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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

WARD CONNERLY, Plaintiff and Appellant, v. STATE PERSONNEL BOARD et al., Defendants and Respondents; THE CALIFORNIA BUSINESS COUNCIL FOR EQUAL OPPORTUNITY et al., Real Parties in Interest and Appellants.	C043329 (Super. Ct. No. 96CS01082)

This is an appeal and cross-appeal from an order awarding attorney fees pursuant to Code of Civil Procedure section 1021.5. (Further section references are to the Code of Civil Procedure unless otherwise specified.) Real parties in interest argue that they may not be held responsible for attorney fees, and plaintiff

challenges the trial court's disallowance, as unreasonable, of some of the hours claimed by his attorneys. We shall affirm the order.

BACKGROUND

This litigation involved state and federal constitutional challenges to five statutory programs that fall within the general rubric of "affirmative action." (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 27.) Pete Wilson, in his capacity as the Governor of California, commenced the litigation by filing, in this court, a petition for writ of mandate against various state agencies and officials with responsibility for implementing the statutory schemes.

A group of organizations and associations who were interested in the matter obtained permission from this court to appear as amici curiae. They asserted, among other things, that there was no justiciable controversy because the action was between the Governor and his subordinate executive officers and agencies, and because no real parties in interest had been named. In response, the Governor filed an amended petition for writ of mandate naming the amici curiae as real parties in interest.

This court denied the petition without a hearing or opinion. Governor Wilson then filed his petition for a writ of mandate in the superior court. In doing so, he named the former amici curiae as real parties in interest.[1] Later, plaintiff Ward Connerly was

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[1] Originally, there were 14 organizations and associations who joined together to appear as amici curiae in this court. Only the six groups, who are the appellants in this appeal, actively participated in the litigation on the merits.

permitted to join the litigation as a taxpayer litigant. (*Connerly v. State Personnel Bd., supra*, 92 Cal.App.4th at p. 27.) Connerly continued the litigation after Governor Wilson left office. (*Ibid.*)

Eventually, the trial court entered a judgment finding invalid one of the statutory schemes, as well as a portion of another, but otherwise upholding them. (*Connerly v. State Personnel Bd., supra*, 92 Cal.App.4th at p. 27.) Plaintiff appealed from the judgment to the extent that it rejected his challenges to the statutory schemes. (*Id.* at p. 28.) Real parties in interest cross-appealed to assert that, with respect to the statutory scheme found invalid, certain data collection and reporting requirements could be severed and upheld. (*Ibid.*)

The appeal resulted in a lengthy published opinion that found constitutional infirmities in each of the challenged statutory schemes. (*Connerly v. State Personnel Bd., supra*, 92 Cal.App.4th at p. 28.) But the opinion also concluded that certain portions of three of the statutory schemes could be severed and upheld. (*Ibid.*) The judgment was reversed and the matter remanded to the trial court with directions to enter a judgment consistent with this court's opinion. (*Id.* at p. 64.) After further proceedings, such a judgment was entered.

Plaintiff then moved for an award of attorney fees pursuant to section 1021.5, the so-called "private attorney general" fee shifting provision. (See *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 925 (hereafter *Woodland Hills*).) The trial court determined that this is an appropriate case in

which to make an award of attorney fees pursuant to section 1021.5, a ruling that is not challenged on appeal.

In determining the amount of the attorney fee award, the trial court utilized the "lodestar" process (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322), by which the court calculates a "touchstone" or "lodestar" figure based upon careful compilation of the time spent and reasonable hourly compensation of each of the attorneys involved in presentation of the case and then increases or decreases that figure by using a multiplier determined through consideration of other factors concerning the case. (*Ibid.*)

In calculating the lodestar figure, the trial court determined that the hours claimed were unreasonable in certain respects. First, it found that the hours claimed for work on the motion for judgment on the pleadings were excessive -- in this respect, the court reduced the hours claimed by Attorney Caso by 27 hours, and the hours claimed by Attorney Gallagher by 4 hours. Second, it found that the hours claimed for work on the judgment proceedings and post judgment proceedings were excessive -- in this respect, the court disallowed 36.5 hours claimed by Attorney Caso, 4.4 hours claimed by Attorney Findley, and 6 hours claimed by Attorney Browne. Finally, it disallowed 13.2 hours claimed by Attorney Caso for "intervention" that had no apparent connection to the litigation, and 4 hours claimed by Attorney La Fetra for correction of an arithmetical or clerical error in the claim. The court allowed total attorney time of 1,426.45 hours. From the reasonable hourly rate for attorney work, the court derived a lodestar figure of $346,957.80.

