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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DOUGLAS KRUSCHEN, Plaintiff and Respondent, v. ANNANDALE TOWNHOUSE ASSOCIATION, INC, Defendant and Appellant.	B341189 (Los Angeles County Super. Ct. No. 23VECV05191)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eric P. Harmon, Judge. Affirmed.

Kulik Gottesman Siegel & Ware, Leonard Siegel and Mitchell S. Brachman for Defendant and Appellant.

Myers, Widders, Gibson, Jones & Feingold and James E. Perero for Plaintiff and Respondent.

Defendant and appellant Annandale Townhouse Association, Inc. (Annandale), appeals from a post-judgment award of costs and attorney fees entered in favor of plaintiff and respondent Douglas Kruschen in this action arising out of a homeowners' association election. After declaring the election invalid, the trial court awarded attorney fees and costs to Kruschen as the prevailing party against Annandale. On appeal, Annandale contends the trial court abused its discretion by (1) determining Kruschen was the prevailing party, because he succeeded on just one of his theories against Annandale regarding defects in its election of directors, and (2) declining to apply a negative multiplier to the lodestar figure. We conclude the record is inadequate to review Annandale's contentions because there is no reporter's transcript or suitable substitute for the hearing on the motion for attorney fees. Even if we were to find the record adequate for review, however, we would affirm because no abuse of discretion has been shown. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. October 2023 Election

Annandale is a nonprofit mutual benefit corporation operating the Annandale Townhouse common interest development (the development). Kruschen owns a condominium in the development, and he was elected to the board of directors for a term beginning in 2020.

Michelle Kelly, who is the inspector of elections for Correct Elect, LLC, conducted an election for Annandale's board of

directors in October 2023. Kelly retrieved ballots from a mailbox on October 16, 2023, and accepted hand-delivered ballots at the election meeting on October 17, 2023. During the meeting on October 17, 2023, Kelly announced that no further ballots would be accepted and a quorum had not been achieved. The number of ballots received was sufficient, however, to establish a quorum at a reconvened meeting on October 19, 2023, due to the reduced threshold required for a reconvened meeting.

On October 19, 2023, prior to the reconvened meeting, Kelly retrieved 50 additional ballots from the post office box that were delivered after the due date stated in the election meeting notice for mailed ballots to be counted and after Kelly had announced no further ballots would be accepted. At the reconvened meeting, she commingled and counted the ballots, including the untimely ballots, and Kruschen was not re-elected.

B. Complaint and Trial

On November 20, 2023, Kruschen filed a complaint against Annandale and five individual defendants seeking declaratory relief under Corporations Code section 7616 and Civil Code section 5145. In a single cause of action for declaratory relief, he sought a declaration that: (1) the 2023 election was invalid and the results were void; (2) the five individual defendants did not comprise the board of directors, were not authorized to act for Annandale, and were prohibited from purporting to conduct business for Annandale; (3) the defendants must cause all Annandale records and funds in their possession to be delivered to Annandale's management company; (4) Kruschen, Jennifer Campbell, Mohammad Danesh, and William Springer comprised

the board of directors until successors were appointed or elected; (5) pursuant to a stipulated settlement, Steven Gittleman was not a director and was not authorized to act on behalf of Annandale; (6) Annandale must engage a new inspector of elections and hold a new election in compliance with applicable laws and regulations; (7) the inspector of elections must contact all candidates nominated by another person to confirm their consent to be nominated; (8) the inspector of elections must tabulate ballots in public at an open meeting of the members; (9) each elected director serves a term of three years pursuant to applicable law and the corporate bylaws; and (10) the defendants shall pursue damages claims against Correct Elect. In addition, Kruschen sought civil penalties and an award of attorney fees and costs.

In Kruschen's trial brief, he argued Annandale violated its election rules by failing to: properly distribute election materials, seek consent of hundreds of candidates that Kruschen nominated, enforce candidate qualifications, facilitate member contact, set forth the correct terms for the directors on the ballots, provide access to election rules, comply with annual meeting notice requirements, handle proxies properly, conduct an authorized meeting to count ballots, reject additional ballots after polls closed, or provide proper notice of the election results.

