

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DANIEL P. POTTER, CLERK

DIVISION 2

Los Angeles County Superior Court

DARLENE RENEE TARDAGUILA,  
Plaintiff and Appellant,  
v.  
CATHLEEN ELIZABETH CONLEY,  
Defendant and Respondent.  
B279316  
Los Angeles County No. YS028404

**\*\*\* REMITTITUR \*\*\***

I, Daniel P. Potter, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on August 29, 2018 and that this order, opinion or decision has now become final.

Defendant is awarded her costs on appeal.

Witness my hand and the seal of the Court  
affixed at my office this

Oct 29, 2018

Daniel P. Potter, Clerk



by: O. Carbone,  
Deputy Clerk



cc: All Counsel (w/out attachment)  
File

Filed 8/29/18

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

COURT OF APPEAL – SECOND DIST.

**FILED**

**Aug 29, 2018**

JOSEPH A. LANE, Clerk

ocarbone Deputy Clerk

DARLENE RENEE TARDAGUILA,

Plaintiff and Appellant,

v.

CATHLEEN ELIZABETH CONLEY,

Defendant and Respondent.

B279316

(Los Angeles County  
Super. Ct. No. YS028404)

APPEAL from an order of the Superior Court of Los Angeles County. Maria Puente-Porras, Commissioner. Affirmed.

Law Offices of Kenneth Gaugh and Kenneth Gaugh for  
Plaintiff and Appellant.

Brandmeyer Gilligan & Dockstader and John J. Gilligan for  
Defendant and Respondent.

Plaintiff and appellant Darlene Renee Tardaguila (plaintiff) appeals from the trial court's order awarding \$8,956.34 in attorney fees to defendant and respondent Cathleen Elizabeth Conley (defendant) following plaintiff's dismissal of her petition for civil harassment restraining orders against defendant under Code of Civil Procedure section 527.6.<sup>1</sup> We affirm the trial court's order.

### **BACKGROUND**

Defendant is the former spouse of plaintiff's current husband. On April 21, 2016, plaintiff filed a petition for civil harassment restraining orders against defendant based on allegations that defendant filled out 65 magazine subscription applications to be sent to plaintiff's home in order to harass her. Appellant attached as evidence in support of her petition a declaration from a graphologist, who opined that she reviewed exemplars of defendant's signature and found them to be the same as the signatures contained in the 65 magazine subscription applications. Defendant denied completing the subscription applications and retained a forensic document examiner to counter the graphologist's declaration.

At the June 27, 2016 hearing on the petition, the court disallowed testimony by plaintiff's graphologist, and plaintiff then dismissed her petition.

On July 5, 2016, defendant filed a memorandum of costs seeking \$3,225 in expert witness fees and \$9,996.34 in attorney fees pursuant to section 527.6, subdivision (s). The memorandum of costs was supported by a declaration by defendant's attorney attesting to his hourly billing rate and the amount of fees and costs incurred in defending against plaintiff's petition. Attached

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

to the declaration were copies of the attorney's redacted billing records.

Plaintiff filed a motion to tax costs on the grounds that the attorney fees sought were excessive and not authorized under section 527.6, subdivision (s), and that expert witness fees for the forensic document examiner had not been approved by the court. Defendant opposed the motion to tax costs, arguing that fees and costs were recoverable under section 527.6.

In reply to the opposition, plaintiff argued that defendant was not entitled to recover her attorney fees because she had not filed a noticed motion as required by California Rules of Court, rule 3.1702.

At the September 28, 2016 hearing on the motion to tax costs, the trial court heard argument from the parties as to whether a noticed motion was required under California Rules of Court, rule 3.1702 in order for defendant to recover attorney fees, or whether a memorandum of costs was sufficient. The court then granted the motion in part, striking the expert witness fees from the cost memorandum and reducing the amount of attorney fees to \$8,956.34. Plaintiff was ordered to pay that amount in fees to defendant. This appeal followed.

### **DISCUSSION**

The usual standard of review for an award of attorney fees is abuse of discretion. (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175-1176.) In this case, however, we consider whether the trial court had authority to award attorney fees, an issue of law that we review de novo. (*Ibid.*)

Defendant's memorandum of costs, supported by the declaration of her attorney, was a proper mechanism for claiming attorney fees as the prevailing party under section 527.6. (§§ 527.6, subd. (s); 1033.5, subd. (c)(5)(A)(ii).) Although defendant could have sought to recover attorney fees by filing a

noticed motion (§ 1033.5, subd. (c)(5)(A)(i)), such a motion was not required.

Section 527.6, subdivision (s) states that “[t]he prevailing party in an action brought pursuant to this section may be awarded court costs and attorney fees, if any.” Section 1033.5 provides that attorney fees authorized by statute are an allowable cost and may be fixed either “upon a noticed motion” or “upon application supported by affidavit made concurrently with a claim for other costs.” (§1033.5, subds. (a)(10)(B), (c)(5)(A)(i), (c)(5)(A)(iii).)<sup>2</sup> Defendant complied with the statutory requirements.

California Rules of Court, rule 3.1702 does not compel a different result. Rule 3.1702 provides that a motion must be made to recover attorney fees “[e]xcept as otherwise provided by statute.” (Cal. Rules of Court, rule 3.1702(a), (b).) In this case, because attorney fees are authorized by section 527.6, section 1033.5 applies. Defendant properly claimed as an item of costs attorney fees to which she was statutorily entitled under section 527.6.

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<sup>2</sup> Statutory attorney fees allowable as costs may also be fixed at the time a statement of decision is rendered or upon entry of default judgment. (§ 1033.5, subd. (c)(5)(A)(ii), (iv).)

**DISPOSITION**

The order awarding attorney fees to defendant is affirmed.  
Defendant is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST