

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM05
HON. Judge Ebrahim Baytieh

Date: 05/10/2024

Court Room Rules and Notices

#	Case Name	Tentative
1	Nisttahuz -Trust (2019-01063054)	<p style="text-align: center;">MOTION TO INTERVENE ON APPEAL</p> <p>The motion by Intervenors for leave to intervene to oppose the appeal filed by the Meier Respondents is DENIED.</p> <p style="text-align: center;"><u>Background</u></p> <p>Reid & Hellyer, APC and Stafford Law (collectively, “Intervenors”) represented Jeffrey Lund in the underlying action.</p> <p>On 1/19/22, Jeffrey Lund filed a Third Amended Petition against Pietro Lombardi, Liza Lombardi, Meier Law Firm (“MLF”), Jonathan Johnson, and Bonnie Johnson (“Lund Petition”). (ROA 575.) MLF and Jonathan Johnson are collectively referred to as the “Meier Respondents.”</p> <p>On 9/26/22, Pietro Lombardi and Liza Lombardi filed a Petition against Jeffrey Lund, Lance Lund, and Luke Lund (“Lombardi Petition”). (ROA 713.)</p> <p>Both petitions were tried together before the Honorable Judge David Belz.</p> <p>On 12/8/23, Judge Belz issued his Final Statement of Decision and Judgment. (ROA 1014.) In ruling on the Lund Petition, the court found the Meier Respondents liable for financial elder abuse and awarded Jeffrey Lund attorney’s fees and costs pursuant to Welfare and Institutions Code section 15657.5. In ruling on the Lombardi Petition, the court found Jeffrey Lund liable for unpaid rent and for financial elder abuse and awarded the Lombardis attorney’s fees and costs pursuant to Welfare and Institutions Code section 15657.5.</p> <p>After the Statement of Decision was issued, the parties reached a settlement and submitted a “Joint Stipulation and [Proposed] Order Re: Approval of Executed Settlement Agreement.” Intervenors objected to the settlement agreement because its terms waived Jeffrey Lund’s award of attorney’s fees and costs. Intervenors filed an ex parte application for leave to intervene to oppose the approval of the settlement agreement and for leave to file a motion for attorney’s fees.</p> <p>On 2/6/24, Judge Belz issued an order granting Intervenors leave to file a motion for attorney’s fees and costs, as well as leave to oppose the parties’ proposed settlement agreement. (ROA 1072.) Judge Belz handwrote, “This order applies to the Petition to Approve Settlement only.” (Id.)</p> <p>On 2/6/24, the Meier Respondents filed a Notice of Appeal. The Meier Respondents appeal the court’s finding that the Meier Respondents are liable for financial elder abuse.</p>

		<p style="text-align: center;"><u>Merits of the Motion</u></p> <p>Intervenors now move this court for leave to oppose the Meier Respondents’ appeal. The motion sets forth legal authority as to why the court can rule on this motion notwithstanding the pending appeal. The court agrees that this motion for leave to intervene is an ancillary matter to the appeal. However, the court disagrees with Intervenors’ argument that they have a “direct interest in the matter” appealed.</p> <p>Intervenors have a direct interest in any Petition to Approve Settlement only. (ROA 1072.) A Petition to Approve Settlement would affect the issue of whether Jeffrey Lund can waive the award of prevailing party attorney’s fees. However, Intervenors are not parties to the underlying action and have no direct interest in the outcome of the Lund Petition.</p> <p>Put another way: The appeal concerns the cause of action for financial elder abuse. The award of attorney’s fees is a remedy, not a cause of action. The appeal will determine whether Jeffrey Lund is entitled to the remedy (i.e., whether the Meier Respondents should be liable for financial elder abuse), but it will not determine whether Jeffrey Lund can waive the remedy if the trial court’s judgment stands. If the trial court’s judgment is reversed, then Intervenors’ motion for attorney’s fees will become moot. However, such possibility does not give Intervenors the right to advocate in favor of the judgment.</p> <p>For the foregoing reasons, the motion for leave to intervene is denied. Counsel for the Meier Respondents is ordered to give notice of the ruling.</p>
2	Boudakian - EA (2023-01347356)	<p style="text-align: center;"><u>MOTION FOR FEES</u></p> <p>Respondent Max Amirkhizi brings this Motion for Attorney Fees and Costs (ROA 34) pursuant to Welfare & Institutions Code § 15657.03(t).</p> <p>Pursuant to Welfare & Institutions Code § 15657.03(t), the prevailing party in a request for an Elder Abuse Restraining Order (“EARO”) “may be awarded court costs and attorney’s fees . . .” A “prevailing party” includes “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (CCP § 1032.) A dismissal was entered in favor of Respondent. (ROA 37.) Therefore, Respondent is the prevailing party and is entitled to fees and costs under Welfare & Institutions Code § 15657.03(t).</p> <p>Calculation of attorneys’ fees is committed to the sound discretion of the trial court. (<i>PLCM Group v. Drexler</i> (2000) 22 Cal.App.4th 1084, 1095-1096.) The calculation of the attorneys’ fees must be based on “a computation of time spent on a case and the reasonable value of that time.” For purposes of the calculation, “[t]he reasonable hourly rate is that prevailing in the community for similar work.” (Id.) The court is not bound by the evidence and argument provided by the party seeking the fees. Under California law, “[t]he court has a duty, independent of any objection, to assure that the amount and mode of payment of attorney fees are fair and proper, and may not simply act as a rubberstamp for the parties’ agreement.” (<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545, 555.) “The courts repeatedly have stated that the trial court is in the best position to</p>

