NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FRANCO VESCOVI,	
Plaintiff and Appellant,	G052716
v.	(Super. Ct. No. 30-2013-00635978)
CLINT CLARK,	O P I N I O N
Defendant and Respondent.	

Appeal from a postjudgment order of the Superior Court of Orange County, Mary Fingal Schulte, Judge. Affirmed.

Janus Capital Law Group and Deron Colby for Plaintiff and Appellant.

Beckerman Anderson and Robert Beckerman for Defendant and Respondent.

Franco Vescovi lost his trade secret misappropriation action against Clint Clark, and the trial court awarded Clark $50,000 in attorney fees pursuant to Civil Code section 3426.4 of the California Uniform Trade Secrets Act (UTSA) [permitting sanctions for bad faith misappropriation claim].[1] In this appeal, Vescovi does not challenge the underlying decision in Clark's favor, but rather maintains the trial court erred in concluding the action was objectively and subjectively brought in bad faith within the meaning of section 3426.4. In addition, he asserts there was insufficient evidence to support the amount of the award. Finding his arguments lack merit, we affirm the postjudgment attorney fee award.

I

In 2013, Vescovi filed a complaint against Clark (and others not relevant to this appeal) alleging causes of action for misappropriation of trade secrets, unfair competition, and unjust enrichment. The operative first amended complaint (FAC) alleged as follows: "Vescovi, a renowned tattoo artist of over 20 years, entrepreneur and manufacturer, is the inventor and producer of the Bishop Rotary Tattoo Machine" (the Bishop Rotary). The Bishop Rotary is "a unique and proprietary inking machine with . . . ergonomic shapes that incorporates a precision needle, balance[,] and is light weight to offer the tattoo artist the 'feel of virtual weightlessness' and the resulting welcome relief from pain (carpal tunnel syndrome, an injury common to many tattoo artists)." Vescovi claimed that after two years of research and multiple prototypes, involving many trade secrets related to the parts and manufacturing process, he was able to "implement, customize, service, and sell the Bishop [Rotary] in an effective and cost-efficient manner."

In the operative complaint, Vescovi alleged one of his employees, Todd Pekar, introduced him to Clark, who was a machinist. Vescovi hired Clark to assist him

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[1] All further statutory references are to the Civil Code, unless otherwise indicated.

in manufacturing the Bishop Rotary. Three years later, Vescovi noticed some machines were missing. He alleged, "On April 25, 2012, Clark confessed to the scheme of stealing the [s]ecrets and the other wrongful acts alleged herein. Clark confessed before several witnesses and while on video camera." Vescovi asserted, "Clark clearly stated [in the taped confession] that he participated with Pekar in stealing the [s]ecrets, which the two . . . are now selling as the Impact Machine to Vescovi's former customers, such as Worldwide Tattoo Supply."

Clark demurred to the original complaint and argued the parts of a machine being sold to the public cannot be a trade secret. The court sustained Clark's demurrer with leave to amend. In the FAC, Vescovi alleged his trade secrets had not been disclosed by selling the Bishop Rotary because the secrets could not "be deduced by one who purchases the finished product." The court overruled Clark's demurrer to the FAC.

Because Vescovi is not challenging the underlying decision, and did not include in our record any evidence or testimony presented during the four-day trial, our summary of those proceedings is taken from the trial court's minute order, designated as the statement of decision. After discussing the elements and requirements for a successful trade secret claim, the court wrote the following: "The [c]ourt has considered and weighed all the testimony and the documentary evidence, as well as the credibility of the witnesses. The [c]ourt found . . . Clark to be a knowledgeable and credible witness. His demeanor and the content of his testimony were above average. [Pekar] was evasive and shed no light on any of the disputed facts. [Vescovi] was extremely vague, and often nonresponsive, in his testimony. [¶] Essentially, . . . Vescovi's claimed secrets are all parts of a tattooing machine that he sells, and the process of making them. The evidence disclosed that in or around 2009, [Vescovi] hired . . . Clark to assist him in creating a tattoo machine later known as the Bishop Rotary. [Clark] established that he was an independent contractor, not an employee. [Clark] machined parts for the Bishop Rotary, until around May of 2011. In or around April of 2012, Clark was hired by Pekar to design the Impact Rotary. Vescovi claims the Impact [Rotary] was his design, stolen from him."

