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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JENNA DEVEREAUX,

Plaintiff and Appellant,

v.

TIMOTHY ERIC CLONTZ,

Defendant and Respondent.

H037998

(Santa Clara County

Super. Ct. No. 1-06-CV060715)

The case underlying the present appeal¹ is a dispute over a promissory note and attempts to collect a judgment. Jenna Devereaux was the prevailing party in a suit against Timothy Eric Clontz related to the promissory note.

In this appeal, Ms. Devereaux challenges three trial court orders, including an order dated November 2, 2011 granting Mr. Clontz's motion to vacate the December 3, 2010 order awarding Ms. Devereaux over \$27,522.24 in post-judgment attorney fees, a February 3, 2012 order denying Ms. Devereaux's motion to vacate or in the alternative for reconsideration of the November 2, 2011 order, and a February 3, 2012 order granting Mr. Clontz's motion to tax Costs.

¹ This is the first of two appeals of the underlying action. The second appeal is *Devereaux v. Clontz* (Apr. 30, 2015, H039324) [nonpub. opn.] and was brought by Timothy Clontz. The second appeal is also related to post-judgment attorney fees and costs.

STATEMENT OF THE CASE

Ms. Devereaux sued Mr. Clontz attempting to collect a debt on a promissory note. Following a January 19, 2007 bench trial, the trial court found in favor of Ms. Devereaux, and awarded her a judgment against Mr. Clontz in the principal sum of \$23,577, plus interest and costs. Judgment was entered on March 28, 2007 in the total sum of \$28,084.11. The court determined Ms. Devereaux to be the prevailing party in the action, and ordered Mr. Clontz to pay prejudgment attorney fees in the amount of \$3,500.

Mr. Clontz is a New York resident, and on July 7, 2007, he filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the Eastern District of New York. In response, Ms. Devereaux hired a New York law firm to represent her interests as a judgment creditor in Mr. Clontz's 2007 bankruptcy proceeding. Mr. Clontz's bankruptcy was terminated on January 6, 2009.

Following the termination of Mr. Clontz's bankruptcy, Ms. Devereaux filed a motion for post-judgment attorney fees on July 28, 2010 seeking an award of \$25,824.74 in post-judgment attorney fees. The motion was denied "without prejudice."

Subsequently, on October 7, 2010, Ms. Devereaux filed a new motion for post-judgment attorney fees, claiming \$27,522.24 in post-judgment fees and costs. On December 3, 2010, the court granted the motion, awarding Ms. Devereaux \$27,522.24 in post-judgement attorney fees and costs.

On June 11, 2011, Mr. Clontz filed two separate motions to set aside, or vacate the December 3, 2010 order. These motions were based on alternative theories arising under Code of Civil Procedure section 473.² On July 7, 2011, the court denied the motions without prejudice.

² All further unspecified statutory references are to the Code of Civil Procedure.

On July 29, 2011, Mr. Clontz filed a revised motion to vacate pursuant to section 473, subdivision (d). This motion asserted that the court lacked jurisdiction under section 685.080 to order attorney fees reflected in the December 3, 2010 order, because the legal services encompassed in that order were rendered over two years prior to the filing of Ms. Devereaux's October 7, 2010 motion.

On September 20, 2011, the court granted Mr. Clontz's motion to vacate the December 3, 2010 order, voiding all but \$3,500.00 of the post-judgment attorney's fees originally granted under the December 3, 2010 order, thereby reducing it by \$24,017.24. An order reflecting the court's ruling was entered on November 2, 2011, and is the subject of this appeal.

On September 27, 2011, Ms. Devereaux filed a memorandum of costs after judgment, pursuant to section 685.070, seeking \$31,707.64 in attorney fees. This memorandum of costs included the \$24,017.24 previously stricken by the court one week prior. On October 18, 2011, Mr. Clontz filed a motion to tax costs.

Meanwhile, on October 3, 2011, Mr. Clontz filed a motion for attorney fees incurred in connection with his successful motion to vacate the December 3, 2010 order. The hearing on this motion was originally scheduled for November 1, 2011, however, it was rescheduled to February 3, 2012 on Ms. Devereaux's request.

On December 14, 2011, Ms. Devereaux filed a motion to vacate, or in the alternative motion for reconsideration of the November 2, 2011 order granting Mr. Clontz's motion to vacate the December 3, 2010 order.

