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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

Conservatorship of the Person and Estate of ROY WHITLEY.	
NORTH BAY REGIONAL CENTER, Petitioner and Respondent, v. VIRGINIA MALDONADO, Objector and Appellant.	A122896 (Sonoma County Super. Ct. No. SPR-061684)

I.

INTRODUCTION

Appellant Virginia Maldonado (Maldonado) appeals from the trial court's denial of her motion for an award of attorney fees under Code of Civil Procedure section 1021.5 (section 1021.5).[1] Maldonado's motion for attorney fees followed this court's published decision in *Conservatorship of Whitley* (2007) 155 Cal.App.4th 1447 (*Whitley*), in which Maldonado was the prevailing party. As we will explain, the trial court did not abuse its

[1] Section 1021.5 codifies the private attorney general fee doctrine. "Entitlement to fees under section 1021.5 requires a showing that the litigation: '(1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) imposed a financial burden on plaintiffs which was out of proportion to their individual stake in the matter.' [Citation.]" (*California Licensed Foresters Assn. v. State Bd. of Forestry* (1994) 30 Cal.App.4th 562, 569 (*California Licensed Foresters Assn.*).)

discretion in finding that Maldonado failed to satisfy one of the three criteria necessary for the entitlement to attorney fees pursuant to section 1021.5—that the financial burden of bringing this litigation was out of proportion to her individual stake in the matter. Consequently, we affirm.

II.

FACTS AND PROCEDURAL HISTORY

Maldonado has served for over 25 years as conservator for her brother, Roy Whitley, who is a developmentally disabled adult with epilepsy, mild cerebral palsy, and profound mental retardation. In *Whitley, supra*, 155 Cal.App.4th 1447, we considered Maldonado's challenge to a trial court order, entered over her objection, granting the North Bay Regional Center's (NBRC) request to move Whitley from the Sonoma Developmental Center, where he had lived for over 40 years, to Miracle Lane, a smaller, community-based facility. The trial court's decision to approve Whitley's move to Miracle Lane came after a two-day evidentiary hearing in the superior court as contemplated in the settlement of an unrelated federal case, *Richard S. v. Department of Developmental Services* (U.S. Dist. Ct., C.D. Cal., Aug. 29, 2000, No. SACV97-219GLT (ANX)) (*Richard S.*) (*Id.* at p. 1456.) The *Richard S.* settlement dictated the procedures to be followed when a member of the developmentally disabled person's interdisciplinary team objects to a community placement decision. (*Ibid*.)

This court reversed and remanded, finding that the superior court lacked jurisdiction to conduct the *Richard S.* hearing on the propriety of Whitley's community placement. (*Whitley, supra*, 155 Cal.App.4th at p. 1464.) We concluded the only means by which Maldonado's objection to NBRC's community placement decision could be resolved in the first instance was by invoking the statutorily authorized administrative fair hearing provisions provided under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.). (*Id*. at pp. 1462-1463.) We cited two reasons to support this conclusion. First, Maldonado was not a party to the *Richard S.* settlement; so it was not binding on her. (*Id*. at pp. 1461-1462.) Second, the Lanterman Act's comprehensive approach to resolving disagreements concerning

placement decisions—including a voluntary meeting, voluntary mediation, and an administrative fair hearing with judicial review—showed the Legislature's intent that the Lanterman Act's fair hearing procedures be the exclusive remedy for actions by legal representatives, such as Maldonado, asserting an objection to a community placement decision. (*Id.* at pp. 1462-1463.)

After our decision in *Whitley* was issued, Maldonado moved for an award of attorney fees under section 1021.5 for the appeal in the amount of $177,887. An award was warranted, according to Maldonado, because "*Whitley* created a procedural precedent that . . . conferred a significant benefit on the public and a large class of persons." Additionally, "Maldonado's victory on appeal transcended her personal interest in Whitley's welfare."

NBRC did not dispute the reasonableness of the hours Maldonado's appellate counsel devoted to this case or the rates charged. NBRC likewise did not dispute that a fee award is permissible even though her appellate counsel agreed to handle the case on a pro bono basis. However, NBRC opposed Maldonado's request for attorney fees on the ground that this case does not meet all the criteria for an award of fees under section 1021.5. NBRC challenged Maldonado's right to attorney fees, arguing that even if an important public right was at issue, a significant benefit was not conferred upon the public or a large class of persons, and the financial burden imposed on Maldonado was not out of proportion "to her personal interest in blocking Roy's transfer to Miracle Lane."