In its statement of decision, the court made the following legal conclusions: "The [c]ourt finds that [Vescovi] has failed to meet his burden of proof as to any of his causes of action. The only evidence of a contract with Clark is that of a vague oral agreement. The design of the Bishop [Rotary] was, per the evidence, one that could be recreated without much difficulty, using industry standard knowledge. The thrust of the lawsuit is that an idea, or invention, of Vescovi's was allegedly stolen. The claimed secrets are parts of a machine [Vescovi] sells. However, these parts are all known in the industry as they've been disclosed. In other words, they are general knowledge in the trade of tattooing. [¶] . . . Additionally, evidence of damages was highly speculative, as is evidence of unjust enrichment. There was insufficient evidence to establish that any distributor of [Vescovi's] product ceased carrying his product due to either defendant's actions."

After entry of judgment, Clark filed a motion for attorney fees pursuant to section 3426.4. He presented evidence establishing the two required elements for attorney fees. First, Clark established there was an "objective speciousness" for the action for attorney fees because Vescovi never identified a formula, pattern, device, or technique that could be called a trade secret. This was the reason he lost the underlying case. In addition, Clark presented evidence he alerted Vescovi to the deficiencies of his claim before trial and Vescovi responded by haggling over settlement terms. Vescovi never produced the video containing Clark's alleged confession. And finally, Vescovi did not produce any evidence of damages at trial.

Clark also produced evidence supporting the second element required for an attorney fee sanction award, i.e., subjective bad faith. He explained this element was also proven by Vescovi's complete failure to produce a single document in discovery proving the existence of a viable trade secret. Vescovi requested an anti-competition agreement as part of the settlement, indicating he wished to put Clark out of business. Vescovi harassed Clark by sending Clark's boss an e-mail asking that he be fired, sent threatening text messages to Clark, sent intimidating texts to Clark's wife and sent Facebook messages to Clark's daughter. The family also received threatening messages from unknown phone numbers they believed originated from Vescovi. To support the motion, Clark submitted his declaration and attorney Robert Beckerman's declaration.

Beckerman declared that before trial he wrote several letters to Vescovi's counsel, pointing out a tattoo machine cannot be a trade secret and urging dismissal. Beckerman declared Vescovi's discovery responses did not provide any specific information on the alleged trade secret at issue. Moreover, Vescovi did not produce the so-called confession video during discovery or at trial.

In his declaration, Beckerman stated, "Although [Vescovi's counsel] never described anything which closely resembled a trade secret, he had no qualms about trying to extract a settlement . . . ." Vescovi initially demanded $30,000 and Clark's written agreement to not engage in any business involving tattoo machines. Later, Clark extended a Code of Civil Procedure section 998 offer of $1,000. Vescovi responded with a request for $10,000 and a signed anti-competition agreement. After all settlement efforts failed, the case was set for trial

Beckerman and Clark also discussed in their declarations Vescovi's threatening text messages and attached copies of them to their declarations. In one, Vescovi wrote Clark's boss and demanded he be fired. He sent intimidating messages to Clark's wife and daughter. Clark declared he believed other messages from unknown numbers also originated from Vescovi because they "always referred to the litigation and the issues involved in it." Clark explained he and his wife received messages within an hour of concluding his deposition. In addition, shortly after receiving the trial court's minute order ruling in his favor, Clark received a message in which "Vescovi does not hide the fact that [the anonymous messages were] coming from him." Clark noted, "He refers to my victory in the case, declares me to have gotten lucky and threatens me with round [two] in which he will have more evidence."

Vescovi opposed the motion, arguing Clark had not met his burden of proving bad faith. He pointed to documents produced during discovery to refute the notion he had no evidence to support his claim. He asserted mere animosity between the parties was not the same thing as filing a complaint for an improper motive, such as harassment. He separately filed objections to portions of the depositions submitted in support of the motion.

Our record contains the final judgment prepared using a judicial council form, showing the court awarded Clark $50,000 in attorney fees. Vescovi did not include in our record the court's minute order explaining its reasons for the ruling or its conclusions regarding the evidentiary objections.