After three days of hearings in February 2024, the trial court issued its ruling on March 20, 2024. The court found there was non-compliance with election rules as Kruschen described, but the non-compliance was de minimis and did not affect the results of the election, with one exception. With respect to the allegation that ballots were accepted after the polls closed in violation of the election rules, the trial court found the inspector

of elections improperly counted 50 ballots received after the polls closed. The only mailed ballots that the inspector should have counted were ones received by noon on October 16, 2023, which was the day before the election meeting. Moreover, only ballots in the inspector's possession at the meeting by the close of the polls on October 17, 2023, should have been counted. There was no evidence that Annandale's board of directors authorized any extension of the deadline. After reviewing the total votes for each candidate, the court concluded Annandale failed to establish noncompliance did not affect the results of the election. The court declared the October 2023 election for the board of directors invalid. The court declined to assess civil penalties, because the noncompliance was not intentional, reckless, or the result of willful misconduct.

The trial court entered judgment on March 26, 2024, in favor of Kruschen and against Annandale and the five individual defendants as follows: (1) the 2023 election was invalid and void; (2) the five individual defendants Martinez, Wagner, Grossman, Perl, and Atkinson, do not comprise the board of directors and are not authorized to act for Annandale; (3) the individual defendants must cause all Annandale records and funds in their possession to be delivered to Annandale's management company; (4) Kruschen, Campbell, Danesh, and Springer comprise the board of directors until successors are appointed or elected; (5) Annandale must engage a new inspector of elections and hold a new director election in compliance with applicable laws and governing documents; and (6) Kruschen is the prevailing party for an award of attorney fees and costs in amounts to be determined.

Annandale filed an appeal from the judgment, which is the subject of a separate appeal; this court has affirmed the judgment in a separate opinion.

C. Motion for Attorney Fees

On May 24, 2024, Kruschen filed a motion seeking an award of attorney fees of $54,877.50 and costs of $60, for a total of $54,937.50, as against Annandale in connection with the successful judgment and the motion for attorney fees. In connection with the underlying matter, Kruschen incurred the following attorney fees: attorney James E. Perero billed 101.80 hours at an hourly rate of $450 per hour, for a total of $45,075; attorney Michael Pellegrini billed 3.3 hours at an hourly rate of $400 per hour for a total of $1,320; attorney Monique Fierro billed 0.4 hours for a total of $160; and Sandra Puga billed 3.65 hours for a total of $730. In addition, in connection with the motion for attorney fees, the attorneys anticipated billing an additional 10.7 hours for Perero's services ($4,815) and 7 hours for Pellegrini's services ($2,800), for a total additional amount of $7,615.

On June 20, 2024, Annandale opposed the motion for attorney fees and costs on the ground that the amount was excessive, the request was not limited to recovery of fees incurred to prosecute the single election violation on which Kruschen prevailed, and the amount requested was not consistent with the statutory intent to resolve association election disputes expeditiously and economically. In addition, Annandale argued that the trial court should apply a downward adjustment to the lodestar figure.

Kruschen filed a reply.[1] A hearing was held on the motion for attorney fees and costs on August 29, 2024. No reporter's transcript for the hearing has been included in the appellate record. The minute order reflects that the trial court acknowledged Kruschen requested a total fee award of $54,937.50, but the court granted a reduced amount of $52,130, as described below. In determining the lodestar amount under the case law, the court noted that a reduced attorney fee award is appropriate when the claimant achieved limited success, except when the claims were factually related and closely intertwined. When a lawsuit consists of related claims and the plaintiff has won substantial relief, the trial court has discretion to award all or substantially all of the plaintiff's fees even if the court did not adopt each contention raised. Attorney fees do not need to be reduced for work on unsuccessful claims if they are so intertwined it would be impracticable to separate the attorney's time into compensable and noncompensable units.

The trial court noted that it had reviewed the entries in the first fee report attached to the motion and found the time billed was reasonable. The court also reviewed the evidence of the attorneys' billable rates and found the rates to be reasonable.

