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**DAVID ARIAS et al., Plaintiffs and Appellants, v. CITY OF MANHATTAN BEACH,
Defendant and Appellant.**

B165931

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,
DIVISION EIGHT**

*2004 Cal. App. Unpub. LEXIS 4251***April 29, 2004, Filed**

NOTICE: [*1] NOT TO BE PUBLISHED IN OFFICIAL REPORTS CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 977.

PRIOR HISTORY: APPEAL from a judgment of the Superior Court of Los Angeles County. Owen Lee Kwong, Judge. Los Angeles County Super. Ct. No. BC279730.

DISPOSITION: Reversed in part and remanded.

COUNSEL: Sullivan, Workman & Dee and Joseph S. Dzida for Plaintiffs and Appellants.

Robert V. Wadden, Jr., City Attorney, for Defendant and Appellant.

JUDGES: COOPER, P.J. We concur: RUBIN, J., BOLAND, J.

OPINIONBY: COOPER

OPINION: PROCEDURAL HISTORY

David Arias, individually, and as trustee of the David Joseph 2000 Trust, and Marquesa & Co. (Arias) filed a lawsuit against the City of Manhattan Beach (City) challenging a joint public/private development of a public parking garage and retail buildings on the site of an old pottery factory (the "Project"). The lawsuit included three causes of action: a taxpayer's action for misuse of public funds; a writ of mandate petition alleging violation [*2] of the California Coastal Act; and a writ of mandate petition challenging the adequacy of the "Statement of Overriding

Consideration" ("SOC") adopted by the Manhattan Beach City Council in approving the project under the California Environmental Quality Act (CEQA).

The second cause of action under the Coastal Act was dismissed as unripe on City's motion for judgment on the pleadings. City then prepared and filed an administrative record consisting of ten volumes and over 2,700 pages, which included the transcripts of three public hearings. At the same time, City filed motions for summary adjudication of the remaining two causes of action. On the day that opposition was due, Arias dismissed the remainder of the lawsuit in its entirety. n1 City filed a memorandum of costs, which was challenged by Arias. Arias' motion to tax costs claimed that City was not the prevailing party and that the costs were overstated. The trial court granted the motion to tax costs, ruling that even though City was the prevailing party, it was not entitled to recovery of any costs, including the cost of preparing the administrative record, because it failed to show the costs were "reasonable in need and amount. [*3] " City filed a motion for reconsideration presenting evidence that the costs requested were reasonable and necessary and required by the statute to be awarded. The trial court denied the motion. City filed a timely appeal of the order granting the motion to tax costs.

n1 Arias subsequently filed a second lawsuit (LASAC case No. BS 080384) also challenging the Project and the Coastal Development Permit issued by the Coastal Commission.

Arias filed an appeal with regard to the trial court's determination that City was the prevailing party. Arias' argument on appeal is that City is not the prevailing party, because despite the dismissal, Arias obtained substantial relief as a result of the Coastal Commission's decision regarding the Project. Arias also argues that the costs claimed by City are fraudulent and exaggerated.

RECOVERY OF COSTS

We think it would be useful to begin our discussion with a general review of the statutory provisions governing recovery of costs without regard to the specific contentions [*4] made in this appeal. We will then consider the issues raised in City's appeal and Arias' appeal.

Code of Civil Procedure n2 "section 1032 is the fundamental authority for awarding costs in civil actions. It establishes the general rule that 'except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.' (§ 1032, subd. (b).)" (*Scott Co. v. Blount, Inc. (1999) 20 Cal.4th 1103, 1108.*) Assuming the prevailing party requirements are met, the trial court has no discretion to order each party to bear his or her own costs of suit. (*Michell v. Olick (1996) 49 Cal.App.4th 1194, 1198.*)

n2 Unless otherwise indicated all further statutory references are to the Code of Civil Procedure.

Section 1032 defines the term prevailing party to mean, "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 [*5] a defendant as against those plaintiffs who do not recover any relief against that defendant." (§ 1032, subd. (a)(4).)

The defendant who is dismissed from the action is the "prevailing party."