While the appeal was pending, we granted Clark's motion to augment the record with a copy of the court's minute order granting attorney fees (the August Order). Despite being given two time extensions, Vescovi did not file a reply brief addressing the contents of the August Order or Clark's arguments in his respondent's brief relating to the court's express findings in that order.

II

A. Section 3426.4 Attorney Fees

Under the UTSA, to establish misappropriation of trade secret, Vescovi had the burden of proving, "(1) [he] owned a trade secret, (2) [Clark] acquired, disclosed, or used the [Viscovi's] trade secret through improper means, and (3) [Clark's] actions damaged [Viscovi]." (*Sargent Fletcher, Inc. v. Able Corp.* (2003) 110 Cal.App.4th 1658, 1665, citing § 3426.1.) Section 3426.4 provides, "the court may award reasonable attorney's fees and costs to the prevailing party" when "a claim of misappropriation is made in bad faith." However, section 3426.4 does not define "bad faith."

Courts have developed a two-prong test requiring the following: (1) objective speciousness of the claim, and (2) subjective bad faith in bringing or maintaining the action, i.e., an improper purpose. (*Gemini Aluminum Corp. v. California Custom Shapes, Inc.* (2002) 95 Cal.App.4th 1249, 1262 (*Gemini*).) In the *Gemini* case, the court rejected appellant's claim courts should apply the Code of Civil Procedure section 128.5 standard of "'frivolous'" in deciding the first prong of the section 3426.4 test. (*Ibid.*) It explained section 3426.4 does not contain the word "'frivolous'" and in enacting the provision the "Legislature was concerned with curbing 'specious' actions for misappropriation of trade secrets, and such actions may *superficially appear to have merit*." (*Ibid.,* italics added.) For this reason, "'bad faith' for purposes of section 3426.4 requires objective speciousness of the plaintiff's claim, as opposed to frivolousness, and its subjective bad faith in bringing or maintaining the claim." (*Ibid.*)

Because the award is a sanction, a trial court has broad discretion in awarding fees. (*Gemini*, *supra*, 95 Cal.App.4th at p. 1262.) "On appeal from such an order, the appellant has an 'uphill battle' and must overcome both the 'sufficiency of evidence' rule and the 'abuse of discretion' rule. We need not repeat these well-settled rules." (*FLIR Systems, Inc. v. Parrish* (2009) 174 Cal.App.4th 1270, 1275-1276 (*FLIR Systems*).) "'Assuming some evidence exists in support of the factual findings, the trial court's exercise of discretion will not be disturbed unless it exceeds the bounds of reason. [Citation.] [¶] In reviewing the facts which led the trial court to impose sanctions, we must accept the version thereof which supports the trial court's determination, and must indulge in the inferences which favor its findings. [Citations.]' [Citation.]" (*Gemini, supra*, 95 Cal.App.4th at pp. 1262-1263.)

B. The First Prong--Objective Speciousness

Objective speciousness exists where the action superficially appears to have merit but there is a complete lack of evidence to support the claim. (*Gemini, supra,* 95 Cal.App.4th at pp. 1261-1262.) Vescovi focuses on the court's statement of decision to support his argument he met his burden of disproving the first prong, i.e., there was "'some'" evidence to support the claim. Specifically, Vescovi argues the first prong was not satisfied for the following reasons: (1) he produced some documents in discovery that showed he believed there were trade secrets; (2) the court could not rely on settlement negotiations to prove bad faith and he objected to this evidence; (3) the court ruled his evidence on damages was "'highly speculative'" but not completely absent; and (4) Vescovi believed "the Bishop Rotary, along with its parts and processes, had economic value." We disagree.

The court ultimately concluded there was no evidence of damages or the misappropriation of trade secrets. In the statement of decision, the court determined Vescovi "failed to meet his burden of proof as to any of his causes of action" and "evidence of damages was highly speculative." The court reasoned there was dispositive evidence establishing the Bishop Rotary could be recreated "without much difficulty" using "industry standard knowledge." Because the alleged trade secrets were "parts of a machine" sold to the tattooing trade, his theory the invention was stolen was not viable. Simply stated, Vescovi disclosed the trade secrets when he released the parts to others in the industry.

