite. In *Morgan*, the court refused to award fees. Plaintiff points out that in *Morgan* the defendant took the corrective action before suit was filed, which is not what happened here. But even if the court inappropriately relied on *Morgan*, we review the result, not the reasoning. (*Woods v. Union Pacific Railroad Co.* (2008) 162 Cal.App.4th 571, 577.)

In short, plaintiff has not shown the court abused its discretion in denying plaintiff attorney fees. We are simply not persuaded by any of the cases plaintiff cited that he is entitled to an award of attorney fees as a matter of law or that the court abused its discretion in denying plaintiff’s fee request.

DISPOSITION

The order is affirmed. City is entitled to its costs on appeal.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.