The trial court enhanced the lodestar figure by 30 percent, for a total fee for the merits of the litigation of $451,045.14. To this it added $37,022.50 for work on the motion for attorney fees. The allowance for work on the motion for attorney fees represented the full amount of the hours and rates claimed, but without an increase in the award through application of a multiplier. The total attorney fee award was thus $488,067.64.

Rejecting the contention of real parties in interest that liability for the attorney fee award should be the responsibility of the state defendants alone, the trial court ruled that, under the circumstances of this case, real parties in interest must bear liability for an equitable share of the attorney fee award. Thus, it ordered that the award shall be the joint and several liability of the state defendants and real parties in interest, to be borne in equal shares by the State Personnel Board, the California Community Colleges, the State Treasurer, the State Lottery, the Department of General Services, and real parties in interest.

Real parties in interest appeal, contending they may not be charged with liability for attorney fees in this case. Plaintiff cross-appeals to challenge the disallowance of some of the hours claimed by his attorneys.

DISCUSSION

I

Section 1021.5 provides: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an

important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code. [¶] Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in Serrano v. Priest [(1977)] 20 Cal.3d 25, 49."

Real parties in interest rely on federal decisional authority, primarily *Flight Attendants v. Zipes* (1989) 491 U.S. 754 [105 L.Ed.2d 639], to support their contention that requiring them to pay section 1021.5 attorney fees is inconsistent with the purpose of the statute, which, they assert, was "modeled upon federal law . . . ." In their view, section 1021.5 is not intended to apply to "blameless" parties who "did not engage in [the] litigation for abusive or frivolous reasons." The contention fails for reasons that follow.

A

The "private attorney general" attorney fee theory arose in federal decisional authority prior to *Alyeska Pipeline Serv. v. Wilderness Soc.* (1975) 421 U.S. 240 [44 L.Ed.2d 141] (hereafter *Alyeska*). (See *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 27.) After the United States Supreme Court's decision in *Alyeska* put an end to the non-statutory development of the private attorney general rule in federal courts (*Alyeska, supra,* 421 U.S. at pp. 247, 269 [44 L.Ed.2d at pp. 147, 159-160]), California's Supreme Court considered the issue as a matter of state law. (*Serrano v. Priest, supra*, 20 Cal.3d 25 (hereafter *Serrano III*.) *Serrano III* held the "private attorney general" attorney fee theory is applicable in California when litigation advances a public policy that has a basis in our state Constitution. (*Id.* at pp. 46-47.) The court left for another day the determination whether the theory can be applied where the public policy to be vindicated has a statutory rather than constitutional basis. (*Ibid.*)

At about the same time as the decision in *Serrano III*, the Legislature enacted section 1021.5. (Stats. 1977, ch. 1197, § 1, p. 3979.) This legislatively adopted private attorney general rule authorizes an award of attorney fees in any action that results in the enforcement of an important right affecting the public interest regardless of its source, whether constitutional, statutory, or other. (*Woodland Hills, supra*, 23 Cal.3d at p. 925.)

In drafting section 1021.5, the Legislature relied on federal decisional authority prior to *Alyeska*. (*Woodland Hills, supra*,

23 Cal.3d at p. 934.) But section 1021.5 is not a mere offshoot or extension of some other fee shifting rule. (*Serrano III, supra*, 20 Cal.3d at p. 45, esp. fn. 16.) It establishes an independent state attorney fee shifting rule (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639, fn. 29) that has its own rationale and must be interpreted and applied in light of that rationale. (*Serrano III, supra*, 20 Cal.3d at p. 45, esp. fn. 16.) Accordingly, federal authority is not controlling. (See *Serrano v. Unruh, supra,* 32 Cal.3d at p. 639, fn. 29.) This is particularly so with respect to post-*Alyeska* decisions, which cannot reflect a private attorney general rule as embodied in section 1021.5.