The trial court addressed Annandale's argument that Kruschen litigated eleven different alleged election violations over three days of trial but prevailed on only a single violation, which had consumed less than half a day. The court found each

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[1] On June 26, 2024, Kruschen filed a motion with this appellate court to augment the appellate record with his reply to the motion for attorney fees and costs and a minute order issued on August 29, 2024. Kruschen's motion to augment the appellate record is granted.

of the violations alleged, including the allegation that Kruschen prevailed upon, related to the procedure and conduct of the October 2023 board election, and Kruschen sought the identical relief for each alleged violation. Had Kruschen prevailed on additional violations, the relief awarded would have been no greater. All of the alleged violations were factually related and closely intertwined such that separating Kruschen's attorneys' time into units allocated to each alleged violation was impractical. Kruschen's attorney fee award did not need to be reduced to reflect unsuccessful claims, and it would not be appropriate to reduce his award on this basis, because not only were the claims related and intertwined, but he obtained substantial relief. The trial court exercised its discretion to award substantially all of Kruschen's fees, even though the court did not adopt every one of the contentions he raised.

The trial court also addressed Annandale's argument that Kruschen could have brought his claim in small claims court, so the bulk of his attorney fees were not reasonable or necessary. Although Civil Code section 5145 authorizes a party to bring a case in small claims court, it alternatively permits filing of a claim in superior court. It was permissible for Kruschen to file the action in superior court and did not constitute an unnecessary expense or delay.

Annandale had argued equitable principles dictated anything more than a nominal award of fees was unreasonable and excessive because the defendants were not guilty of wrongdoing. The trial court concluded Civil Code section 5145 awarded attorney fees to the prevailing party, regardless of wrongdoing. Annandale was directly more culpable than the individual defendants and should bear the full burden of

Kruschen's attorney fees. Therefore, the motion for attorney fees was properly brought solely against Annandale.

With respect to Annandale's argument that the fees and costs claimed were excessive, the trial court noted that Annandale did not provide evidence, specific analysis or factual support, citation to the record, or any explanation of any particular fees that were unreasonable or duplicative. Therefore, Annandale did not meet its burden to show Kruschen's attorney fees were excessive at the rates claimed.

Annandale had argued that the trial court should apply a negative multiplier to the loadstar based on the nature and difficultly or the litigation, the novelty and complexity of the issues, the amounts in controversy, and the result obtained. The trial court found Kruschen sought primarily equitable relief. The civil penalties requested in the complaint did not accurately represent what was in controversy in the litigation. Although Kruschen prevailed as to only one alleged violation, success was defined by the impact of the action. Kruschen only needed to prevail on one allegation to obtain substantial relief and realize his goals in the litigation. The court found Kruschen substantially attained his goals in the litigation. The court observed that whether to apply a multiplier to a loadstar figure was discretionary. The court declined to apply a multiplier, positive or negative, to the lodestar figure that the court had already found to be reasonable.

The trial court scrutinized the amount requested to prepare the motion for attorney fees. Although the rates reasonable, the court found the amount of time expended was excessive. The court reduced the amount awarded in connection with the motion from $7,700 to $4,132.50.

On September 3, 2024, the trial court entered a post-judgment order awarding attorney fees of $52,070 and costs of $60 to Kruschen as against Annandale. Annandale filed a timely notice of appeal from the post-judgment order.

DISCUSSION

A. Standard of Review

We review whether statutory language authorizes an award of attorney fees and costs de novo (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214), but it is undisputed in this case that an award of attorney fees is authorized under Civil Code section 5145, subdivision (b). Annandale does not contend that any issue on appeal amounts to a question of statutory construction subject to de novo review. Instead, Annandale challenges the trial court's determination that Kruschen was the prevailing party and the decision not to apply a negative multiplier.

When an award of attorney fees is authorized by statute, we review the trial court's ruling on a motion for attorney fees for an abuse of discretion. (*Soni v. Wellmike Enterprise Co. Ltd.* (2014) 224 Cal.App.4th 1477, 1481 (*Soni*).) An appellate court will not disturb the discretionary rulings of the trial court unless the appellant demonstrates, based on the applicable law and relevant circumstances, that the trial court's decision exceeded the bounds of reason, resulting in a miscarriage of justice. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) "The abuse of discretion standard affords considerable deference to the trial court, provided that the court acted in accordance with the

governing rules of law." (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1422.)

