Filed 3/10/22 Mallonee v. Toyota Motor Sales CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JENNIFER MALLONEE et al., Plaintiffs and Appellants, v. TOYOTA MOTOR SALES, U.S.A., INC., Defendant and Respondent.	E075088 (Super. Ct. No. CIVDS1801960) OPINION

APPEAL from the Superior Court of San Bernardino County. Brian McCarville, Judge. Affirmed.

The Law Office of John Derrick and John Derrick; Bickel Sannipoli, Brian J. Bickel and Jordan K. Sannipoli, for Plaintiffs and Appellants.

Horvitz & Levy, John A. Taylor, Jr. and Steven S. Fleischman; Beatty & Myers, Sean D. Beatty and Courtney E. Perdue, Defendant and Respondent.

I.

INTRODUCTION

Jennifer and Jesse Mallonee sued Toyota Motor Sales, U.S.A., Inc., under the Song-Beverly Consumer Warranty Act (Civ. Code, §§ 1790 et seq.), commonly known as California's "lemon law." After the Mallonees prevailed at trial, they sought to recover about $430,000 in attorney's fees, but the trial court awarded them only about $41,000. The Mallonees appeal the fee award. We affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

The Mallonees bought a Toyota Prius in early 2016. Mrs. Mallonee believed the car had electrical problems that caused it to shut down, so she asked Toyota to repurchase it. Toyota declined to do so.

In November 2017, Mrs. Mallonee rear-ended another car while driving the Prius. The Mallonees' insurance company determined that the car had been totaled and paid off the balance of the Mallonees' outstanding loan on it.

The Mallonees later filed this action as an unlimited case alleging one Song-Beverly claim and seeking more than $25,000 in damages. The case went to trial with no motions filed except for routine motions in limine.

The trial lasted eight days. The Mallonees called six witness, including themselves, representatives from Toyota and the dealership where they bought the Prius, and an expert witness. Toyota called only a rebuttal expert witness.

In closing argument, the Mallonees' counsel argued the jury should award the Mallonees $6,519.96 (the amount the Mallonees had paid on the Prius before it was totaled) and a $13,039.92 civil penalty under Song-Beverly, for a total award of $19,559.88. The jury awarded the Mallonees $19,559.88, and the trial court entered judgment in that amount.

The Mallonees then moved for attorney's fees under Song-Beverly. The Mallonees' counsel, The Bickel Law Firm, submitted their time records along with the motion, which showed that the firm staffed the case with nine attorneys who spent about 780 hours on the case, for a total of about $277,000 in fees. Attorney Jordan K. Sannipoli spent 312.9 hours at hourly rates of $425 (7.6 hours) and $465 (305.3 hours). Attorney John P. Meyers spent 271.1 hours at an hourly rate of $405. Attorney Brian J. Bickel billed 25.2 hours at an hourly rate of $665. The remaining six attorneys spent 12.9 hours at hourly rates between $355 and $495. The Bickel Law Firm's "Paralegals/Law Clerks" spent 143.4 hours on the case at an hourly rate of $195, for a total of $27,963, while its Legal Assistants billed 14.1 hours at an hourly rate of $145, for a total of $2,044.50. In total, the Mallonees sought $307,316 in fees, plus a multiplier of .4, for a total of $430,242.40 in requested fees.

Toyota opposed the motion on several grounds, including that the trial court should reduce or deny the Mallonees' fee request under Code of Civil Procedure section 1033, subdivision (a) (section 1033(a))[1] because they recovered less than the unlimited jurisdiction threshold of $25,000. Toyota also argued the Mallonees' request was excessive and unreasonable.

After a hearing on the motion, the trial court took the matter under submission, stating that the parties would receive "the Court's decision in writing." The trial court later issued a minute order awarding the Mallonees $40,875 in attorney's fees. The order states in relevant part: "[T]his was not a complex case prior to or during trial. Little, if any, law and motion practice was involved. No novel or complex in limine motions. [¶] After reviewing the time records, the Court finds the case could have been responsibly handled by two attorneys and one paralegal. [¶] Based upon at least 50 other Lemon Law Attorney's fee requests, the Court finds the reasonable attorney hourly rate for Attorney Sannipoli to be $300.00 per hour. For Attorney Meyers $275.00 per hour and for paralegal work $75.00 per hour. [¶] The plaintiffs' attorneys achieved favorable results for the client, they do extensive Lemon Law litigation and they protect a valid public interest, but here, the work provided before the Court does not justify the requested hourly rate request[], nor are the amount of hours requested reasonable. [¶]

[1] Section 1033(a) provides that "[c]osts or any portion of claimed costs shall be as determined by the court in its discretion in a case other than a limited civil case . . . where the prevailing party recovers a judgment that could have been rendered in a limited civil case."