It was long after *Alyeska* that *Flight Attendants v. Zipes, supra,* 491 U.S. 754 [105 L.Ed.2d 639] (hereafter *Zipes*), upon which real parties in interest place their primary reliance, was decided.

In *Zipes,* former flight attendants brought a class action against Trans World Airlines (TWA), contending that its policy of terminating flight attendants who became mothers constituted sex discrimination. The parties eventually reached a settlement by which TWA agreed to a monetary recovery and to credit class members with full company and union seniority from the date of termination. At that point, the union representing incumbent flight attendants intervened to challenge the settlement to the extent it would provide retroactive seniority to class members, thus affecting the seniority rights of the incumbents. After the union's challenges were resolved, the district court awarded attorney fees against the union. (*Zipes, supra,* 491 U.S. at pp. 755-758 [105 L.Ed.2d at pp. 645-646].)

Zipes was concerned with a congressionally-created exception to the general rule that a prevailing litigant cannot recover attorney fees. Specifically, it was concerned with section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-5(k)), which provides that in litigation under Title VII of the Civil Rights Act, the federal district court has discretion to award reasonable attorney fees to the prevailing party. (*Zipes, supra,* 491 U.S. at p. 755 [105 L.Ed.2d at p. 644].)

Prior Supreme Court decisions had held a prevailing plaintiff in Title VII litigation should recover attorney fees unless special circumstances make the award unjust, while a prevailing defendant should not recover fees unless the plaintiff's action was frivolous, unreasonable, or without foundation. (*Zipes, supra,* 491 U.S. at p. 759-760 [105 L.Ed.2d at pp. 647-648].) Interpreting section 706(k) of the Civil Rights Act of 1964 "in light of the competing equities that Congress normally takes into account," the Supreme Court concluded "that district courts should similarly award Title VII attorney's fees against losing *intervenors* only where the intervenors' action was frivolous, unreasonable, or without foundation." (*Id.* at p. 761 [105 L.Ed.2d at p. 648], italics added.)

Zipes is neither controlling or persuasive with respect to section 1021.5. First, it was decided long after section 1021.5 was enacted. Second, it interpreted an attorney fee provision contained in a specific federal statutory enactment limited in scope and purpose; it was not resolved on constitutional grounds; and it did not purport to set limitations on state attorney fee

awards. Third, it was consistent with the United States Supreme Court's policy of interpreting fee shifting rules in a narrow and restrictive manner absent specific legislative guidance otherwise (see *Alyeska, supra*, 421 U.S. at pp. 263-264 [44 L.Ed.2d at p. 157]); whereas section 1021.5 provides such legislative guidance. And fourth, it was based in part on the concern that a request for attorney fees should not require a second major litigation (*Zipes, supra,* 491 U.S. at p. 766 [105 L.Ed.2d at pp. 651-652]); whereas, by enacting section 1021.5, our Legislature requires California courts to engage in additional adversarial fee litigation to the extent necessary to serve the purposes of the rule (see *Serrano v. Unruh, supra*, 32 Cal.3d at pp. 632-639).

California's Legislature has chosen to give state trial courts equitable discretion to award attorney fees "against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest." (§ 1021.5.) Since our private attorney general statute is not an offshoot of other fee shifting theories and has its own rationale, we must apply it in light of that rationale. (*Serrano III, supra*, 20 Cal.3d at p. 45, esp. fn. 16.) Accordingly, in determining the reach of section 1021.5, we look first and foremost to California decisional authorities.

B

The imposition of attorney fee awards under section 1021.5 is not limited to public entities; it is well established that such an award may be imposed against private parties. (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 517-518;

Feminist Women's Health Center v. Blythe (1995) 32 Cal.App.4th 1641, 1669; *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 756.)

