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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

HOPE RANCH PARK HOMES
ASSOCIATION,

Plaintiff and Appellant,

v.

A. STUART RUBIN et al.,

Defendants and Respondents.

2d Civil No. B299932
(Super. Ct. No. 17CV02874)
(Santa Barbara County)

Hope Ranch Park Home Association (the HOA) appeals the trial court's order denying its motion for an award of attorney fees after it prevailed in litigation against respondents A. Stuart Rubin and Annette Rubin. The trial court reasoned that it lacked jurisdiction to award fees because the parties litigated the issue at trial, the statement of decision included a finding that "allowance of fees to either side in this matter would be inequitable and thus [the court] orders that each side will bear their own fees," the HOA did not appeal from the final judgment, and the time to appeal the judgment had passed. We reverse

because the record demonstrates the parties did not litigate attorney fees at trial and the final judgment is silent on the issue. In addition, the trial court lacks discretion to deny an award of fees to the HOA where, as here, the HOA prevailed in an action to enforce its governing documents. (Cal. Civ. Code, § 5975, subd. (c).)¹

Facts

Respondents own a home in the HOA. In October 2011, as required by the HOA's Covenants, Conditions and Restrictions (CC&Rs), respondents obtained permits from the HOA to extensively remodel their home. They obtained additional permits to complete additional projects in August and December 2012. The permits required construction to be completed within two years. By February 2015, the project was still not finished. Respondents asked for an extension of time. The HOA board eventually extended their permits until October 1, 2015. It informed respondents they would be fined \$100 per day for every day thereafter that work remained uncompleted. On August 2, 2016, the HOA's building supervisor certified the work was complete.

Procedural History

The HOA filed a complaint against respondents to collect \$26,600 in penalties imposed for the late completion.² Its complaint also sought an award of costs and "attorney fees incurred herein pursuant to Civil Code § 5975(c) and section 11.06 of the [HOA] CC&Rs."

¹ All further statutory references are to the Civil Code.

² The HOA assessed a penalty of \$30,600. Respondents paid \$4,000 before trial.

At the court trial, the question of whether the prevailing party would be awarded attorney's fees was not addressed. Counsel for HOA did not mention attorney fees in his trial brief, opening statement or closing argument. Respondents' counsel noted in his opening statement that the homeowners would be "asking that you award attorneys fees pursuant to [statute,] as is required." Their closing argument did not mention attorney's fees. Neither party presented testimony, documents or argument at trial relating to their entitlement to attorney's fees.

The trial court issued a statement of decision in which it concluded the HOA properly imposed the penalties and that respondents owed HOA \$26,600. The trial court also stated, "The court finds that allowance of fees to either side in this matter would be inequitable, and thus orders that each side will bear their own fees. The prevailing party is awarded costs, to be determined through the filing of a Memorandum of Costs."

The HOA filed an objection to the statement of decision, requesting that the trial court strike the sentence relating to attorney fees because the issue had not been litigated and a fee award to the prevailing party is mandatory under section 5975. (*Tract 19051 Homeowners Assn. v. Kemp* (2015) 60 Cal.4th 1135, 1139.) It also reminded the trial court that it "may order a hearing on . . . objections to a proposed statement of decision . . ." (Cal. Rules of Court, rule 3.1590(k).) The trial court did not schedule a hearing or otherwise acknowledge the HOA's objection.

About three months later, the HOA filed a "supplemental" objection to the proposed statement of decision, in which it reiterated that it was entitled to an award of attorney

fees. It further noted that, *Rancho Mirage Country Club Homeowners Assn. v. Hazelbaker* (2016) 2 Cal.App.5th 252 (*Rancho Mirage*), held, “Once the trial court determined the [HOA] to be the prevailing party in the action, it had no discretion to deny attorney fees.” (*Id.* at p. 263.) The trial court did not acknowledge the supplemental objection.

On April 22, 2019, the trial court entered its Judgment After Bench Trial. The judgment finds in favor of the HOA and awards it \$26,600 in “monetary penalties,” with interest. It also awards the HOA “costs pursuant to a filing of a memorandum of costs.” The judgment is silent on the subject of attorney fees.

The HOA filed its memorandum of costs on May 10 and the trial court awarded the entire \$1,358.29 sought. It filed a motion for attorney’s fees on June 6, 2019, noting again that it was entitled to an award of fees under section 5975, subdivision (c). Respondents opposed the motion on the ground that the trial court had already declined, in its statement of decision, to award fees to the HOA so the motion was barred by the final judgment.

The trial court denied the motion. It reasoned that the parties had divided attorney’s fees “into two separate issues: the prevailing party’s entitlement to an award of attorney fees and the amount of such an award. The former issue was presented by the parties as an issue for trial; the latter issue was reserved for determination, as necessary, by a postjudgment motion. The parties argued the issue of entitlement and the court decided the issue of entitlement in its statement of decision.”