Vescovi's reads the statement of decision not being decisive on the issue of whether he produced "some evidence" of trade secrets. He notes several documents disclosed *during discovery* qualified as "evidence" of trade secrets "regardless of how the court ultimately ruled as to the strength or weakness of that evidence." This argument fails in light of the August Order, which clarified "[t]here was a complete lack of evidence to support the claim." With the benefit of hindsight, the trial court correctly recognized Vescovi's pre-trial claims to have a full blown confession tape and other documents proving his case served only to create a superficially viable looking claim that certainly did not measure up at trial. (See *Gemini*, *supra*, 95 Cal.App.4th at p. 1261.)

Further support for the conclusion Vescovi filed a specious action is the nature of his settlement demands. Vescovi argues there is no legal authority authorizing the trial court to consider settlement negotiations and he objected to the evidence. Missing from his analysis is whether the court ruled on his objections. He also fails to address case authority clearly holding the court has authority to consider the quality, tenor, and makeup of settlement negotiations. Clark's respondent's brief correctly cites *FLIR Systems, supra,* 174 Cal.App.4th at page 1282, which held, "A trial court, in awarding sanctions, may consider a party's dilatory tactics and bad faith *settlement demands* in maintaining the action. (§ 3426.4; *Gemini, supra,* 95 Cal.App.4th at p. 1263; see e.g., *In re Marriage of Norton* (1988) 206 Cal.App.3d 53, 58-60.)" (Italics added.) That court concluded the trial court properly relied on evidence showing "appellants maintained the action in bad faith by imposing unnecessary settlement conditions." (*Id.* at p. 1281.) Appellants had demanded "$75,000, a noncompetition agreement, an agreement that respondents would not hire appellants' employees, or challenge . . . patent applications." (*Ibid.*) There was evidence the $75,000 sum was "'inflammatory.'" (*Id.* at p. 1282.) The appellate court agreed with the trial court's assessment the other terms were unrelated to the trade secret action, "were made for an anticompetitive purpose," and violated public policy. (*Ibid.*)

Here, Vescovi made an equally incendiary $30,000 settlement offer in addition to a demanding noncompetition agreement. He later reduced the offer to $10,000, but held steadfast to the need for an anticompetition agreement. As in the *FLIR Systems* case, the trial court reasonably concluded the settlement offered terms unrelated to the trade secret action for an anticompetitive purpose. It was undisputed Clark placed Vescovi on notice his trade secrets claims were not viable. With the benefit of hindsight, the $30,000 offer was insincere because the evidence showed no proof of a trade secret or damages. Moreover, the offer followed Beckerman's renewed efforts to convince Vescovi to dismiss the case due to the lack of evidence produced during discovery.

Objective speciousness was established by evidence Vescovi had an anticompetitive motive in filing the lawsuit. (See *FLIR Systems, supra,* 174 Cal.App.4th at p. 1276.)

Perhaps the most telling factor of speciousness was the court's statement of decision holding Vescovi provided only "highly speculative" evidence of actual loss or unjust enrichment caused by the alleged misappropriation. "'A trade secrets plaintiff must show an actual use or an actual threat.' [Citation.]" (*FLIR Systems, supra*, 174 Cal.App.4th at p. 1277.) In his opening brief, Vescovi asserts speculative evidence is "'some' evidence of damages" because "if there was no evidence of damages, the [c]ourt would have certainly said so." Not surprisingly, he offers no authority to support this theory.

Contrary to Vescovi's belief, highly speculative evidence is not evidence of a good faith belief of an injury warranting recoverable damages. It is well settled, "Whatever its measure in a given case, it is fundamental that 'damages which are speculative, remote, imaginary, contingent, or merely possible cannot serve as a legal basis for recovery. [Citations.]' [Citations.]" (*Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 989.) Indeed, uncertain, hypothetical and speculative evidence is often deemed inadmissible. (See e.g. *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770 ["expert opinion based on speculation or conjecture is inadmissible"].) Similarly, we found no legal authority, and Vescovi cites to none, to support the theory his *subjective belief* the Bishop Rotary "had economic value" was relevant to deciding if there was an *objective basis* for claiming damages caused by an actual use of trade secrets.

In summary, entirely missing from this case was evidence of misappropriation, actual loss, or unjust enrichment. On the other hand, there is ample evidence of bad faith settlement demands. In light of all the above, it cannot be said the court abused its discretion in concluding there was sufficient evidence of objective speciousness.

