Appendix A: U.S. District Court "Order Granting in Part and Denying in Part Motion to Review Taxation of Costs" on 5/19/2016.

United States District Court, N.D. California.

Case No. 10-cv-04641-PJH.
May 19, 2016.

ALFRED LAM, et al., Plaintiffs,
v.
THE CITY & COUNTY OF SAN FRANCISCO, et al.,
Defendants.

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO REVIEW TAXATION OF COSTS

PHYLLIS J. HAMILTON, District Judge.

Before the court is plaintiff's motion to review the taxation of costs. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS in part and DENIES in part plaintiff's motion, as follows.

BACKGROUND

On March 7, 2016, the court entered an order granting defendant's motion for summary judgment. On March 14, 2016, defendant filed a bill of costs, seeking reimbursement of $22,334.76. Plaintiffs filed objections on March 28, 2016, and on April 14, 2016, the Clerk of Court reduced defendant's requested costs by a total of $2,040.71, and taxed costs against plaintiffs in the amount of $20,294.05.

On April 21, 2016, plaintiffs filed a document entitled "notice of motion and motion objections to defendants' bill of cost," which the court construed as a motion to review taxation of costs, and for which the court set a briefing schedule.

Defendant has now filed its opposition brief, and plaintiffs have filed a reply brief.

DISCUSSION

A. Legal Standard

"Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party." Fed. R. Civ. P. 54(d). The U.S. Supreme Court has interpreted Rule 54(d) as "codif[ying] a venerable presumption that prevailing parties are entitled to costs." ; see also Amarel v. Connell, 102 F.3d 1494, 1523 (9th Cir. 1997). The use of the word "should" in Rule 54(d) "makes clear that the decision whether to award costs ultimately lies within the sound discretion of the district court." Marx, 133 S.Ct. at 1172-73.

The losing party has the burden of overcoming the presumption by affirmatively showing that the prevailing party is not entitled to costs. See Save Our Valley v. Sound Transit, 335 F.3d 932, 944-45 (9th Cir. 2003) (citing Stanley v. University of So. Cal., 178 F.3d 1069, 1079 (9th Cir. 1999)). Generally, only misconduct "worthy of a penalty," an insignificant or nominal recovery, or the losing party's indigency will suffice. Association of Mexican-American Educators v. State of Cal., 231 F.3d 572, 591-92 (9th Cir. 2000) (en banc); see also Save Our Valley, 335 F.3d at 945(Ninth Circuit has in past decisions considered factors including the losing party's limited financial resources, misconduct on the part of the prevailing party, the importance and complexity of the issues, the merit of the plaintiff's case, and the chilling effect on future civil rights litigants of imposing high costs).

If the district court wishes to depart from the presumption in favor of awarding costs, it must "specify reasons" for doing so by explaining "why a case is not `ordinary' and why, in the circumstances, it would be inappropriate or inequitable to award costs." Mexican-American Educators, 231 F.3d at 591-93. Although a district court must "`specify reasons' for its refusal to tax costs to the losing party," a court need not specify reasons for its "decision to abide the presumption and tax costs to the losing party." Save Our Valley, 335 F.3d at 945 (citing Association of Mexican-American Educators, 231 F.3d at 591) ("The presumption itself provides all the reason a court needs for awarding costs, and when a district court states no reason for awarding costs, [the reviewing court] will assume it acted based on that presumption.").

District courts may consider a variety of factors in determining whether to exercise their discretion to deny costs to the prevailing party. Association of Mexican-American Educators, 231 F.3d at 592-93. A court abuses its discretion by awarding costs only in the "rare occasion" where "severe injustice will result from an award of costs," and the court does not conclude that the presumption in favor of awarding costs has been rebutted. Save Our Valley, 335 F.3d at 945.

B. Legal Analysis

Plaintiffs' motion largely makes the same arguments that were raised in their objections to defendant's bill of costs. The arguments are, in large part, very generalized — arguing that the court should exercise its discretion to not award costs, arguing that defendants have unclean hands, and arguing that large portions of the depositions were dominated by defendants' counsel's objections. Plaintiffs do present a list of specific reasons for granting their motion: "(a) only reasonable costs may be recovered and this court has the discretion to refuse or apportion costs as

appropriate, (b) any of defendants' improper claims for expedited service of process fees should be denied, (c) defendants' excessive claims for transcript costs should be denied, and (d) defendants' excessive claims for photocopying should be denied." Finally, plaintiffs argue that a costs award would impose a hardship on them.

In general, the court finds that plaintiffs' arguments do not overcome the presumption that the prevailing party is entitled to costs. A number of plaintiffs' arguments are conclusory — for instance, that defendants have unclean hands — and the others simply fail to meet the standard of showing that defendant has engaged in misconduct "worthy of a penalty." However, there is one category of costs that are not warranted.