A hearing was held on February 3, 2012, during which the court considered Ms. Devereaux's motion to vacate, Mr. Clontz's motion to tax costs, and Mr. Clontz's motion for attorney fees. The court denied Mr. Clontz's motion for attorney fees. The court denied Ms. Devereaux's motion to vacate or in the alternative for reconsideration of the November 2, 2011 order. The court granted Mr. Clontz's motion to tax costs, voiding

the legal fees stated in Ms. Devereaux's September 27, 2011 memorandum of costs after judgment. The rulings on Ms. Devereaux's motion to vacate or for reconsideration, and Mr. Clontz's motion to tax costs are the subject of this appeal.

On February 29, 2012, Ms. Devereaux filed a notice of appeal of the November 2, 2011 order granting Mr. Clontz's motion to vacate the December 3, 2010 awarding Ms. Devereaux over \$27,522.24 in post-judgment attorney fees, the February 3, 2012 order denying Ms. Devereaux's motion to vacate or in the alternative for reconsideration of the November 2, 2011 order, and the February 3, 2012 order granting Mr. Clontz's motion to tax costs.

DISCUSSION

Ms. Devereaux challenges three orders of the trial court. The first two are related to the court's reduction of her attorney fee award of \$27,522.24 to \$3,500. The third order relates to the court's granting of Mr. Clontz's motion to tax costs claimed in Ms. Devereaux's memorandum of costs filed after the court reduced her fee award.

Order Voiding Original Award of Attorney Fees

The issue on appeal can be reduced to the question of whether the original award of \$27,522.24 in attorney fees in connection with Ms. Devereaux's attempts to enforce her judgment against Mr. Clontz was void as to all but \$3,500.00, because \$24,022.24 of the fees were incurred over two years prior to the date they were sought.

California's enforcement of judgments law is codified at section 680.010 through section 724.260. It is a comprehensive statutory scheme governing enforcement of civil judgments in California. (*Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 546.) The statutory scheme demonstrates a legislative intent to reimburse judgment creditors for the costs they reasonably incur to enforce a judgment and to protect judgment debtors from stale or excessive demands for payment of costs.

A judgment creditor claiming costs of enforcement as part of the judgment, including attorney fees if authorized, must file a memorandum of costs and/or a motion for attorney fees before the judgment is fully satisfied. (§§ 685.070, 685.080.) Section 685.080, subdivision (a) provides, in relevant part: “(a) The judgment creditor may claim costs authorized by Section 685.040 by noticed motion. The motion shall be made before the judgment is satisfied in full, but not later than two years after the costs have been incurred. The costs claimed under this section may include, but are not limited to, costs that may be claimed under Section 685.070.”

In this case, Ms. Devereaux brought a motion on October 7, 2010, seeking post-judgment attorney fees in the amount of \$27,522.24. This total reflected \$3,500 in fees awarded in 2007 when Ms. Devereaux first received her judgment against Mr. Clontz. \$22,369.74 of the fees was incurred between July 2007 and August 2008 in connection with Ms. Devereaux’s attempt to intervene in Mr. Clontz’s New York bankruptcy action. (H037998; CT 96-118) The remaining fees were incurred from January 2007, through February 2008 in connection with attempts to collect the judgment in California, as well as an effort to domesticate the judgment in Georgia where Mr. Clontz owns real property. Although all but \$3,500 of the fees sought in Ms. Devereaux’s motion were incurred more than two years prior to the filing of the motion in October 2010, the court initially awarded the fees in their entirety.

However, following Mr. Clontz’s motion to vacate the order pursuant to section 473, subdivision (d), which provides: “[t]he court may . . . on motion of either party after of notice to the other party, set aside any void judgment or order,” the court found the original order was void, because the fees awarded were incurred more than two years prior to the motion date in violation of section 685.080. The court’s order states: “the December 3, 2010 order awarding a total of \$27,522.24 is void as to fees incurred more than two years before the motion was filed on October 7, 2010, in the amount of

\$24,017.24. The balance of the fees awarded reflect [sic] the enforcement efforts during 2010. The December 3, 2010 order is therefore vacated, and an order issues for plaintiff to recover from defendant attorney fees incurred in enforcing the judgment in 2010, in the amount of \$3,505.”