According to the trial court, when the HOA objected to the statement of decision, it was “[r]ecognizing that the issue

had been decided” The “clear implication” of the HOA’s objections was its “understanding that the court’s decision, if left undisturbed, would constitute a final adverse disposition of the issue of entitlement to an award of attorney fees. The court did not change its ruling on the issue . . . and entered judgment based upon that ruling.” The trial court concluded, “Because the parties argued entitlement to attorney fees as part of the trial of this action and because the court adjudicated the issue of entitlement, as presented by the parties, in its final judgment on the merits, the court does not have jurisdiction to alter its adjudication of the issue of entitlement to attorney fees by this post-judgment motion.”

Discussion

The HOA raises two issues on appeal. First, whether the trial court had jurisdiction to consider the postjudgment motion for attorney’s fees. Second, whether the trial court erred when it denied the motion. Both questions are subject to our de novo review. “The meaning of a court order or judgment is a question of law within the ambit of the appellate court. [Citation.]” (*In re Insurance Installment Fee Cases* (2012) 211 Cal.App.4th 1395, 1429.) Similarly, statutory interpretation is a question of law, as is the “determination of the legal basis for an award of attorney fees” (*Retzloff v. Moulton Parkway Residents’ Assn. No. One* (2017) 14 Cal.App.5th 742, 747, quoting *Pueblo Radiology Medical Group, Inc. v. Gerlach* (2008) 163 Cal.App.4th 826, 828; see also *Carpenter v. Jack in the Box Corp.* (2007) 151 Cal.App.4th 454, 460 [determination whether statute authorized attorney fee award “is a question of law that we review de novo”].)

We conclude the trial court erred. Because the judgment did not conclusively decide the HOA's entitlement to attorney's fees, the trial court retained jurisdiction to decide the motion. It erred when it denied the motion because section 5975, subdivision (c) makes an award of attorney fees to the prevailing HOA mandatory.

Effect of Final Judgment. In its minute order denying the HOA's motion for attorney's fees, the trial court stated the issue had already been conclusively decided in the judgment and that it lacked jurisdiction to reconsider that finding. This was error. The judgment is silent on attorney's fees. Consequently, the HOA was not required to appeal it in order to preserve its right to recover fees or to appeal a subsequent order denying fees. (See, e.g., *Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 693-694; *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 46.)

The trial court's statement of decision included a finding that, "allowance of fees to either side in this matter would be inequitable, and thus [the court] orders that each side will bear their own fees." This finding was not included in the judgment which is silent on the subject of fees. As a consequence, the judgment did not conclusively determine the HOA's entitlement to an award of attorney's fees.

The statement of decision itself is not appealable. (*Estate of Reed* (2017) 16 Cal.App.5th 1122, 1126.) "A conclusion of law which is not carried into the judgment cannot be deemed a part thereof." (*Estate of Buckhantz* (1958) 159 Cal.App.2d 635, 647.) Even when a trial court erroneously treats a statement of decision as a judgment, "its error in doing so does not affect our

jurisdiction to hear” an otherwise timely appeal. (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1571-1572.) Because the judgment did not decide the issue, the trial court retained jurisdiction to consider the HOA’s postjudgment motion for attorney’s fees.

Motion for Attorney’s Fees. Section 5975 provides that, in an action to enforce the CC&Rs of a common interest development, “the prevailing party shall be awarded reasonable attorney’s fees and costs.” (*Id.*, subd. (c).) Attorney fees under section 5975 “are awarded as a matter of right, and there is no discretion afforded to the trial court in granting or denying such fees, other than as to their reasonableness and amount.” (*Chapala Management Corp. v. Stanton* (2010) 186 Cal.App.4th 1532, 1546; see also *Rancho Mirage, supra*, 2 Cal.App.5th at pp. 260-261 [trial court has no discretion to deny attorney fees to a prevailing HOA]; *Salehi v. Surfside III Condominium Owners Assn.* (2011) 200 Cal.App.4th 1146, 1152.)

Here, there can be no doubt that the HOA is the prevailing party. It was awarded judgment for the exact amount alleged in its complaint. Section 5975, subdivision (c) provides that the HOA “shall be awarded reasonable attorney’s fees” Only the amount of the award is committed to the sound discretion of the trial court. (*Rancho Mirage, supra*, 2 Cal.App.5th at p. 263.) This issue has never been considered by the trial court because it erroneously concluded both that it could deny fees based on equitable considerations and that it lacked jurisdiction to consider a postjudgment motion for attorney fees. We therefore remand the matter, to permit the trial court to exercise its discretion to determine the amount of reasonable attorney’s fees to which the HOA is entitled.

Conclusion

The July 30, 2019 order denying HOA's motion for attorney's fees is reversed. The matter is remanded to the trial court to award the HOA its reasonable attorney's fees. The HOA shall recover its costs and reasonable attorney's fees on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

Stephen P. Wiley, for Plaintiff and Appellant.

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Respondents.