The trial court's factual findings are reviewed under the substantial evidence standard. (*Soni*, *supra*, 224 Cal.App.4th at p. 1481.) " 'In this regard, "the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact]." ' [Citation.]" (*Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal.App.5th 1121, 1137.)

B. Inadequate Record

We conclude the appellate record is inadequate to show the trial court abused its discretion in awarding attorney fees, or that the trial court's factual findings are not supported by substantial evidence, because there is no reporter's transcript or suitable substitute for the hearing on the motion for attorney fees.

A judgment or order of the lower court is presumed to be correct; the appellant bears the burden of overcoming this presumption by affirmatively showing error on an adequate record. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140–1141.) Under California Rules of Court, rule 8.120(b), "[i]f an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings in the form of one of the following: [¶] (1) A reporter's transcript under rule 8.130; [¶] (2) An agreed statement under rule 8.134; or [¶] (3) A settled statement under rule 8.137."

" '[I]t is appellant's burden to provide a reporter's transcript if "an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court . . ." (Cal. Rules of Court, rule 8.120(b)), and it is the appellant who in the first instance may elect to proceed without a reporter's transcript (Cal. Rules of Court, rule 8.130(a)(4)). . . .' [Citation.] A reporter's transcript may not be necessary if the appeal involves legal issues requiring de novo review. (See, e.g., *Chodos v. Cole* (2012) 210 Cal.App.4th 692, 698–700 [transcript not necessary for de novo review of order granting an anti-SLAPP motions].) In many cases involving the substantial evidence or abuse of discretion standard of review, however, a reporter's transcript or an agreed or settled statement of the proceedings will be indispensible. (See, e.g., *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 [declining to review the adequacy of an award of damages absent a transcript or settled statement of the damages portion of a jury trial]; *Vo. v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447–448 (*Vo.*) ['The absence of a record concerning what actually occurred at the trial precludes a determination that the trial court abused its discretion']).)" (*Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 483 [without reporter's transcript or suitable substitute, appellant cannot demonstrate attorney fees award constituted abuse of discretion].)

Annandale elected to proceed without a reporter's transcript or a suitable substitute, but the issues raised on appeal require consideration of the evidence and argument presented to the trial court and the trial court's exercise of its discretion. Without a record of the trial court proceedings on August 29, 2024, we cannot review the arguments, concessions,

or information presented to the trial court. The trial court's order must be affirmed because the record provided by Annandale is inadequate to show that the trial court abused its discretion in finding Kruschen to be the prevailing party and the amount of attorney fees requested to be reasonable. "The 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.' " (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) The absence of a record concerning what occurred at the hearing precludes a determination that the trial court abused its discretion.

C. Prevailing Party Determination

Even were we to find the record adequate for appellate review, however, we would find no abuse of discretion in the trial court's determination that Kruschen was the prevailing party.

"The analysis of who is a prevailing party under the fee-shifting provisions of the [Davis-Sterling] Act focuses on who prevailed 'on a practical level' by achieving its main litigation objectives[.]" (*Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252, 260.) "[T]he test for prevailing party is a pragmatic one, namely whether a party prevailed on a practical level by achieving its main litigation objectives." (*Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773.) "And on top of all that is the observation by our Supreme Court, that *'in determining litigation success*, courts should respect substance rather than form, and to this extent should be guided by "equitable considerations." ' (*Hsu*

v. Abbara (1995) 9 Cal.4th 863, 877.) In short, abuse of discretion it is—along with practicality and equity." (*Artus v. Gramercy Towers Condominium Assn.* (2022) 76 Cal.App.5th 1043, 1051.)