(§ 1032, subd. (a)(4).) This is true whether the dismissal is voluntary or involuntary. (*Santisas v. Goodin (1998) 17 Cal.4th 599, 606.*)

There are some situations in which the court determines who, if anyone, recovers costs. This would include a situation where other than monetary relief is recovered and in situations other than as specified. In those instances the court determines the "prevailing party" and the award of costs is discretionary. (*Lincoln v. Schurgin (1995) 39 Cal.App.4th 100, 105.*) Types of non-monetary relief can include where a party obtains relief in the form of a permanent injunction (*United States Golf Assn. v. Arroyo Software Corp (1999) 69 Cal.App.4th 607, 625*) and where a party prevails on declaratory relief claims without recovering damages (*Texas Commerce Bank v. Garamendi (1994) 28 Cal.App.4th 1234, 1248-1249.*)

A court may base the determination of "prevailing party" on a pragmatic analysis [*6] of the extent to which each party has "realized its litigation objectives, whether by judgment, settlement, or otherwise. (See *Hsu v. Abbara*

[(1995)] 9 Cal.4th 863, 877.)" (*Santisas v. Goodin, supra, 17 Cal.4th at p. 622.*) The *Santisas* court stated that "it seems inaccurate to characterize the defendant as the 'prevailing party' if the plaintiff dismissed the action only after obtaining, by means of settlement or otherwise, all or most of the requested relief, or if the plaintiff dismissed for reasons, such as the defendant's insolvency, that have nothing to do with the probability of success on the merits." (*Id. at p. 621.*) Where neither plaintiff nor defendant obtains relief, defendant is the prevailing party even in actions seeking purely non-monetary relief. (*Chaparral Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134.*)

Section 1094.5 also relates to the issues in this case and it provides that the cost of a transcript of hearings before administrative agencies whose orders or decisions are subject to review in proceeding for writ of mandate must be allowed to the prevailing party. (§ 1094.5; [*7] *Williams v. Santa Maria Joint Union High Sch. Dist. (1967) 252 Cal. App. 2d 1010, 60 Cal. Rptr. 911.*)

Regardless of entitlement, in all instances allowable costs must be both reasonable in amount and reasonably necessary to the conduct of the litigation. (§ 1033.5, subd. (c)(2) & (3); *Ladas v. California State Auto. Assn (1993) 19 Cal.App.4th 761, 774.*) The court has the power to disallow costs "allowable as a matter of right" if they do not meet these standards. (*Perko's Enterprises, Inc. v. RRNS Enterprises (1992) 4 Cal.App.4th 238, 245.*)

WHO WAS THE PREVAILING PARTY?

Analytically, resolution of this appeal must begin with an evaluation of the trial court's determination that City was the prevailing party. n3 Arias' appeal challenges the trial court's finding. Arias contends that notwithstanding the voluntary dismissal they obtained substantial relief and are the party that achieved its litigation objective. Arias argues, "[Arias] dismissed the case only because they had obtained substantially all of the relief they requested in this case from the Coastal Commission. The Coastal Commission ruled in favor of [Arias] [*8] on all but one of the issues raised in this case." In specific:

"The result of the proceedings before the Commission was decidedly in favor of [Arias]. [Arias] won on the jurisdiction issue, the interim parking issue, the valet parking issue and the height of the Inn issue. [Arias] only lost on the issue of the general adequacy of the parking to be provided, although the Commission did impose conditions in an effort to alleviate some of their concerns."

Arias acknowledges that "in the typical instance where a plaintiff dismisses an action of its own volition the defendant is the prevailing party. However, [Arias] cites case law to support [the] contention that where a party achieves

the relief it seeks outside the scope of the litigation it may still be deemed a prevailing party even if the case is dismissed." City makes the observation that Arias raised all the same arguments in trial court papers and that "nothing in the trial court's opinion . . . indicates that the court assumed the defendant was automatically the prevailing party because plaintiff dismissed the case." City suggests that Arias is now asking this court to reweigh the same evidence presented to the trial [*9] court.

n3 Trial court's minute order reads as follows:

"[City] has failed to show that the costs were reasonable and necessary. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs. *CCP section 1094.5(a)*. Section 1032 applies equally to mandamus actions under section 1094.5 and therefore, costs are awardable to the prevailing party. *Santos v. Civil Serv. Bd. (1987) 193 Cal. App. 3d 1442, 1446, 239 Cal. Rptr. 14*. Prevailing parties under section 1094.5 include parties whom litigation was commenced and later dismissed, which includes voluntary dismissals by plaintiffs. *Id. at 1446-47; CCP section 1032 (a)(4)*. When a party recovers other than monetary relief, the prevailing party is determined by the court, and the award of costs is within the court's discretion. *Michell v. Olick (1996) 49 Cal.App.4th 1194, 1198*. Before awarding costs, however, the trial court must determine whether a cost is reasonable in need and amount. *Thon v. Thompson (1994) 29 Cal.App.4th 1546, 1548*. If the cost is properly objected to and put in issue, the burden is on the party claiming them as costs. *Ladas, 19 Cal.App.4th 761, 744*. [P] Here, [City] is the prevailing party, as [Arias has] voluntarily dismissed [its] complaint against [City]. However, [City] has failed to show that the costs for transcripts of the proceedings and the ten sets of copies of the administrative record were reasonable in need and amount. [City] has failed to submit any evidence to help the Court evaluate whether the photocopies and the transcripts were reasonably necessary. Hence, [Arias'] Motion to Tax Costs is granted."