The case law in this district is fairly clear that "costs for expedited transcripts are not recoverable." Apple Inc. v. Samsung Electronics Co., Ltd., 2014 WL 4745933 (N.D. Cal. Sept. 19, 2014); see also Hesterberg v. United States, 75 F.Supp.3d 1220, 1225 (N.D. Cal. 2014 ("It is well established in this district that `expedited delivery charges for deposition transcripts are not allowable'"); City of Alameda v. Nuveen, 2012 WL 177566 (N.D. Cal. Jan. 23, 2012). Included within the bill of costs is a total of $5,316.27 for expedited deposition transcripts[1], and under the law of this district, the court finds that these costs are not recoverable. Accordingly, plaintiffs' motion to review the taxation of costs is GRANTED to the extent that it seeks to reduce the costs award to remove the expedited transcript costs, but DENIED on all other grounds.

CONCLUSION

For the foregoing reasons, plaintiffs' motion to review the taxation of costs is GRANTED in part and DENIED in part. The costs awarded for transcripts shall be reduced by

$5,316.27, resulting in a total costs award to defendant in the amount of $14,977.78.

IT IS SO ORDERED.

[1] This figure includes $687.06 for the expedited transcript of the deposition of John Radogno, $501.93 for the expedited transcript of the deposition of Dennis Doyle, $513.81 for the expedited transcript of the deposition of Mildred Singh, $457.38 for the expedited transcript of the deposition of Toni Ratcliff-Powell, $798.93 for the expedited transcript of the deposition of Greg Foote, $308.88 for the expedited transcript of the deposition of Christopher Baldwin, $507.87 for the expedited transcript of the deposition of Robert Taylor, $310.86 for the expedited transcript off the deposition of Tamara Ratcliff, $310.00 for the expedited transcript of the deposition of Allen Nance, and $919.55 for the expedited transcript of the deposition of Luis Recinos. See Dkt. 209, Ex. B.

Appendix B: Attached 9th Circuit Court Memorandum on 3/18/2019

United States Court of Appeals, Ninth Circuit.

ALFRED LAM; PAULA LEIATO, Plaintiffs-Appellants,
v.
CITY AND COUNTY OF SAN FRANCISCO; et al.,
Defendants-Appellees.

Nos. 16-15596, **16-16559**, No. 17-15208.

Submitted March 14, 2019[**].
Filed March 18, 2019.

Appeal from the United States District Court for the Northern District of California; D.C. Nos. **4:10-cv-04641-PJH**, 4:08-cv-04702-PJH, Phyllis J. Hamilton, Chief Judge, Presiding.

Before: WALLACE, FARRIS, and TROTT, Circuit Judges.

NOT FOR PUBLICATION

MEMORANDUM[*]

In these appeals, Alfred Lam and Paula Leiato appeal pro se from the district court's summary judgment in their action alleging employment discrimination; from the district court's award of costs to the defendants; and from the district court's denial of their motion to reconsider a prior summary judgment. We affirm in part and dismiss in part.

In Appeal No. 16-15596, Lam and Leaito appeal from the district court's summary judgment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Vasquez v. County of Los Angeles*, 349 F.3d 634, 639 (9th Cir. 2003), and we affirm.

The district court properly granted summary judgment on Lam's and Leiato's discrimination claims because Lam and Leiato failed to raise a genuine dispute of material fact as to whether defendants took adverse action against plaintiffs, and whether defendants had legitimate, non-discriminatory motives for their actions. *Id.*at 640-42 (providing framework for analyzing discrimination claims). Lam and Leiato's contentions that the district court ignored relevant evidence or was biased against them are unsupported by the record. *See, e.g.,* Brown Bag Software v. Symantec Corp., 960 F.2d 1465, 1474 (9th Cir. 1992) (district court's failure to refer to declaration and exhibits in summary judgment order was harmless where plaintiff failed to argue how consideration of declaration would have changed result reached by district court).

The district court properly concluded that Lam and Leiato, as pro se litigants, lacked the authority to represent a class. *See* C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987) ("Although a non-attorney may appear in propria persona in his own behalf, that privilege is personal to him. . . . He has no authority to appear as an attorney for others than himself."). To the extent Lam and Leiato contend that reversal is required due to alleged ineffective assistance of counsel, this contention is without merit. *See, e.g.,* Nicholson v. Rushen, 767 F.2d 1426, 1427 (9th Cir. 1985) (plaintiff is a civil case has no right to effective assistance of counsel). We reject Lam and Leiato's remaining arguments as unsupported by the record.

The district court did not abuse its discretion in awarding costs to defendants because Lam and Leiato failed to establish why the defendants were not entitled to costs. *See* Save Our Valley v. Sound Transit, 335 F.3d 932, 944-45 n.12 (stating standard of review and burden of proof).

In Appeal No. 16-16559, Lam and Leiato appeal the district court's order denying their second motion to reconsider the district court's costs award. We dismiss this appeal because it was not timely filed. *See* Fed. R. App. Proc. 4(a)(1)(A), 26(a)(1); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (untimely civil appeals must be dismissed for lack of jurisdiction).