In this case, Kruschen succeeded in proving Annandale's inspector of elections accepted, commingled, and counted 50 untimely, invalid ballots, which affected the outcome of the election and required invalidation of the entire election. On a practical level, Kruschen prevailed by achieving the remedies he sought, including invalidation of the election, reinstatement of the former board members, and an order directing Annandale to conduct a new election. The trial court did not award Kruschen a relatively minor civil penalty because the violation was not intentional. It is true that Kruschen alleged several other election violations occurred, which the trial court found in fact did occur but had not affected the outcome of the election, and therefore, did not require invalidation of the election. But Kruschen only needed to prove one violation affected the integrity of the election in order to achieve his entire litigation objective. Kruschen was clearly the prevailing party.

Annandale also contends Kruschen should not have been considered the prevailing party because he did not recover against the individual defendants, but Annandale has no standing to assert the claims of the individual defendants. Kruschen was determined to be the prevailing party as against Annandale, and the award of attorney fees and costs was assessed solely against Annandale. No attorney fees or costs were sought against the individual defendants, nor did the individual defendants file a motion for attorney fees or otherwise challenge the prevailing party determination.

Annandale asserts the trial court should not have blindly awarded attorney fees and costs, but it is clear from the detailed, thoughtful decision reflected in the minute order that the trial court did not act arbitrarily or capriciously in determining the fee award.

D. Multiplier Adjustment to Lodestar Figure

Similarly, even if we were to consider the appellate record sufficient for review, we would conclude that Annandale failed to show the trial court abused its discretion by denying the request for a negative multiplier.

"In determining whether to apply a multiplier to a lodestar amount, a court should consider all relevant factors, including: '(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.' (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1132.) A court may rely on these factors to increase or decrease the lodestar. [Citation.] Any one factor may be sufficient to apply a positive or negative multiplier. [Citation.]" (*Cates v. Chiang* (2013) 213 Cal.App.4th 791, 822.)

" '[T]he calculation of attorney fee enhancements [is a] highly fact-specific matter[ ] best left to the discretion of the trial court.' [Citations.] ' " 'There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation.' [Citation.] There are numerous such factors, and their evaluation is entrusted to a trial court's sound discretion . . . ." ' [Citation.]" (*Cates v. Chiang*, *supra*, 213 Cal.App.4th at pp. 822–823.)

The August 29, 2024 minute order reflects that the trial court carefully considered and weighed the factors raised in Annandale's arguments for the application of a negative multiplier. In choosing not to apply any multiplier, positive or negative, the trial court acted well within the bounds of reason. The trial court was in the best position to determine the reasonable value of the services of Kruschen's attorneys, given the nature and difficulty of the litigation, but we note that the rates charged and the hours billed appear well within the bounds of reason for a matter of this complexity. The trial court concluded the facts of the various issues were inextricably intertwined and it would not be reasonable in this case to separate out hours spent on different issues. Because Kruschen only needed to establish one of the alleged violations to invalidate the entire election, he received the full equitable relief that he sought in his complaint. The amount of attorney fees awarded was eminently reasonable considering the level of success that was achieved. No abuse of discretion has been shown.

E. Attorney Fees for Services on Appeal

In a single paragraph in the respondent's brief, Kruschen requests this appellate court confirm that he is entitled to an award of attorney fees on appeal because statutes that authorize attorney fee awards include services on appeal. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 637; *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.* (2012) 211 Cal.App.4th 230, 250.) As the prevailing party on appeal, Kruschen may file a motion for attorney fees on appeal in the trial court pursuant to California Rules of Court, rule 3.1702(c), and Civil Code section 5145. (See

Butler-Rupp v. Lourdeaux (2007) 154 Cal.App.4th 918, 924 ["trial courts retain discretion to award attorney fees incurred on appeal to the eventual prevailing party"]; *Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990, 1001.)

DISPOSITION

The post-judgment order of attorney fees and costs is affirmed. Respondent Douglas Kruschen is awarded his costs on appeal.

NOT TO BE PUBLISHED.

MOOR, J.

I CONCUR:

KIM (D.), J.

Douglas Kruschen v. Annandale Townhouse Association Inc.
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BAKER, Acting P. J., Dissenting

For the reasons stated in my opinion in the companion appeal, case number B337889, I would not affirm the trial court's attorney fees order at this time.

BAKER, Acting P. J.