Early on, this case was a limited jurisdiction case, and the jury so found. [¶] Civil Code of Procedure[] 1033(a) is the general reasonable and necessary consideration regarding awarding of attorney's fees. Here, plaintiff is entitled by Song-Beverly to fees for work done that is reasonable and necessary. Based upon review of all the time records, the written and oral arguments, the Court awards for Attorney Sannipoli 75 hours at $300.00 per hour, for Attorney Meyers 60 hours at $275.00 per hour; and 25 hours of paralegal work at $75.00 per hour for a total of $40,875.00. The Court has already awarded plaintiff[s] costs after a hearing."[2]

The Mallonees timely appealed.

III.

DISCUSSION

The Mallonees contend the trial court erred by awarding them only about 85 percent of their requested lodestar.[3] We find no abuse of discretion. (*Warren v. Kia Motors America, Inc.* (2018) 30 Cal.App.5th 24, 36 (*Warren*) ["We review the trial court's attorney fee award under the Song-Beverly Act for an abuse of discretion"].)

[2] The parties do not challenge the cost award.

[3] The trial court awarded the Mallonees $40,875, which was 86.7 percent of their requested lodestar of $307,316.

We first address the parties' dispute over section 1033(a). Toyota contends the trial court properly reduced the Mallonees' fee request under section 1033(a), which permits a trial court to reduce or deny a plaintiff's fee request if the plaintiff recovers less than the unlimited jurisdiction threshold of $25,000. (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 975.) They also argue that the Mallonees waived any argument about section 1033(a) because they do not mention it in their opening brief. The Mallonees, on the other hand, argue that the trial court did not apply section 1033(a), the statute does not apply to Song-Beverly claims, and, even if it does, the trial court improperly applied it here. We need not resolve the parties' arguments about section 1033(a) because the trial court's order shows that it did not abuse its discretion in reducing the fee award irrespective of section 1033(a).

Every fee request is subject to the "established principle" that a "' request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award *or deny one altogether*.' [Citations.]" (*Chavez v. City of Los Angeles*, *supra*, 47 Cal.4th at p. 990, italics added.) When a fee request is unreasonably excessive, trial courts have the discretion to significantly reduce an attorney fee award or not award *any* fees. (See, e.g., *id.* at p. 991 ["grossly inflated" fee request "alone was sufficient, in the trial court's discretion, to justify denying attorney fees altogether"]; *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1318-1319 [affirming reduction of award by about 90 percent because fee request was "padded"]; *Guillory v. Hill* (2019) 36 Cal.App.5th 802, 815 ["The trial court's denial of plaintiffs' motion [for $3.8 million

in attorney's fees] is equally justified by their inflated fee request."]; *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 432 fn. 7 ["Indeed, there is authority that holds an unreasonably inflated fee request permits the trial court to deny *any* request for fees at all."]; see also *Warren*, *supra*, 30 Cal.App.5th at pp. 40-41 [trial court did not abuse its discretion in awarding only 33 percent of fees requested if reduction was "based on the factors specific to the case, including the excessive time spent on the 'not so complex case'"].)

The Mallonees argue the court improperly reduced the fee award because the jury award was substantially less than the amount of fees requested. In their view, the trial court violated this court's *Warren* decision. We disagree.

We held in *Warren* that the trial court improperly applied an across-the-board, negative multiplier without explanation to reduce a Song-Beverly plaintiff's fee award. (*Warren*, *supra*, 30 Cal.App.5th at p. 37.) We explained that such a reduction is permissible for certain reasons, but not for others. (*Id*. at pp. 39-40.) As relevant here, we held that "it is inappropriate and an abuse of a trial court's discretion to tie an attorney fee award to the amount of the prevailing buyer/plaintiff's damages or recovery in a Song-Beverly Act action." (*Id*. at p. 37.) But we also noted that trial courts may use a "multiplier to arrive at a reasonable fee based on the factors specific to the case." (*Id*. at p. 41.)

We observed that part of the trial court's written ruling suggested that the court properly awarded only 33 percent of the requested fees because the request was excessive. (*Warren, supra*, 30 Cal.App.5th at p. 273.) But the ruling's statement that the court was awarding fees in an amount "much more" than the jury awarded also suggested that the court improperly awarded 33 percent of the requested fees to "arriv[e] at a fee award that was roughly proportional to [the plaintiff's] modest . . . damages award." (*Id*. at pp. 39-40.) We therefore remanded the matter to the trial court to recalculate its fee award without considering the jury award. (*Id*. at p. 46.)