On appeal, Ms. Devereaux argues that while her request for fees was untimely under section 685.080, it was stayed by Mr. Clontz’s bankruptcy. Ms. Devereaux cites both Title 11 United States Code section 362, the automatic stay provision, and Title 11 United States Code section 108, the extension of time provision, as support for her argument.

Mr. Clontz’s Bankruptcy

Ms. Devereaux asserts the original order that awarded her requested fees in full was not void, because the two-year period for bringing the claim pursuant to section 685.080 was stayed as a result of Mr. Clontz’s bankruptcy. Ms. Devereaux cites two sections of the bankruptcy code: the automatic stay provisions of Title 11 United States Code section 362, subdivision (a)(1), and the extension of time provisions of Title 11 United States Code section 108.

The automatic stay provided in Title 11 United States Code section 362(a)(1) states, in relevant part, that the filing of a bankruptcy petition, “operates as a stay, . . . , of— [¶] (1) the commencement or continuation including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencements of the case under this title.”

The applicability of the automatic stay provision of Title 11 United States Code section 362(a)(1) has been considered by the California Courts of Appeal in relation to statutory time limits such as that set forth in section 685.080. For example in *Lewow v.*

Surfside III Condominium Owners Assn., Inc., (2012) 203 Cal.App.4th 128 (*Lewow*), the court considered whether the automatic stay provisions in Title 11 United States Code section 362(a)(1), or the extension of time provisions of Title 11 United States Code section 108(c) applied to the 60-day limitation period for the prevailing party to file a motion for attorney fees. The *Lewow* court held that the 60-day period to file the motion was not tolled by the automatic stay of Title 11 United States Code section 362(a)(1); rather the period was extended until 30 days after the notice of dismissal of the bankruptcy proceedings pursuant to the extension of time provisions of Title 11 United States Code section 108(c). The court stated: “the automatic bankruptcy stay does not toll the running of the 60-day statutory period. ‘The filing of a bankruptcy petition operates as an automatic stay of “the commencement or continuation . . . of a judicial . . . proceeding. . . .” (11 U.S.C. § 362(a)(1).) The running of a statutory time period does not constitute the commencement or continuation of a judicial proceeding within the meaning of this section. [Citation.]’ [Citation.]” (*Lewow v. Surfside III Condominium Owners Assn., Inc.*, *supra*, 203 Cal.App.4th at p. 132.)

Similarly, in *ECC Construction, Inc. v. Oak Park Calabasas Homeowners Ass'n* (2004) 118 Cal.App.4th 1031, 1036-1037 (*ECC Construction, Inc.*), the court considered the applicability of the automatic stay provisions of Title 11 United States Code section 362(a)(1) to the 60-day statutory limit for filing a motion for a new trial. The court held that statutory time limits for filing motions were subject to the extension of time provisions of Title 11 United States Code section 108, and not by a the automatic stay provided in Title 11 United States Code section 362(a)(1). (*Id.* at p. 1037.) The court stated: “The running of a statutory time period does not constitute the commencement or continuation of a judicial proceeding within the meaning of this section. (*Napue v. Gor-Mey West, Inc.* (1985) 175 Cal.App.3d 608, 618.)” (*ECC Construction, Inc.*, *supra*, 118 Cal.App.4th at p. 1037.)

As in *Lewow* and *ECC Construction, Inc.*, wherein statutory time limits were not subject to the automatic stay provisions of the bankruptcy code, here, the statutory time limits of section 685.080 should not be stayed. Title 11 United States Code section 362(a)(1) clearly states that the filing of a bankruptcy petition operates to stay “the commencement or continuation . . . of a judicial, administrative, or other proceeding against the debtor *that was or could have been commenced* before the commencement of the [bankruptcy] case.” (Emphasis added.) This statutory language clearly limits the automatic stay to *only* those proceedings that were initiated or could have been initiated *before* the bankruptcy was filed. Title 11 United States Code section 362(a)(1) does not expressly or implicitly provide a stay for actions that arise *after* the bankruptcy was filed. (See, e.g., *In Matter of M. Frenville Co., Inc.* (3d Cir, 1984)744 F.2d 332, 334.)

In this case, all of the attorney fees Ms. Devereaux was seeking in her attorney fees motion were incurred *after* Mr. Clontz filed his bankruptcy. Indeed, the majority of the fees were incurred in her attempt to intervene in the bankruptcy proceeding. Ms. Devereaux’s motion for attorney fees was not commenced, nor could it have been commenced before Mr. Clontz filed for bankruptcy. Therefore, the automatic stay provision of Title 11 United States Code section 362(a)(1) does operate to stay the two-year period during which Ms. Devereaux was required to request fees pursuant to section 685.080.