Section 1021.5 attorney fees are not intended to serve a punitive purpose. (*San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, supra*, 155 Cal.App.3d at p. 756.) Indeed, no finding of fault is required and there is no good faith exception to the rule. (*Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, 588; *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 231-232; *Schmid v. Lovette* (1984) 154 Cal.App.3d 466, 475.) "There is no special requirement that a party establish that its opponent was guilty of obdurate [litigation] behavior in order to receive attorney's fees under the private attorney general theory." (*Save El Toro Assn. v. Days* (1979) 98 Cal.App.3d 544, 554-555.)

This is not to say the conduct of the party against whom fees are sought is irrelevant. The court can consider a party's culpability in determining whether, and the extent to which, the party should bear responsibility for attorney fees. (*Feminist Women's Health Center v. Blythe, supra*, 32 Cal.App.4th at p. 1670; *Washburn v. City of Berkeley, supra*, 195 Cal.App.3d at p. 592.) Although it is not necessary that the court find the party engaged in improper litigation tactics, the court can consider the extent to which the party actively participated in the litigation and thus contributed to the necessity that attorney fees be incurred. (*Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 836-

837; *Bolsa Chica Land Trust v. Superior Court, supra*, 71 Cal.App.4th at pp. 517-518.)

An award of attorney fees under section 1021.5 may be made against a real party in interest who appears and participates in defense of the action. (*Bolsa Chica Land Trust v. Superior Court, supra*, 71 Cal.App.4th at pp. 501, 517-518; *Washburn v. City of Berkeley, supra*, 195 Cal.App.3d at p. 581; *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, supra,* 155 Cal.App.3d at p. 756.) It is not necessary that the judgment be entered against the party charged with attorney fees. (*Friends of the Trails v. Blasius, supra*, 78 Cal.App.4th at pp. 836-837.) In fact, it is not necessary that a judgment be entered against anyone, as long as the litigation confers a significant benefit on the general public or a large class of persons. (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103; *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 685-686.)

The following decisional authorities illustrate these principles.

Friends of the Trails v. Blasius, supra, 78 Cal.App.4th 810, involved the claim of a public easement for passage and recreational purposes along an irrigation district canal and road. The Nevada Irrigation District (NID) had a recorded easement for the canal and road. When the landowners blocked the road with locked gates, the plaintiffs brought an action against the landowners and NID to quiet title to a public easement. As the holder of an easement for canal purposes, NID could neither permit nor prohibit members of the public from crossing the landowners' property. (*Pasadena v.*

California-Michigan etc. Co. (1941) 17 Cal.2d 576, 579; *Dierssen v. McCormack* (1938) 28 Cal.App.2d 164, 170.) Nonetheless, NID appeared in the action and defended against the declaration of a public easement. The trial court declared a public easement subordinate to NID's easement, enjoined the landowners from interfering with the easement, and granted no relief to the plaintiffs against NID. (*Friends of the Trails v. Blasius, supra*, 78 Cal.App.4th at pp. 819-820.) The court then entered an attorney fee award against the landowners and NID. Rejecting the claim that NID could not be charged with attorney fees because no relief was granted against NID (*id.* at pp. 836-837), the Court of Appeal concluded it was equitable to require NID to share the burden of attorney fees since NID affirmatively and vigorously opposed the declaration of a public easement. (*Ibid.*)

Bolsa Chica Land Trust v. Superior Court, supra, 71 Cal.App.4th 493, involved challenges to the approval of a local coastal program (LCP) by the California Coastal Commission. Although the action named a number of landowners as real parties in interest, only two of them, Koll Real Estate Group (Koll) and Fieldstone Company (Fieldstone), actively participated in the case. (*Id.* at p. 500-501.) The trial court found inadequacies in the LCP, remanded to the commission for further proceedings, and awarded attorney fees against the commission and the landowners who actively participated in the litigation. Rejecting the landowners' contention that it was improper and unconstitutional to award attorney fees against them when it was the commission that was found to have made inadequate findings, the Court of Appeal concluded the argument was "somewhat

disingenuous." (*Id.* at p. 517.) In the appellate court's words: "It suffices to say the vigor of Koll and Fieldstone's defense no doubt compelled the trust to incur substantial attorney fees and accordingly make it fair under the equitable principles embodied in Code of Civil Procedure section 1021.5 to impose some of those costs on Koll and Fieldstone." (*Id.* at p. 517-518.)