The Mallonees maintain that the trial court violated *Warren* by improperly fashioning the fee award so that it was proportionate to the jury's award. To support their position, they rely on the trial court's comment at the hearing, "I'm bothered by the amount of time that was spent on a case that, in essence, should have been a limited jurisdiction case and the recovery of 19,000 and change." They also point to the statement in the minute order, "[e]arly on, this case was a limited jurisdiction case, and the jury so found."

As to the trial court's comment at the hearing about being "bothered" that this case should have been a limited jurisdiction case, it was "not [a] final finding[] and cannot impeach the court's subsequent written ruling." (*Key v. Tyler* (2019) 34 Cal.App.5th 505, 539, fn. 16; accord, *Jespersen v. Zubiate–Beauchamp* (2003) 114 Cal.App.4th 624, 633 ["[A] judge's comments in oral argument may never be used to impeach the final order, however valuable to illustrate the court's theory they might be under some

circumstances."].) And the trial court's written ruling here confirms that the court reduced the Mallonees' fee award because the court found that their fee request was excessive. (See *Morris v. Hyundai Motor America* (2019) 41 Cal.App.5th 24, 36 [relying on trial court's written order instead of its comments at hearing to determine whether court properly reduced fee request].)

We disagree with the Mallonees that the trial court's statement in its minute order, "early on, this case was a limited jurisdiction case, and the jury so found," shows that the trial court improperly tied the fee award to the jury's award. Just after that observation, the trial court stated that section 1033(a) "is the general reasonable and necessary consideration regarding awarding of attorney's fees" and that the Mallonees were "*entitled* by Song-Beverly to fees for work done that is reasonable and necessary." (Italics added.) Without mentioning the jury award, the court then outlined its fee award.

When read within the context of the minute order and the parties' dispute over section 1033(a), the trial court's statement, "[e]arly on, this case was a limited jurisdiction case, and the jury so found," pertains only to the court's determination of whether section 1033(a) applied. The statement does not suggest that the trial court improperly tied the fee award to the jury's award. If anything, it suggests the trial court found that the Mallonees were "entitled by Song-Beverly to . . . reasonable and necessary" fees despite section 1033(a).[4]

[4] We need not and do not decide whether section 1033(a) applies to Song-Beverly fee requests or whether the trial court found that the statute does not apply.

In its minute order, the trial court found that "the case could have been responsibly handled by two attorneys and one paralegal." The court also determined that a reasonable hourly rate for Ms. Sannipoli was $300 (not $425 or $465) and $275 for Mr. Meyers (not $405). The court observed—and the Mallonees do not dispute—that "this was not a complex case," there was "[l]ittle, if any, law and motion practices," and there were "no novel or complex in limine motions." The court thus found that "the work provided before the Court does not justify the requested hourly rate requested, nor are the amount of hours requested reasonable."

In short, the trial court found that the Mallonees' counsel sought payment for an unreasonable amount of time expended at excessive hourly rates. (See *Warren*, *supra*, 30 Cal.App.5th at p. 36.) That finding was not an abuse of discretion on this record.

The """experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong."""" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) "'We defer to the trial court's discretion "because of its 'superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.'"""" (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1249.)

The trial court has discretion to decide an attorney's reasonable hourly rate and the time the attorney reasonably spent on the case. (*Mikhaielpoor v. BMW of North America, LLC* (2020) 48 Cal.App.5th 240, 246.) "Factors to be considered include, but are not limited to, the complexity of the case and procedural demands, the attorney skill exhibited and the results achieved." (*Id.* at p. 247.)

The trial court found that Ms. Sannopoli's reasonable rate was $300 per hour (not $425 or $465) and Mr. Meyers's was $275 (not $405). The Mallonees do not challenge these findings on appeal. The trial court also found the Mallonees' counsel could have competently prosecuted the case with only two attorneys instead of nine—another finding the Mallonees do not challenge. The Mallonees also do not challenge the trial court's finding that this was "not a complex case" with no motions practice other than routine motions in limine.

Given the trial court's uncontested findings that the Mallonees' attorneys' requested rates were unreasonably high and they spent an unreasonable amount of time on an uncomplicated case, the court had discretion to reduce the fee award. (See *Chavez v. City of Los Angeles, supra,* 47 Cal.4th at p. 991; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 ["A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether."]; see also *Mikhaielpoor v. BMW of North America, LLC, supra,* 48 Cal.App.5th at p. 246.) It follows that the trial court did not abuse its discretion in awarding the Mallonees $41,000 in attorney's fees.

IV.

DISPOSITION

The trial court's order awarding the Mallonees $40,875 in attorney's fees is affirmed. Toyota may recover its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.