While the automatic stay provisions do not apply to Ms. Devereaux’s motion for attorney fees, the extension of time provision is applicable. Title 11 United States Code section 108(c) states: “[e]xcept as provided in section 524 of this title, if applicable nonbankruptcy law, and order entered in a nonbankruptcy proceeding or an agreement fixes a period of time for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, . . . and such period has not expired before the date of the filing of the petition, than such period does not expire until the later

of— [¶] (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or [¶] (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title as the case may be with respect to such claim.”

In the present case, in ordering that all but \$3505.00 in attorney fees must be vacated, the court specifically determined that the Mr. Clontz’s pending bankruptcy petition did not toll the two-year period for filing a claim for fees pursuant to section 685.080. Specifically, the court stated, “[Ms. Devereaux] contends that her motion in July 2010 for fees incurred more than two years before that date was nevertheless timely because the entire period during which defendant’s bankruptcy proceedings was pending ‘does not count against the two year period . . .’ Opposition at 11:6-7 Although [Ms. Devereaux] cites 11 U.S.C. 108 for this proposition, that statute does not support this contention. To the contrary, [Mr. Clontz’s] argument is well taken that section 108 provides only an “extension of time” with which [Ms. Devereaux] failed to comply.”

Applying Title 11 United States Code section 108 to the present facts, it is clear Ms. Devereaux’s request for attorney fees was untimely. The two-year limitation period under section 685.080 had not expired before Mr. Clontz filed his bankruptcy petition. Therefore, the period during which Devereux should have requested attorney fees under section 685.080 was within two years from the date the fees were incurred. As a result, her motion for attorney fees that were incurred more than two years prior to date of her request was time barred by the limits of section 685.080.

Section 685.080 Time Limits

The court vacated the original attorney fees order as void pursuant to section 473, subdivision (d), finding that the fees requested were beyond the two-year statutory time limit of section 685.080, and the time limit was not stayed or extended under the

bankruptcy code. The court correctly determined that the bankruptcy code provisions did not operate to extend the time for Ms. Devereaux to request fees. The question remains whether the original order was void.

A motion to vacate a judgment under section 473, subdivision (d), is limited to “set[ting] aside any void judgment or order,” and a trial court has no statutory power under section 473, subdivision (d), to set aside an order unless the order is void. (*Talley v. Valuation Counselors Group, Inc.* (2010) 191 Cal.App.4th 132, 146.) Mr. Clontz asserts the original order was void, because the court lacked jurisdiction to award attorney fees that were incurred more than two years prior to the dates they were requested. He points out that the time limits stated in section 685.080, subdivision (a) are very specific, and require that requests for fees “shall be made before the judgment is satisfied in full, but not later than two (2) years after the cost has been incurred.” The statute does not provide for any exceptions, or otherwise provide any discretion to the court regarding its mandatory 2-year time limitation. Therefore, Mr. Clontz concludes, the court acted in excess of its jurisdiction in awarding fees beyond the statutory time limits of section 685.080.

Lack of jurisdiction has different interpretations in the law. “Lack of jurisdiction in its most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.” (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) “But in its ordinary usage the phrase ‘lack of jurisdiction’ is not limited to these fundamental situations.” (*Ibid.*) It is also applied more broadly “to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no ‘jurisdiction’ (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.” (*Ibid.*) “Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power

be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of *stare decisis*, are in excess of jurisdiction” (*Id.*, at p. 291.)

We have found no cases directly on point regarding the jurisdictional nature of section 685.080. However, section 685.080’s statutory time limit disallowing fees incurred after the judgment has been satisfied has been strictly enforced. The applicable section of the statute provides: “[t]he motion shall be made *before the judgment is satisfied in full*, but *not later than two years* after the costs have been incurred.”

(§ 685.080, subd. (a)) “[S]ection 685.080’s time limit serves a policy purpose of its own, to prevent unfair surprise to the judgment debtor.” (*In re Conservatorship of McQueen* (2014) 59 Cal.4th 603, 615 (*McQueen*)). “[T]he statutory purpose of requiring that the motion for enforcement costs be brought ‘before the judgment is satisfied in full’ (§ 685.080, subd. (a)) is to avoid a situation where a judgment debtor has paid off the entirety of what he believes to be his obligation in the entire case, only to be confronted later with a motion for yet more fees.” (*Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 144 (*Lucky United*)).