Maldonado's request for attorney fees under section 1021.5 was denied. In its written statement of decision, the court explained that "[e]ven though an important right was involved here, no evidence was presented to support the speculative assertions that this case would have ramifications for a large class of persons. Additionally, while the appeal may have clarified the administrative procedure for others as well as for Mr. Whitley's conservator, the necessity of litigation cannot be said to be out of proportion to the individual stake in this matter." This appeal followed.

III.

DISCUSSION

A. Overview

Section 1021.5 codifies the "private attorney general" doctrine under which attorney fees may be awarded to successful litigants as an incentive for the pursuit of public interest-related litigation that might otherwise have been too costly to bring. (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505, 511 (*Families Unafraid*).) Section 1021.5 authorizes an award of attorney fees upon a showing by the successful litigant that the litigation (1) served to vindicate an important public right, (2) conferred a significant benefit on the general public or a large class of persons, and (3) was necessary and imposed a financial burden on the plaintiff which was out of proportion to the plaintiff's individual stake in the matter. (*Ibid.*) Section 1021.5 states the three criteria in the conjunctive, requiring each standard to be met to justify a fee award. (*Punsly v. Ho* (2003) 105 Cal.App.4th 102, 114 (*Punsly*).) However, all three criteria are closely interrelated. (*Id.* at p. 113.)

Of the three requisite elements of section 1021.5, the trial court found that Maldonado did not establish requirements (2) and (3). Maldonado takes issue with both bases of the court's ruling; however, it is necessary that we deal with only (3). After all, "[i]t is within the trial court's discretion to deny attorney fees pursuant to section 1021.5 on the ground that the plaintiff's personal stake in the outcome was not disproportionate to the burden of private enforcement, even where the litigation enforced an important right and conferred a significant benefit upon the public." (*Satrap v. Pacific Gas & Electric Co.* (1996) 42 Cal.App.4th 72, 78.) Consequently, we limit our discussion to whether the trial court properly analyzed this decisive factor.

B. Standard of Review

The parties disagree on whether the applicable standard of review is abuse of discretion or de novo. NBRC cites numerous cases standing for the established proposition that the trial court's determination under section 1021.5 may not be disturbed on appeal absent a showing that the court abused its discretion. (See, e.g., *Families*

Unafraid, *supra*, 79 Cal.App.4th at p. 511; *Punsly*, *supra*, 105 Cal.App.4th at p. 113.) In applying the abuse of discretion standard, we decide whether the grounds given by the court for its denial of an award are consistent with the substantive law of section 1021.5 and, if so, whether the law's application to the facts of the case is within the range of discretion conferred upon the trial courts under section 1021.5, read in light of the purposes and policy of the statute. (*Families Unafraid*, *supra*, 79 Cal.App.4th at p. 512.) Abuse of discretion is shown if the determination amounts to a manifest miscarriage of justice or where there is no reasonable basis for the determination. (*Beach Colony II v. California Coastal Com.* (1985) 166 Cal.App.3d 106, 113.)

Relying on *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 (*Laurel Heights*), Maldonado disagrees that an abuse of discretion standard applies and contends that we may decide her entitlement to attorney fees "*de novo* according no deference to any trial court findings." (Original italics.) *Laurel Heights* stands for the proposition that where the important right involved is first enforced by a Court of Appeal, rather than by the trial court, and the attorney fees issue is fully briefed to the Court of Appeal, nothing prohibits the Court of Appeal from deciding the prevailing party's entitlement to a fee award under section 1021.5 fee in the first instance. (*Id.* at pp. 427-428.)

In this appeal we are presented with a very different situation than the one profiled in *Laurel Heights*. The attorney fees issue was neither briefed on appeal nor decided in the first instance by this court in *Whitley*. Instead, Maldonado opted to have the trial court determine whether attorney fees should be awarded in the first instance. In contrast to the situation in *Laurel Heights*, we have the benefit of the trial court's factfinding and analysis on this issue. Nothing in *Laurel Heights* suggests that we are authorized to ignore what transpired in the trial court and proceed to a de novo consideration of the pertinent issues for awarding attorney fees under section 1021.5. Doing so would clearly usurp the discretionary, decisionmaking function of the trial court.