C. The Second Prong—Subjective Bad Faith

"Subjective bad faith may be inferred by evidence that appellants intended to cause unnecessary delay, filed the action to harass respondents, or harbored an improper motive. [Citation.] The timing of the action may raise an inference of bad faith. [Citation.] Similar inferences may be made where the plaintiff proceeds to trial after the action's fatal shortcomings are revealed by opposing counsel. [Citation.]" (*FLIR Systems, supra,* 174 Cal.App.4th at p. 1278.) As mentioned earlier, "In reviewing the facts which led the trial court to impose sanctions, we must accept the version thereof which supports the trial court's determination, and must indulge in the inferences which favor its findings. [Citations.]' [Citation.]" (*Gemini*, *supra*, 95 Cal.App.4th at pp. 1262-1263.)

Vescovi argues the second prong was not satisfied for the following reasons: (1) the same evidence that defeats the first prong also applies to the second prong; (2) the court should not have considered text and Facebook messages; (3) the court should not have considered messages that came from an unknown number; and (4) evidence of "ill advised" messages to Clark were prompted by anger and emotion, not an intent to harass for any other improper motive. We disagree.

We conclude the trial court properly relied on the same evidence for the first and second prong. In his opening brief, Vescovi asserts, "[i]n lieu of making the same arguments as above, [Vescovi] simply asserts that the cited evidence does not support a finding of objective or subjective bad faith." We have analyzed the evidence with respect to the first prong, concluding the evidence fully supports the trial court's objective speciousness ruling. Consequently, for the same reasons Vescovi's arguments lacked merit with respect to the first prong, we conclude they are unsuccessful as applied to the second prong. Evidence proving Vescovi was placed on notice of the deficiencies, and the anticompetitive motive behind his settlement offers, amply supported the trial court's ruling of subjective bad faith. As noted in the *FLIR Systems* case, "A trade secrets claim could be brought in good faith but warrant attorney fees were the claim pursued beyond a point where the plaintiff no longer believes the case has merit. [Citation.] '"Bad faith may be inferred where the specific shortcomings of the case are identified by opposing counsel, and the decision is made to go forward despite the inability to respond to the arguments raised." [Citation.]' [Citation.]" (*FLIR Systems*, *supra*, 174 Cal.App.4th at p. 1283.)

We could stop our analysis here because the above evidence amply supports the court's ruling on the second prong. (*Gemini*, *supra*, 95 Cal.App.4th at pp. 1262-1263 [when some evidence exists in support of factual findings we will not disturb trial court's exercise of discretion].) But instead of focusing on whether the above evidence would be sufficient to support the court's finding on the second prong, Vescovi concentrates his argument on appeal to challenge the court's reliance on evidence regarding harassing text and Facebook messages. This argument entirely ignores the contents of the August Order (supplied by Clark) in which the trial court characterized the harassing messages as "other evidence," that served to further support its conclusion the lawsuit was continued in bad faith. The court's primary focus in ruling on the second prong was the anticompetitive settlement terms and evidence Vescovi proceeded to trial despite notice of the deficiencies. As noted above, this evidence (without more) was sufficient to support the court's ruling.

For the sake of argument, if we had concluded the above evidence was not enough, we noticed Vescovi utterly failed his burden of providing this court with a sufficient record to address his challenges regarding the harassing messages. The text and Facebook messages were not discussed in the court's statement of decision. Without the benefit of the August Order or reporter's transcript in the appellate record, Vescovi had no way of proving the court relied on this evidence. Contrary to his suggestion on appeal, we cannot infer the court found the evidence relevant simply because it was contained in moving papers. And although the record contained copies of Vescovi's objections “to the introduction of text messages as lacking foundation, hearsay, and lack of authentication,” it does not contain the trial court’s ruling on those objections. We could not have speculated as to why the court overruled the objections, if it ruled on them at all.

Clark assisted this court by augmenting the record with a copy of the court’s August Order before Vescovi’s reply brief was due. Despite being given two time extensions, Vescovi never filed a reply brief. Therefore, he never addressed the contents of the court’s rulings in the August Order granting the attorney fees or Clark’s arguments on appeal concerning that order.