Washburn v. City of Berkeley, supra, 195 Cal.App.3d 578, involved a petition for writ of mandate filed against the city challenging as false and misleading a ballot argument submitted in support of a local initiative measure. The petition named as real parties in interest the persons who had signed the argument. Only two of the real parties in interest opposed the petition, and at the conclusion of the proceedings the trial court awarded attorney fees against one of the opposing real parties in interest. The Court of Appeal affirmed, rejecting arguments that the real party in interest was shielded by privilege and that the award of fees violated the constitutional rights of free speech and to petition the government. (*Id.* at pp. 586-591.)

The foregoing decisional authorities show that section 1021.5 gives California courts equitable discretion to make an award of attorney fees "against one or more opposing parties" when the statutory criteria are satisfied. But this discretion is not unlimited; it must be exercised in light of the legal principles and purposes governing the subject of the action. (*Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 355; *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 634.)

The determination whether a party has met the requirement for an award of fees and the reasonable amount of such an award are matters best decided by the trial court in the first instance. (*Hewlett v. Squaw Valley Ski Corp*. (1997) 54 Cal.App.4th 499, 544.) That court must realistically assess the litigation and determine from a practical perspective whether the statutory criteria have been met. (*Ibid*.) If it determines that the statutory criteria have been met, then it must balance or weigh them in making the ultimate determination whether fee shifting is appropriate. (*Satrap v. Pacific Gas & Electric Co*. (1996) 42 Cal.App.4th 72, 81.)

On appeal from an order awarding section 1021.5 attorney fees, we review the record, paying particular attention to the trial court's stated reasons and whether it applied the proper standards. (*Hewlett v. Squaw Valley Ski Corp., supra*, 54 Cal.App.4th at p. 544.) The court's decision will not be reversed unless there has been a prejudicial abuse of discretion, i.e., unless the record establishes there is no reasonable basis for the award. (*Ibid.; Feminist Women's Health Center v. Blythe, supra*, 32 Cal.App.4th at p. 1666.)

C

Here, the trial court found that this litigation readily met the criteria for an award of attorney fees under section 1021.5, a finding that is not challenged on appeal. Real parties in interest claim only that they should not be required to share responsibility for the award of attorney fees. The relevant authorities we have discussed above demonstrate that there is no legal impediment which

would preclude, as a matter of law, an award of fees pursuant to section 1021.5 against opposing parties who appear and actively participate in the litigation.

Thus, our consideration must be directed to whether the trial court abused its discretion in awarding fees against real parties in interest.

Real parties in interest claim their role in the litigation was effectively that of amici curiae or intervenors rather than as true real parties in interest. They assert that they objected to being named real parties in interest but that the trial court rejected their objections and required them to participate in the proceedings. The record reflects a somewhat different scenario.

When Governor Wilson filed his initial petition for writ of mandate in this court, he did not name any real parties in interest. Together with other organizations and associations, the real parties in interest in this case obtained permission to file an amici curiae brief. Governor Wilson then amended his petition to name the amici curiae as real parties in interest. When this court denied the petition and it was refiled in superior court, the real parties in interest were again named as real parties in interest.

Real parties in interest made vigorous and determined efforts to obtain dismissal of the action. In the course of doing so, they raised questions as to their status as true real parties in interest. But they did so solely in support of their efforts to obtain dismissal of the action in its entirety. In that respect, they raised numerous questions regarding matters such as standing, collusion, adversity, case or controversy, and ripeness, and claimed

that to go forward the Governor would have to name as a real party in interest every individual in the state who would stand to benefit from the challenged statutory schemes. In the course of these arguments, they did not assert that, should the litigation go forward, they would not desire to participate.