		<p>value the services rendered by the attorneys in his or her courtroom, and this includes the determination of the hourly rate that will be used in the lodestar calculus. In making its calculation, the court may rely on its own knowledge and familiarity with the legal market, as well as the experience, skill, and reputation of the attorney requesting fees, the difficulty or complexity of the litigation to which that skill was applied, and affidavits from other attorneys regarding prevailing fees in the community and rate determinations in other cases.” (569 <i>East County Boulevard LLC v. Backcountry Against the Dump, Inc.</i> (2016) 6 Cal.App.5th 426.)</p> <p>Case law recognizes that an award of attorney’s fees to the prevailing party should not impose an unreasonable financial burden on the losing party. (<i>Garcia v. Santana</i> (2009) 174 Cal.App.4th 464, 475; see also <i>Rosenman v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro</i> (2001) 91 Cal.App.4th 859, citing <i>Patton v. County of Kings</i> (9th Cir. 1988) 857 F.2d 1379, 1382 [“We wholeheartedly agree with the Ninth Circuit’s holding an award of attorney fees ‘should not subject the plaintiff to financial ruin.’”].) An award of fees untethered to any consideration of the ability to pay would contravene the First Amendment right to access to the courts. (<i>Garcia v. Santana</i>, supra, 174 Cal.App.4th at pp. 475-476.)</p> <p>“In determining the amount of fees to be awarded to the prevailing party where the statute, as here, requires that the fee be reasonable, the trial court must therefore consider the other circumstances in the case in performing the lodestar analysis. Those other circumstances will include, as appropriate, the financial circumstances of the losing party and the impact of the award on that party.” (<i>Id.</i> at pp. 476-477.)</p> <p>In her points and authorities, Petitioner Rosalinda Farol requests that the court consider Petitioner’s financial limitations. Petitioner’s declaration states that Petitioner borrowed money and sold her car to “ensure continuity” of Mr. Boudakian’s caregiving needs. However, Petitioner provides no information regarding her personal financial situation, or any hardship affecting her ability to pay fees. On the contrary, Petitioner states that she “will accept whatever the court decides as to the application for attorney’s fees for Max’s representation.”</p> <p>Elder Abuse proceedings are public record and contain serious allegations and implications of reprehensible conduct against the accused. An Elder Abuse restraining order should be requested only where necessary to protect an elderly person from abuse perpetuated on the elder. An application for an Elder Abuse restraining order should not be made to force someone’s hand or to gain leverage, nor should it be used to merely settle financial disputes on behalf of an elder. Thus, in this case sanctions are clearly warranted in favor of Respondent.</p> <p>The court finds the time expended by Mr. Bruzzo in connection with the elder abuse proceedings, as well as in bringing this motion, to be reasonable in light of the work performed and results obtained. The court further finds that Mr. Bruzzo’s hourly rate is reasonable when compared with attorneys in the community with similar skill and experience. Therefore, the court awards Respondent \$7,500.00 in attorney’s fees, payable by Petitioner Rosalinda Farol.</p> <p>Moving party to give notice.</p>
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