Vescovi’s lack of response is revealing. For example, the August Order plainly stated the trial court overruled Vescovi’s evidentiary objections due to his failure to comply with “formatting requirement[s].” Vescovi’s failure to demonstrate this ruling was incorrect waives the issue. When an appellant raises an issue “but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

Moreover, the August Order explained the basis for the court’s award. The court viewed the harassing messages as additional support for subjective bad faith. The trial court wrote: “[Vescovi’s] action was commenced or, at the very least, *continued* in bad faith. For example, [Clark] alleges that [Vescovi] set on a course to harass and intimidate him and his family. This includes: (1) [Vescovi] e-mailing [Clark’s] boss demanding that [Clark] be fired; and (2) anonymous text messages sent to [Clark], his wife, and his daughter threatening and intimidating them. . . . With respect to the subject text messages, [Vescovi] denies sending them and states that the subject phone numbers were not his at the time the messages were made. The [c]ourt finds this denial lacks credibility.”

Vescovi argues the court’s reliance on the text messages was improper because “there was no verifiable reference to the actual trial record where the referenced exhibits were admitted into evidence." He provides no legal authority to support his theory the court was limited to admitted trial exhibits when considering a post-trial motion on whether the action was brought in bad faith. This omission is grounds to treat the point as waived. (*Badie, supra,* 67 Cal.App.4th at pp. 784-785.) In any event, we find no legal or logical reason to limit the scope of what a trial court may consider in determining the issue of subjective bad faith. Evidence of harassment and intimidation may not always relate to admissible trial evidence or the underlying dispute.

Vescovi also attacks the court's reliance on messages that came from an unknown number. Vescovi explained he objected to this evidence as being hearsay, lacking foundation, and having no authentication. He maintained it was never established he "had anything to do with the messages." Of course this argument is premised on an appellate record that does not contain the August Order, and for this reason it lacks merit. The August Order established the trial court overruled the objections on procedural grounds, which Vescovi does not dispute on appeal. More importantly, the court made the factual finding all the messages were from Vescovi and his "denial lack[ed] credibility." Vescovi offers no argument on this point, perhaps realizing these are not issues we reconsider on appeal. Appellate courts "do not reweigh evidence or reassess the credibility of witnesses. [Citation.]" (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622.)

And finally we find no merit to Vescovi's assertion the messages merely reflected his anger but not an intent to harass or continue the action with improper motives. As noted above, we do not reweigh the evidence. "'[W]e must accept the version [of facts] which supports the trial court's determination, and must indulge in the inferences which favor its findings. [Citations.]' [Citation.]" (*Gemini, supra,* 95 Cal.App.4th at pp. 1262-1263.) We conclude the harassing messages, viewed in the context of a plaintiff also making incendiary settlement offers while hotly persisting with the pressure and expense of a meritless lawsuit, clearly supported the court's ruling on the second prong. Vescovi's reliance on an unpublished federal district court case is misplaced because not only are the facts dissimilar, the case is not binding authority. We have reviewed the record and agree with the trial court's conclusion the various messages plainly revealed Vescovi's scheme to intimidate, harass, and financially ruin Clark.

D. Amount of Attorney Fees

Pursuant to section 3426.4, the court may award "reasonable attorney's fees and costs to the prevailing party." "'It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court . . . . [Citations.] The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.' [Citation.]" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

Clark's attorney, Beckerman, submitted a nine-page declaration. He stated he was a partner in a civil litigation firm and his ordinary hourly rate was $250 an hour. He described his level of expertise, the procedural history of the case, and how Vescovi's litigation tactics before trial created added expenses in the case. He attached to his declaration a detailed 10-page invoice, containing the dates and descriptions of tasks, and the hours worked, from the time of the initial client consultation in October 2013, to when he filed the attorney fee motion in June 2015. Using the lodestar method, Clark sought attorney fees for 229.6 hours of work for a total of $57,400. The trial court awarded less than requested ($50,000).