The various efforts of real parties in interest to terminate the litigation failed. When the trial court denied their motion for judgment on the pleadings, it did not order or otherwise require them to participate in the proceedings. Indeed, the court would have had no such authority. When it was clear the litigation was going forward, real parties in interest could have asked for dismissal as to them on the ground that they did not wish to participate. Alternatively, they could have simply declined to participate, which is a tactic often employed by persons named as real parties in interest who do not wish to participate. (*Bolsa Chica Land Trust v. Superior Court, supra,* 71 Cal.App.4th at pp. 501, 517; *Washburn v. City of Berkeley, supra*, 195 Cal.App.3d at p. 581.) In other words, being named as real parties in interest merely gave them an opportunity to participate in the litigation, it did not compel them to do so. However, when their efforts to terminate the litigation failed, real parties in interest willingly and vigorously participated in the litigation and exercised all of the prerogatives of a party.

In its ruling, the trial court said: "Real parties may lack responsibility for the violation, implementation or enforcement of the five statutory schemes invalidated in this litigation, and they may have been involuntarily joined as parties to the litigation,

but they have participated in the litigation as full-fledged parties. Unlike *amici*, real parties have comprehensively and actively litigated multiple procedural and substantive aspects of petitioner's lawsuit, asserting the interest of their members as well as that of respondents from the outset of the litigation. Thus, real parties have essentially acted as respondents in the lawsuit and have clearly increased petitioner's burden in obtaining relief."

The record well supports that trial court's findings and, in that light, we can perceive no abuse of the trial court's discretion in requiring real parties in interest to share the burden of section 1021.5 attorney fees.

II

As noted *ante*, the appropriate amount of a section 1021.5 attorney fee award is determined by calculation of a lodestar figure through careful compilation of the time spent and reasonable hourly compensation for each attorney involved in the case, with adjustment up or down through use of a multiplier based upon other factors involved in the case. (*Press v. Lucky Stores, Inc., supra*, 34 Cal.3d 311, 322.)

In determining the lodestar figure, a trial court is not required to accept every hour claimed by the successful attorneys. In *Serrano v. Unruh, supra*, 32 Cal.3d at page 639, the court said that an award should "include compensation for all hours reasonably spent." In footnote 21, at page 635, the court cited with approval federal authorities which had reduced the hours claimed for reasons such as the attorneys' efforts were unorganized or duplicative;

the attorneys spent excessive hours on the claim; and the time spent was unreasonable. In footnote 28, at page 639, the court said the hours claimed should be documented and "[t]he trial or appellate court may deem either the hours or the rate excessive, and either may find special circumstances for reducing the award or denying one altogether."

In *California Common Cause v. Duffy* (1987) 200 Cal.App.3d 730, the trial court disallowed a significant portion of the hours claimed by the attorneys of the prevailing party. The court said it did so because there was some duplication of effort, some of the hours were spent accommodating the press and other interested attorneys, and some of the hours were devoted to unnecessary adversarial skirmishing between the attorneys. (*Id.* at pp. 753-754.) The Court of Appeal upheld the ruling, concluding that the reasons given by the trial court were proper reasons for disallowing the hours claimed. (*Ibid.*; see also *Californians for Responsible Toxics Management v. Kizer* (1989) 211 Cal.App.3d 961, 970-973; *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 273-274.)

The experienced trial court is the best judge of the value of legal services rendered in that court. (*Serrano III, supra*, 20 Cal.3d at p. 49.) It has its own expertise and may make its own determination contrary to, or without the necessity for, expert testimony. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.) The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court. (*Ibid.*) An appellate court will not interfere with the trial court's

determination unless it is an abuse of discretion, i.e., "'unless the appellate court is convinced [the determination] is clearly wrong.'" (*Serrano III, supra*, 20 Cal.3d at p. 49.)

Here, the trial court found the hours claimed for responding to the motion for judgment on the pleadings were excessive. It noted that the standing and jurisprudential issues presented in the motion were legal issues that did not require the extensive time claimed for conferring with, and responding to the comments of, the client. We would add that the issues were largely rehashed arguments which had been presented and argued before and, therefore, the attorneys were not required to start from scratch in responding to them. The attorneys claimed 107.86 hours in responding to the motion. The trial court disallowed a total of 31 hours, thus awarding compensation for 76.86 hours. We can perceive no abuse of discretion.