Maldonado also claims that *Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 8 (*Protective League*) authorizes this court to engage

in a de novo review of the section 1021.5 factors. The appellate court in *Protective League* issued a published opinion reversing a trial court judgment and remanding the matter for consideration of attorney fees under section 1021.5. (*Id.* at p. 5.) In the subsequent appeal from the denial of the request for attorney fees, *Protective League* held that where the appellate court had published an opinion in the case, it was "in at least as good a position as the trial court to judge whether the legal right enforced through its own opinion is 'important' and 'protects the public interest' and whether the existence of that opinion confers a 'significant benefit on the general public or a large class of persons.' " (*Id*. at p. 8.) However, with respect "to the third element of the section 1021.5 test," whether the necessity and financial burden of private enforcement are such as to make an attorney fee award appropriate, deference is normally given to the trial court's findings so long as the proper criteria guided the trial court's discretion. (*Id.* at pp. 9-11.)

Here, we can think of no reason why we would be any better equipped than the trial court to resolve the issues normally presented in determining whether the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to the plaintiff's individual stake in the matter. (*Adoption of Joshua S*. (2008) 42 Cal.4th 945, 952 (*Joshua S*.).) Consequently, we shall apply the abuse of discretion standard of review in this case.

C. Burden of Private Enforcement

Of the three requisite elements under section 1021.5, the one at issue here is the third, namely whether " ' "the cost of the claimant's legal victory transcends his personal interest, that is, [whether] the necessity for pursuing the lawsuit placed a burden on the plaintiff 'out of proportion to his individual stake in the matter.' [Citation.]" ' [Citation.]" (*Joshua S.*, *supra*, 42 Cal.4th at p. 952.) Proper analysis of this factor "does not turn on a balance of the litigant's private interests against those of the public but on a comparison of the litigant's private interests with the anticipated costs of suit. [Citation.]" Section 1021.5 is intended as a 'bounty' for pursuing public interest litigation, not a reward for litigants motivated by their own interests who coincidentally serve the public. [Citations.]" (*California Licensed Foresters Assn., supra*, 30

Cal.App.4th at p. 570.) Thus, where " 'the enforcement of the public interest is merely "coincidental to the attainment of . . . personal goals" [citation] or is "self serving," [citation], then this [third] requirement is not met.' [Citation.]" (*Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173, 181 (*Bowman*).)

We garner from these cases the general rule that an attorney fee award is not proper when the primary effect of the litigation is vindication of a plaintiff's personal rights or economic interests. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.) However, Maldonado questions whether a personal, nonpecuniary interest can ever legitimately be used to disqualify a successful litigant from eligibility for section 1021.5 attorney fees. She argues that "[u]nlike pecuniary and even quasi-financial interest which can be valued relatively easily . . . there is no rational means of weighing personal, familial interests against litigation costs."

Maldonado's argument runs counter to numerous Court of Appeal decisions which stand for the proposition that, "[w]hile the traditional focus of personal interest . . . is on financial interest, personal interest can also include specific, concrete, nonfinancial interests . . . ." (*Families Unafraid, supra,* 79 Cal.App.4th at p. 514; but see *Families Unafraid*, *supra*, at pp. 527-528 (dis. opn. of Sims, Acting P. J.); *Bowman*, *supra*, 131 Cal.App.4th at p. 181; *Hammond v. Agran* (2002) 99 Cal.App.4th 115, 124-128 (*Hammond*); *Williams v. San Francisco Bd. of Permit Appeals* (1999) 74 Cal.App.4th 961, 968-971.)

Significantly, the court in *Punsly*, *supra*, 105 Cal.App.4th 102 has recognized that the kind of personal, familial interests that Maldonado exhibited throughout this litigation are sufficient to preclude an award of attorney fees under section 1021.5. In *Punsly*, the grandparents sought a court order establishing a visitation schedule with the child of their deceased son. (*Id.* at p. 107.) Over the mother's objection, the trial court entered the order sought by the grandparents. The mother appealed. The appellate court reversed, finding the order unconstitutional in light of a recent United States Supreme Court case dealing with nonparental visitation. (*Ibid.*) After the appeal, the mother sought attorney fees pursuant to section 1021.5, but the trial court denied her fee request. (*Id.* at p. 108.)