The *McQueen* and *Lucky United* courts’ strict construction of section 685.080’s time limit stated in the first part of the sentence “[t]he motion shall be made before the judgment is satisfied in full,” applies equally to the second part of the sentence, “but not later than two years after the costs have been incurred.” (§ 685.080, subd. (a).) The statute provides no discretion for the trial court to extend the time limits, nor does it provide any exceptions. Moreover, the public policy of protecting a judgment debtor from costs incurred after a judgment is satisfied is equally applicable to protect a debtor from stale costs claims.

Other statutes with time limits similar to section 685.080’s wherein a party may seek relief have been strictly enforced *and* have been deemed jurisdictional. For

example, the six-month time period during which a party may seek relief from default under section 473, subdivision (b) has been interpreted as a jurisdictional limit on the court's power to grant relief. A party who seeks discretionary relief under section 473 from entry of default or default judgment based on mistake, inadvertence, surprise, or excusable neglect, must bring the motion for relief “*within a reasonable time*” but “*in no case exceeding six months*” after the entry of default. (§ 473, subd. (b), italics added; *Rutan v. Summit Sports, Inc.* (1985) 173 Cal.App.3d 965, 970; see also, *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981; *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42 [“[a] default and default judgment may be set aside pursuant to the provisions of ... section 473, subdivision (b), but the motion must be made within six months after entry of the default”])

Like section 473, subdivision (b), the civil forfeiture provisions of Health and Safety Code section 11488.4 contain strict time limits that are considered jurisdictional. In *People v. Superior Court (Brent)* (1992) 2 Cal.App.4th 675 (*Brent*), the court was presented with the question of whether a petition for writ of mandate pursuant to Health and Safety Code section 11488.4, subdivision (h) could be considered when it was filed 19 days after the 30-day period for filing the petition ended. The court reviewed the statutory language of Health and Safety Code section 11488.4, subdivision (h), and noted that it “does not create any discretion in the trial court to extend jurisdiction.” (*Brent, supra*, 2 Cal.App.4th at p. 686.) The court further noted that Health and Safety Code section 11488.4 “has no internal provision that permits the trial court to extend the time in which a writ petition is filed. Absent authorization within the statute itself, trial courts cannot extend the time in which a party may file a petition. (*Brent, supra*, 2 Cal.App.4th at pp. 686-687.) The court concluded that the statute’s 30-day time limit was jurisdictional and the filing 19 days after the 30 day time limit was fatally defective. (*Id.* at p. 687.)

Both Health and Safety Code section 11488.4 and section 473, subdivision (b), discussed above contain strict time limits during which a party may seek relief, and provide no exception or court discretion to extend the time limit. Moreover, the court lacks jurisdiction to order relief under either statute if the request for relief is outside the prescribed time period.

The time limits of section 685.080 are similarly strict and without exception or court discretion. Section 685.080 specifically requires a request for fees be made “not later than two years after the costs are incurred.” (§ 685.080, subd. (a).) Here, Ms. Devereaux requested fees that were incurred more than two years prior. As a result, the fees were incurred outside the time limits of section 685.080, subdivision (a), and the court lacked jurisdiction to order them. The court’s subsequent finding pursuant to section 473, subdivision (d) that the original order granting fees was void because the court lacked jurisdiction to grant the fees was proper.

Order Denying Motion to Vacate or Reconsider

Following the court’s order voiding all but \$3,505 of attorney fees, Ms. Devereaux brought a motion to vacate or reconsider. This motion was brought pursuant to sections 473, subdivision (d) and 1008.

As stated above, section 473, subdivision (d), which provides: “[t]he court may . . . on motion of either party after of notice to the other party, set aside any void judgment or order.”

Section 1008 of the Code of Civil Procedure governs applications to reconsider a previous order of the court. The statute generally requires that any motion for reconsideration be made within 10 days after notice of entry of the order and based “upon new or different facts, circumstances, or law” (§ 1008, subd. (a).) Any renewal of an application for an order also must be based “upon new or different facts, circumstances, or law” (§ 1008, subd. (b).)

