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

JENNA DEVEREAUX,

Plaintiff and Respondent,

v.

TIMOTHY ERIC CLONTZ,

Defendant and Appellant.

H039324

(Santa Clara County

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

The present appeal<sup>1</sup> is brought by Timothy Eric Clontz, who is the judgment debtor in an action brought by Jenna Devereaux to collect on a promissory note. In this appeal, Mr. Clontz argues the court erred in denying his motion to tax costs associated with Ms. Devereaux's July 5, 2012 memorandum of costs incurred in enforcement of her judgement against Mr. Clontz.

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<sup>1</sup> This is the second appeal of the underlying action. The first appeal is *Devereaux v. Clontz* (Apr. 30, 2015, H037998) [nonpub. opn.] and was brought by Jenna Devereaux. The first appeal is also related to post-judgment attorney fees and costs.

## STATEMENT OF THE CASE<sup>2</sup>

On July 5, 2012, Ms. Devereaux filed a memorandum of costs after judgment, claiming attorney's fees and costs in the amount of \$20,214.15. These costs were incurred in attempts to enforce her 2007 judgment against Mr. Clontz. The dates encompassed in the memorandum were "7/14/10 – present."

On November 20, 2012, the court denied Mr. Clontz's motion to tax costs, finding that Mr. Clontz had not met his burden of proving that the costs and fees stated in Ms. Devereaux's memorandum of costs were unreasonable or unnecessary.

Mr. Clontz filed a notice of appeal on February 14, 2013.

## DISCUSSION

In this appeal, Mr. Clontz challenges the court's denial of his motion to tax costs related to Ms. Devereaux's memorandum of costs filed on July 5, 2012.

Ms. Devereaux's memorandum of costs claimed attorney fees associated with enforcement of the judgment against Mr. Clontz. According to the memorandum of costs, the attorney fees stated therein were incurred from "7/14/10 – present," in the amount of \$20,214.15.

"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.)

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<sup>2</sup> We omit the lengthy procedure in this case, because it is stated fully in our opinion *Devereaux v. Clontz, supra*, H037998 [nonpub. opn.]. We take judicial notice of the record and filings in that case.

Mr. Clontz asserts on appeal that the court erred in denying his motion to tax costs. He argues the trial court lacked jurisdiction to consider the issue because the matter was stayed by the pending appeal in *Devereaux v. Clontz, supra*, H037998 [nonpub. opn.] under section 916, and the trial court abused its discretion.

***Stay Based on Pending Appeal in Devereaux v. Clontz, supra, H037998***  
**[nonpub. opn.]**

Mr. Clontz argues the court lacked jurisdiction to consider the post-judgment attorney's fees requested in the July 5, 2012 memorandum of costs because of the pending appeal in *Devereaux v. Clontz, supra*, H037998 [nonpub. opn.]. Code of Civil Procedure section 916, which governs stays of trial court actions based on pending appeals provides, in relevant part: "(a) . . . the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order. [¶] (b) When there is a stay of proceedings other than the enforcement of the judgment, the trial court shall have jurisdiction of proceedings related to the enforcement of the judgment as well as any other matter embraced in the action and not affected by the judgment or order appealed from."

In *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, the court considered the applicability of the appellate stay under section 916. The court stated: "[i]n determining whether a proceeding is embraced in or affected by the appeal, we must consider the appeal and its possible outcomes in relation to the proceeding and its possible results." (*Id.* at p. 189.) The court further held that the question of whether the stay applies depends on whether " 'the proceedings on the matter would have any effect on the "effectiveness" of the appeal.' [Citation.]" (*Ibid.*)

Here, the trial court correctly rejected Mr. Clontz's challenge to its jurisdiction under Code of Civil Procedure section 916. The motion to tax costs associated with the

2012 memorandum of costs is wholly separate and unaffected by the appeal in *Devereaux v. Clontz, supra*, H037998 [nonpub. opn.], and is not “embraced” in or “affected” by the appeal. Moreover, the court’s decision on the motion to tax costs has no effect on the “effectiveness” of the appeal in *Devereaux v. Clontz, supra*, H037998 [nonpub. opn.].