Among other bases for denying the award, the trial court concluded that the mother had pursued the appeal primarily for her personal nonmonetary benefit. (*Id.* at p. 112.) The mother again appealed.

Looking to *Families Unafraid, supra,* 79 Cal.App.4th at pages 512-516, the court noted that section 1021.5 applied to cases involving both monetary and nonmonetary private interests. (*Punsly, supra,* 105 Cal.App.4th at p. 116.) In this context, the court's task is to compare realistically and practically the litigant's personal interest to the cost of the litigation. (*Id.* at p. 117.) Ultimately, the question is whether the cost of the litigation is out of proportion to the party's personal stake in the outcome. (*Ibid*.)

Adapting a test defined in *Families Unafraid,* the court stated that in order "[f]or this personal, family-related parental interest 'to block an award of attorney fees under the financial burden criterion, that interest must function essentially in the same way in the comparative analysis as a financial interest, clearly an objective interest. A subjective, vaguely grounded [parental] interest, even if 'heart-felt,' will not be considered sufficient; nor will a mere abstract interest in [family] integrity or [parental rights] preservation suffice to block an award of attorney fees.' [Citation.]" (*Punsly, supra,* 105 Cal.App.4th at p. 118.)

In affirming the denial of fees, the court upheld the trial court's finding that the appeal was pursued primarily for the mother's "strong, objectively ascertainable personal interests" in assessing and pursuing her child's best interests, as she saw them; and the litigation did not impose on the mother or her pro bono attorney a financial burden out of proportion to her individual stake in the matter. (*Punsly, supra,* 105 Cal.App.4th at p. 118.) Consequently, given the facts of the case, the trial court did not abuse its discretion in denying the mother's request for attorney fees. (*Id.* at pp. 118-119.)

Here, as in *Punsly,* there is sufficient evidence in the record to support the trial court's finding that in pursuing this litigation, Maldonado acted primarily to further what she perceived to be her brother's best interests, and that she failed to establish that the financial burden of this litigation was out of proportion to her personal interest in blocking her brother's transfer to Miracle Lane, a community-based facility. A party's

personal stake is evaluated as it existed at the time important litigation decisions were being made, not based on the subsequent outcome of the action. (*Lyons v. Chinese Hospital Assn*. (2006) 136 Cal.App.4th 1331, 1353.) When viewed from this perspective, Maldonado cannot avoid the effect of her own admissions made at the *Richard S.* hearing, that she pursued this case because she promised her mother that she would make sure that Whitley continued living at the SDC. Whitley had an unsuccessful experience living in the community, and his mother did not want him to go through a similar experience again. Maldonado thus saw her litigation efforts as fulfilling a promise she made to her mother regarding her brother's welfare.

We also note that Maldonado did not bring this action in her representative capacity to secure an interpretation of the jurisdictional issue decided in *Whitley*, *supra*, 155 Cal.App.4th 1447, for the purpose of benefiting the public at large. Instead, Maldonado initiated this litigation to prevent Whitley from being moved from the SDC. We alerted the parties to the jurisdictional issue by a letter from this court, issued fairly late in the proceedings, inviting them to address, among other things, "what authority exists allowing the parties to bypass the administrative hearing procedure provided for in the Lanterman Act . . . ." (*Whitley*, *supra*, 155 Cal.App.4th at p. 1458, fn. 6.) Thus, establishing a ruling on the proper venue for resolving disputes over community placement was only coincidental to Maldonado's primary objective of blocking her brother's placement into the community. Consequently, the trial court legitimately found that Maldonado's "strong, objectively ascertainable personal interests" sufficed to motivate her to incur the burdens of bringing this lawsuit, and an award of fees was therefore unwarranted as an additional incentive. (See *Punsly*, *supra*, 105 Cal.App.4th at p. 118.)

IV.

DISPOSITION

The judgment is affirmed. Each party is to bear its own costs on appeal.

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Ruvolo, P. J.

We concur:

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Reardon, J.

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Rivera, J.