Plaintiff asserts, however, that defendants and real parties in interest did not object and produce specific evidence with respect to the hours claimed for responding to the motion for judgment on the pleadings and that the trial lacked authority to consider the issue sua sponte. We disagree.

The failure to make a timely objection in the trial court generally waives an issue for purposes of appeal. (*Wiley v. Southern Pacific Transportation Co.* (1990) 220 Cal.App.3d 177, 188.) But a trial court has the authority to amend and control its process and orders so as to make them conform to law and justice. (§ 128, subd. (a)(8).) In considering a motion for attorney fees, the trial court is required to engage in careful compilation of the

time spent and reasonable hourly compensation for the attorneys. (*Press v. Lucky Stores, Inc.*, *supra*, 34 Cal.3d at p. 322.) In doing so, the court has its own expertise and is in the best position to determine the reasonableness of the attorney hours claimed in presenting a case. (*PLCM Group, Inc. v. Drexler, supra,* 22 Cal.4th at p. 1096; *Serrano III, supra*, 20 Cal.3d at p. 49.) Accordingly, the lack of a specific objection does not deprive the trial court of authority to scrutinize a claim for attorney fees to ensure itself that the hours claimed are reasonable.

The trial court also concluded that the time spent on the judgment and post-judgment proceedings was excessive. It ruled that presentation of a proposed judgment through motion procedure, rather than by correspondence, unnecessarily expanded the time reasonably required to settle the judgment. The court also found that the motions to vacate and correct the judgment unreasonably expanded the time necessary to correct minor errors in the judgment. It concluded that the remainder of the issues in the motions to vacate and correct the judgment were entirely devoid of merit and frivolous. Lastly, the court found that the time spent on appeal and petition for writ of mandate following the court's orders on the motions to vacate and correct the judgment were not necessary to the relief obtained in the litigation. It allowed 42.2 hours claimed by Attorney Caso, 2.5 hours claimed by Attorney Findley, and 3 hours claimed by Attorney Browne. It disallowed 36.5 hours claimed by Attorney Caso, 4.4 hours claimed by Attorney Findley, and 6 hours claimed by Attorney Browne.

The judgment and post judgment proceedings arose when in *Connerly v. State Personnel Bd., supra*, 92 Cal.App.4th at page 64, the matter was remanded to the trial court with directions to enter a judgment consistent with the opinion in *Connerly v. State Personnel Bd*. On remand, plaintiff's attorneys spent considerable time objecting to the form of the proposed judgment and attempting to vacate the judgment entered. In an unpublished opinion in *Connerly v. State Personnel Board*, C042245, filed June 25, 2003, this court considered and rejected plaintiff's objections to the form of the judgment. For all the time expended, the attorneys succeeded only in correcting two minor errors in the judgment.

A failure to obtain total success does not automatically preclude attorney fees for time spent unsuccessfully. Rather, we leave it to the trial court's discretion to determine whether time spent on unsuccessful efforts was nevertheless reasonably incurred in the context of the litigation. (*Sundance v. Municipal Court, supra*, 192 Cal.App.3d at p. 274.)

Upon review of the record, we find that the trial court did not abuse its discretion in determining that the time spent on the judgment and post judgment proceedings was excessive.

III

Plaintiff asks for attorney fees for the time spent on the appeal and cross-appeal. (*Serrano v. Unruh, supra*, 32 Cal.3d at p. 639 ["fees recoverable under section 1021.5 ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim"].)

Whether section 1021.5 fees should be awarded to plaintiff for the cost of defending the attorney fee order on the appeal, and for the cost of prosecuting an unmeritorious cross-appeal (but see, *Serrano v. Unruh, supra*, 32 Cal.3d at p. 639, fn. 28), are matters that we leave to the discretion of the trial court in the first instance.

DISPOSITION

The order awarding attorney fees pursuant to section 1021.5 is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 27(a).)

SCOTLAND, P.J.

We concur:

BLEASE, J.

RAYE, J.