Here, the basis of Ms. Devereaux's motion is that in ordering the original award of attorney fees void, the court did not take into account two previously filed and unopposed memoranda of costs. These memoranda were filed on May 13, 2009, and November 2, 2011. Ms. Devereaux asserts that because these memoranda were unopposed, they became part of the judgment, and are in conflict with the court's order voiding the original attorney fees award.

On appeal, as in the trial court, Ms. Devereaux provides no argument demonstrating the order voiding the original attorney fees award is void pursuant to section 473, subdivision (d). However, Ms. Devereaux does argue that the order is subject to reconsideration pursuant to section 1008, subdivision (b), because the memoranda are "new or different facts" unknown to the court at time it made its order. (§ 1008, subd. (b).)

We review the trial court's order on a motion for reconsideration under the abuse of discretion standard. (*Lucas v. Santa Maria Pub. Airport Dist.* (1995) 39 Cal.App.4th 1017, 1027.) A motion for reconsideration based on new or different facts requires a " 'satisfactory explanation for the failure to produce the evidence at an earlier time. In short, the moving party's burden is the same as that of party seeking new trial on the ground of "newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at trial." ' " (*Baldwin Home Savings of America* (1997) 59 Cal.App.4th 1192, 1198, emphasis omitted.)

Here, in denying Ms. Devereaux's motion to reconsider, the trial court found that Ms. Devereaux knew about the memoranda in question, yet never brought them to the court's attention despite numerous opportunities to do so. The court noted that Ms. Devereaux filed motions for fees on July 28, 2010 and October 7, 2010, and did not mention the memoranda of costs. The court also noted that Ms. Devereaux filed an

opposition to Mr. Clontz's motion to vacate on August 10, 2011, and did not mention the memoranda of costs. Finally, the court noted that at August 25, 2011 hearing on Mr. Clontz's motion to vacate, Ms. Devereaux did not mention the memoranda of costs. Ms. Devereaux provided no explanation for her failure to bring these "new or different facts" to the court in her motion for reconsideration. The court denied Ms. Devereaux's motion for reconsideration because of her "failure to offer an excuse for not bringing this information to the Court's attention earlier."

We find no abuse of discretion in the trial court's denial of Ms. Devereaux's motion for reconsideration. In denying the motion, the court correctly found that Ms. Devereaux had not met her burden of demonstrating that the "new or different facts" could not, with reasonable diligence, have been brought to the attention of the trial court prior to its order. (See, e.g., *Baldwin, supra*, 59 Cal.App.4th at p. 1198.)

Order Granting Motion to Tax Costs

On September 27, 2011, Ms. Devereaux filed a memorandum of costs after judgment, pursuant to section 685.070, seeking a total of \$31,707.64 in attorney fees. This memorandum of costs was filed one week after the court granted Mr. Clontz's motion to vacate the original award of attorney fees as void. On October 18, 2011, Mr. Clontz filed a motion to tax costs.

The court granted Mr. Clontz's motion to tax costs stating the following: "In the Memorandum of Costs filed on September 27, 2011, [Ms. Devereaux] states under oath that \$3,505 in attorney fees were incurred on December 3, 2010: an assertion contradicted by [Ms. Devereaux's] own evidence that the fees were incurred years earlier. Moreover, she *added* the \$3,505 to \$28,187.64 (a number that appears on the May 2009 Memorandum, though not on the July 2010 Memorandum), even though the Court's ruling on September 20, 2011, one week before the [September 27, 2011] Memorandum

was filed (eventually formalized as the November 2011 Order) was clear that the \$3,505 superseded the previous award *and was not additive to it*. (Emphasis in original,)

“The trial court’s exercise of discretion in granting or denying a motion to tax costs will not be disturbed if substantial evidence supports its decision.” (*Lubetzky v. Friedman* (1991) 228 Cal.App.3d 35, 39.) The appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598.) Appellate courts will disturb discretionary trial court rulings only upon a showing of a clear case of abuse and a miscarriage of justice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.)

Here, the court did not abuse its discretion in granting Mr. Clontz’s motion to tax costs. The court’s decision is supported by substantial evidence that Ms. Devereaux provided false information on the September 27, 2011 memorandum of costs regarding when her fees were incurred. In addition, the court’s decision is supported by the fact that the memorandum of costs included fees that were vacated by the court one week prior to the date of the filing of the memorandum.

DISPOSITION

The orders on appeal are affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.