In Appeal No. 17-15208, Lam and Leiato appeal the district court's order denying their motion for relief under Federal Rules of Civil Procedure 59(b), (e), 60(b), and 60(d)(3) as "untimely and meritless". We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993) (Rule 59(e) and Rule 60(b)). We affirm.

The district court correctly exercised its discretion in denying Lam and Leiato's motion. The district court properly determined that all of the twenty-two alleged questionable grounds for relief were untimely because their motion was filed more than four years after the entry of judgment.

APPEAL NOS. 16-15596 and 17-15208 AFFIRMED.

APPEAL NO. 16-16559 DISMISSED.

[**] Lam and Leiato's request for oral argument is denied, because the panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appendix C: 9th (Ninth) Circuit Motion for Reconsideration Decision on 4/19/2019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALFRED LAM; PAULA LEIATO,
Plaintiffs - Appellants,
V.
CITY AND COUNTY OF SAN FRANCISCO;
et al.,
Defendants - Appellees.

April 19, 2019

No. 16-16559
D.C. No. 4:10-cv-04641-PJH
Northern District of California, Oakland

ORDER

Before: WALLACE, FARRIS, and TROTT, Circuit Judges,

Appellants' motion for reconsideration is DENIED.

No further motions will be entertained in this closed case.

Appendix D: U.S. District Court Denying Motion for Reconsideration on 7/18/2016

United States District Court, N.D. California.

Case No. 10-cv-04641-PJH.

July 18, 2016.

ALFRED LAM, et al., Plaintiffs,
v.
THE CITY & COUNTY OF SAN FRANCISCO, et al.,
Defendants.

ORDER DENYING MOTION TO RECONSIDER TAXATION OF COSTS

Re: Dkt. No. 228

PHYLLIS J. HAMILTON, District Judge.

Before the court is a motion by plaintiffs Alfred Lam and Paula Lieto ("plaintiffs") seeking reconsideration of the court's order on the taxation of costs. Dkt. 228. Having reviewed the papers, and good cause appearing, the court hereby DENIES the motion.

On March 7, 2016, the court granted summary judgment to defendants on all claims in this workplace discrimination case. Dkt. 204. Plaintiffs filed both an appeal and a motion for reconsideration of the judgment. Dkt. 211, 212. In light of the appeal, the court denied a prior motion for reconsideration, which it construed as a Rule 59/60 motion, for lack of jurisdiction on April 7, 2016. Dkt. 214.

On March 14, the defendants filed a bill of costs, seeking $22,334.76. Plaintiffs objected, and the Clerk taxed costs in the amount of $20,294.05 on April 14. Dkt. 215. Plaintiffs then filed a motion objecting to the bill of costs, which the court construed as a motion seeking review of the Clerk's taxation of costs under Federal Rule 54(d)(1). Dkt. 218.

The matter was briefed, and on May 19 the court issued an order granting the motion in part, and reducing the cost taxation to $14,977.78 because costs for expedited transcripts were not recoverable. Dkt. 226.

Plaintiffs now bring a "motion for reconsideration" of the May 19 order on taxation of costs, purportedly pursuant to Federal Rules of Civil Procedure 59(b), 59(e), and 60(b). Rules 59(b), 59(e) are not applicable here, as plaintiffs do not seek a new trial or to alter a judgment, and none of the grounds listed in Rule 60(b) apply here. Local Rule 7-9(a), governing motions for reconsideration, applies only to interlocutory orders prior to judgment, and the plaintiffs have not sought leave of the court to file such a motion.

Accordingly, the court will construe the motion is as made pursuant to Federal Rule 54(d)(1) to review the clerk's taxation of costs. However, as the plaintiffs have already made such a motion, see Dkt. 217, the instant motion is therefore both repetitive and untimely. This is the plaintiffs' third attempt to object to the taxation of costs. They achieved a reduction from the Clerk, Dkt. 215, and a further reduction from the court in its May 19 order. Dkt. 226. There is no procedural basis to reconsider the court's prior order, and for good reason: the court has already reviewed and ruled on the matter. The motion for reconsideration is therefore DENIED.

IT IS SO ORDERED.

Appendix E: U.S. District Court Denying Motion for Reconsideration on 8/2/2016

United States District Court, N.D. California.

Case No. 10-cv-04641-PJH.

August 2, 2016.

ALFRED LAM, et al., Plaintiffs,
v.
THE CITY & COUNTY OF SAN FRANCISCO, et al.,
Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

Re: Dkt. No. 232.

PHYLLIS J. HAMILTON, District Judge.

Before the court is plaintiff Alfred Lam's motion for reconsideration of the court's order on the taxation of costs (Dkt. 232). This is plaintiff's fourth attempt to object to the taxation of costs and the second motion for reconsideration of the court's May 19, 2016 order on taxation of costs. The motion is repetitive, and untimely, and is hereby DENIED.

IT IS SO ORDERED.