Vescovi maintains the amount of the award cannot be supported by the evidence. Specifically, he raises the following contentions: (1) Clark failed to provide evidence he paid attorney fees or is obligated to pay; (2) the invoices are not separated into months making it "impossible to tell which charges relate specifically to the misappropriation claim." The argument lacks merit because he has not demonstrated how the court abused its discretion by relying on Beckerman's declaration and invoice. The statute simply authorizes an award of reasonable fees (§ 3426.4), it does not require proof the fees have already been paid. As correctly noted by the trial court in its minute order awarding attorney fees, "'The law is clear . . . that an award of attorney fees may be based on counsel's declarations, without production of detailed time records.'" (Citing *Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375) We conclude the invoice and declaration adequately establish Clark had an obligation to pay his attorney for many hours of legal services over nearly two years of litigation.

Vescovi's second argument suggests Clark's documentation should have shown how many hours were spent working on the trade secret misappropriation claim, as opposed to defending his other causes of action. He asks us to presume the attorney fee award was erroneous because it included time spent on claims for which Clark was not entitled to recover fees. However, Beckerman's invoice included daily entries that described the tasks performed in the case. He submitted documentation reminding the trial court that early in the proceedings all the claims, except for the misappropriation action, were disposed of by his demurrer to the FAC. Everything thereafter related to defending against the trade secret misappropriation claim. Thus, for the first six months of the case, leading to the demurrer, the misappropriation action was joined with other causes of action for which attorney fees are not recoverable.

It is well settled the joinder of causes of action need not necessarily dilute the right to attorney fees. (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.) "Such fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are permitted and one for which they are not. All expenses incurred on the common issues qualify for an award.

[Citation.] When the liability issues are so interrelated that it would have been impossible to separate them into claims for which attorney fees are properly awarded and claims for which they are not, then allocation is not required." (*Ibid.*) Not surprisingly, Vescovi does not discuss this authority.

Moreover, he does not acknowledge or discuss the trial court's reduction of the requested fees by $7,400 or explain why this downward modification did not account for the time spent litigating the non-misappropriation claims. We have examined Beckerman's invoice, and because it contains detailed entries with corresponding dates, it is easy to see when other claims were disposed of by the demurrer in May 2014. Simple addition for the entries leading up to that ruling shows Beckerman spent a total of approximately 25 hours working on the case. Applying his billing rate of $250, the trial court could calculate the amount of attorney fees for the first six months of the case (approximately $6,250). Vescovi failed to explain why the court's award of $50,000, which was $7,400 less than requested, did not take into account Beckerman's litigation of claims other than the trade secret misappropriation.

This omission is surprising because the court's August Order regarding the award expressly noted the reduced award accounted for work not recoverable. Specifically, the order stated, "Although [Vescovi] contends in the opposition papers that the amount requested is unsupported by the evidence and is unreasonable, the [c]ourt finds that [Clark's] attorney has sufficiently supported his request for attorney's fees via his declaration and billing ledger. In addition, the amount requested is reasonable in light of the fact that this case has been in litigation for two years. The [c]ourt deducts from the amount requested, an amount that reflects what would reasonably have been billed on the ex parte for an order shortening time for, and the actual motion on, the request for a continuance and/or bifurcation of trial (the OST was granted, but the motion was denied), *as well as time spent on the demurrer which successfully attacked another claim.* The [c]ourt finds that the reasonable value for the services in defending, successfully, the trade secret claim, are $50,000." (Italics added.) We conclude Vescovi's failure to rely on pertinent case authority, or explain why the trial court's ruling and calculations were incorrect, waives the issue. (*Badie*, *supra*, 67 Cal.App.4th at pp. 784-785.)

E. Attorney Fees on Appeal

Clark seeks attorney fees on appeal. "'[I]t is established that fees, if recoverable at all—pursuant either to statute or [the] parties' agreement—are available for services at trial *and on appeal*.'" (*Morcos v. Board of Retirement* (1990) 51 Cal.3d 924, 927.) Clark is the prevailing party on appeal, and thus he is entitled to fees under section 3426.4. "Although this court has the power to fix attorney fees on appeal, the better practice is to have the trial court determine such fees." (*Security Pacific National Bank v. Adamo* (1983) 142 Cal.App.3d 492, 498.)

III

The postjudgment order is affirmed. The matter is remanded to the trial court for its determination of an award to Clark for attorney fees on appeal. Clark is also awarded costs on appeal.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

THOMPSON, J.