[*10]

The trial court's determination that City was the prevailing party was an exercise of the court's discretion. Discretionary decisions are subject to an abuse of discretion standard of review, and will not be reversed on appeal unless it appears that the court abused its discre-

tion and a miscarriage of justice has resulted. (*Denham v. Superior Court (1970) 2 Cal.3d 557, 566, 86 Cal. Rptr. 65.*) "Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power." (*Ibid.*; *Shamblin v. Brattain (1988) 44 Cal.3d 474, 478, 243 Cal. Rptr. 902*; accord, *Los Angeles County Metropolitan Transportation Authority v. Continental Development Corp. (1997) 16 Cal.4th 694, 722*; *In re Stephanie M. (1994) 7 Cal.4th 295, 318-319*; *Walker v. Superior Court (1991) 53 Cal.3d 257, 272, 279 Cal. Rptr. 576.*) [*11] Arias does not carry the burden on appeal to show the trial court abused its discretion in finding City was the prevailing party. The record supports the trial court's finding City was the prevailing party in this proceeding. The trial court relied on the voluntary dismissal of Arias' lawsuit as the basis for its prevailing determination. The trial court was not required to accept the explanation given by Arias as to the reason for the dismissal to override the voluntary dismissal rule.

TRANSCRIPTION COSTS

As noted above, section 1094.5, subdivision (a), provides in relevant part: "If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs." (See also *Ralph's Chrysler-Plymouth v. New Car Dealers Policy & Appeals Bd. (1973) 8 Cal.3d 792, 796, 106 Cal. Rptr. 169.*) Under section 1094.5, subd. (a), the prevailing party must be allowed to recover the cost of preparation of the administrative record submitted in a mandamus proceeding, even if such preparation occurred in the administrative proceeding, "so long as the transcript was essential to review and its cost allowable under the [*12] language of the applicable statute." (*Ralph's Chrysler-Plymouth v. New Car Dealers Policy & Appeals Bd., supra, 8 Cal.3d at p. 796; Santos v. Civil Service Bd. (1987) 193 Cal. App. 3d 1442, 1446, 239 Cal. Rptr. 14* ["The prevailing party . . . is entitled to tax the costs of preparing the record"].)

City contends as the prevailing party, it is entitled to recover its costs for transcription of the record under section 1095. n4 We agree. Once the trial court made the determination that City was the prevailing party, City was entitled to recover this cost.

n4 That section states in pertinent part: "If judgment be given for the appellant, he may recover the damages which he has sustained, . . . as may be determined by the court . . . together with costs . . .

."

WERE THE COSTS REASONABLE AND NECESSARY?

WERE THE COSTS FRAUDULENT AND EXAGGERATED?

Regardless of entitlement however, allowable costs must be both reasonable in amount and reasonably necessary to the conduct [*13] of the litigation. (§ 1033.5, subd. (c)(2) & (3); *Ladas v. California State Auto. Assn* (1993) 19 Cal.App.4th 761, 774.) Therefore the court has the power to disallow costs "allowable as a matter of right" if they do not meet these standards. (*Perko's Eenterprises, Inc. v. RRNS Enterprises, supra*, 4 Cal.App.4th 238, 245.)

Although the trial court in this case found City to be the prevailing party, the court granted Arias' motion to tax costs. The trial court stated:

"However, [City] has failed to show that the costs for transcripts of the proceedings and the ten sets of copies of the administrative record were reasonable in need and amount. [City] has failed to submit any evidence to help the Court evaluate whether the photocopies and the transcripts were reasonably necessary. Hence, [Arias'] Motion to Tax Costs is granted."

The trial court felt that ten sets of copies of the record was excessive and that City failed to provide evidence to support their necessity. We agree with the trial court as to the large number of sets of documents prepared. However, appropriate reimbursement for the necessary preparation of the record used in the proceeding [*14] itself is mandatory under section 1096.4. For this reason the case will be remanded to the trial court for a determination of what portion of the costs requested reflects the items prepared for the record below. The motion to tax costs should not apply to that portion allowable under section 1096.4.

DISPOSITION

The portion of the judgment that denied City the award of costs for preparation of the administrative record is reversed. The judgment is otherwise affirmed. The cause is remanded to the trial court for further consideration and findings in accordance with this opinion. City to recover costs on appeal.

COOPER, P.J.

We concur:

RUBIN, J.

BOLAND, J.