### ***Abuse of Discretion***

In addition to his jurisdictional challenge, Mr. Clontz also asserts the trial court abused its discretion when it denied his motion to tax costs. After the hearing on the motion, the trial court held: “[Mr. Clontz] raises in reply additional arguments that the fees incurred were not reasonable or necessary. [Mr. Clontz] bears the burden of proving costs, including fees, established by the prima facie evidence are not reasonable and necessary. *Ladas v. California Auto Assn.* (1993) 19 Cal.App.4th 761, 774-776. [Mr. Clontz] has not met this burden.”

Mr. Clontz asserts the court’s ruling was in error, because he argues it was Ms. Devereaux who had the burden to prove her costs were reasonable and necessary, and the court misapplied the standard. However, case law belies that assertion.

In *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, the court stated: In ruling upon a motion to tax costs, “[t]he trial court’s first determination is whether the statute expressly allows the particular item and whether it appears proper on its face. [Citation.] If so, the burden is on the objecting party to show them unnecessary or unreasonable.” (*Id.* at p. 131.)

Here, Ms. Devereaux established that the attorney fees she was seeking in her July 5, 2012 memorandum of costs were statutorily allowed as post-judgment fees associated with the enforcement of a judgment pursuant to Code of Civil Procedure section 685.040. In addition, Ms. Devereaux’s July 5, 2012 memorandum of costs was timely, in that it was filed before the judgment was satisfied in full, and within two years of the date the fees were incurred pursuant to Code of Civil Procedure section 685.080.

As a result, the request for fees was proper on its face, and Mr. Clontz, as the objecting party, had the burden to show the requested fees were unnecessary or unreasonable.

The trial court's determination that Mr. Clontz failed to establish that the fees in the July 5, 2012 memorandum of costs were unnecessary or unreasonable is supported by substantial evidence. There was ample evidence supporting the fees requested in the memorandum of costs. The memorandum of costs included the declarations of Ms. Devereaux's New York attorney, as well as her California attorney, both of whom worked to enforce her judgment against Mr. Clontz. Accompanying the declarations was detailed billing information for the attorneys. The fees of the New York attorneys totaled \$10,983.56, and were incurred in efforts to domesticate and enforce the judgment in New York, where Mr. Clontz resides. The work in New York included filing restraining notices and information subpoenas on banks where Mr. Clontz had accounts, filing an income execution, serving an information subpoena on Mr. Clontz's wife, and preparing a subpoena on Mr. Clontz's property. In addition, Ms. Devereaux's attorney negotiated a stipulation with Mr. Clontz's attorney in which Mr. Clontz agreed to turn over \$28,048.11 towards satisfaction of the judgment. The memorandum of costs reflects the fees of the New York firm were incurred through significant legal attempts to secure Ms. Devereaux's judgment against Mr. Clontz.

The fees of the California attorney were \$9,230.59. In addition to the efforts of the New York firm, Ms. Devereaux's counsel in California worked to enforce the judgment. The materials accompanying Ms. Devereaux's attorney's declaration demonstrate that these fees were incurred in defense of post-judgment attorney fees motions, including the Mr. Clontz's motion to vacate the original attorney fees order that is the subject of the appeal in *Devereaux v. Clontz, supra*, H037998 [nonpub. opn.]. While one of the motions for which Ms. Devereaux's fees were incurred was decided in favor of Mr. Clontz, all of the fees stated in the memorandum of costs were incurred in

ongoing attempts to enforce Ms. Devereaux's judgment against Mr. Clontz and were allowable under Code of Civil Procedure section 685.040.

The trial court did not abuse its discretion in denying Mr. Clontz's motion to tax costs. There is substantial evidence to support the court's decision, and the decision did not exceed the bounds of reason. (See, e.g., *Lubetzky v. Friedman, supra*, 228 Cal.App.3d at p. 39; *In re Marriage of Connolly, supra*, 23 Cal.3d at p. 598.)

#### **DISPOSITION**

The order on appeal is affirmed.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.