

Appendix A.

Order of the California Supreme Court that
denied my Petition for Review No. S261831,
July 08, 2020.

SUPREME COURT
FILED

Court of Appeal, First Appellate District, Division Four - No. A157851 JUL 8 2020

S261831

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

TATYANA E. DREVALEVA, Plaintiff and Appellant,

v.

ALAMEDA HEALTH SYSTEM, Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix B.

Opinion of the Court of Appeal for the First District, Division Four in Appeal No. A157851 (unpublished), March 20, 2020.

Filed MAR 20 2020

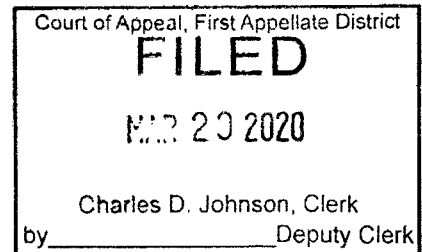
NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIRST APPELLATE DISTRICT

DIVISION FOUR



TATYANA E. DREVALEVA,
Plaintiff and Appellant,

v.

ALAMEDA HEALTH SYSTEM,
Defendant and Respondent.

A157851

(Alameda County
Super. Ct. No. RG19002840)

Tatyana Drevaeva appeals from a judgment denying her verified petition under Government Code¹ section 946.6 for relief from the government claim-filing requirements in section 945.4. She also contends that the trial court erred in denying her request for sanctions against Alameda Health System (AHS) for purportedly forcing her to bring an unnecessary petition, and she challenges the trial court's denial of her motion to vacate the judgment under Code of Civil Procedure section 663. We affirm.

I. BACKGROUND

On January 16, 2019, plaintiff filed a verified petition under section 946.6 for relief from the claim filing requirements of section 945.4 of the Government Claims Act (§ 810 et seq.). The petition stemmed from AHS's denial of a claim that plaintiff had filed on August 20, 2018.

¹ All further statutory references are to the Government Code unless otherwise specified.

AHS hired plaintiff as a monitor technician in 2013. On September 5, 2013, plaintiff sent a letter to her manager questioning her employee status, unpaid shift differentials, unpaid overtime, the failure of AHS to give work breaks, and the denial of her request for union affiliation. AHS terminated plaintiff on September 7, 2013, and, shortly thereafter, she filed unlawful retaliation and wage claims against AHS with the Department of Industrial Relations, Division of Labor Standards Enforcement (DIR).

In December 2016, the DIR determined that AHS terminated plaintiff for a legitimate, non-discriminatory reason, and plaintiff failed to show pretext. Plaintiff immediately filed a lawsuit against AHS and the DIR in federal court alleging what appeared to be claims for Labor Code violations, discrimination, retaliation, libel, negligence, and fraud. Plaintiff filed a lawsuit in state court against the DIR in November 2017.²

Plaintiff presented a government claim to AHS in August 2018. In response to questions on the claim form asking for a description of the cause of her loss and damages, plaintiff stated that AHS employees had informed a DIR investigator in December 2013 that plaintiff had been fired for medical negligence, but there was no explanation or evidence of medical negligence. She stated that AHS informed the Ninth Circuit Court of Appeals that she was fired for poor performance. She further stated that, as result of her termination in 2013, she suffered losses including loss of health and dental insurance, the ability to purchase a home and car, and the ability to become a physician assistant. She indicated that the total amount of her claim was approximately \$540,980. Additionally, plaintiff requested that AHS provide

² The federal court dismissed plaintiff's lawsuit, and plaintiff is appealing the dismissal. This court affirmed the judgment dismissing plaintiff's lawsuit against the DIR in two recent decisions, *Drevaleva v. Department of Industrial Relations* (A155165, A155187, A155899, Dec. 20, 2019) [nonpub. opn.] and *Drevaleva v. Department of Industrial Relations* (A156248, Dec. 20, 2019) [nonpub. opn.].

answers to the following questions: “1) Describe in detail the nature of the ‘discrepancies between acceptable employment standards and those [I] exhibited during [my] employment with [AHS].’ Provide documentary evidence of the alleged discrepancies. [¶] 2) Describe in detail and provide documentary evidence regarding the allegation of ‘failure to timely read chart and notify the medical provider.’ [¶] 3) Describe in detail and provide documentary evidence of the alleged ‘poor [professional] performance.’ ”

AHS maintains that it interpreted plaintiff’s claim to be one for wrongful termination. On September 4, 2018, acting through its agent, AHS rejected the claim as untimely. On October 24, 2018, AHS denied plaintiff’s request to present a late claim. AHS’s denial letter also stated, “If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (Claim presentation requirement). Please see Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your Application for Leave to Present Late Claim was denied. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.”³

Plaintiff filed a verified petition asking that the court issue orders relieving her from section 945.4 and compelling AHS to give her explanations and evidence regarding the DIR investigator’s December 2013 conversation with AHS employees regarding plaintiff’s alleged negligence.

Shortly after filing her verified petition, plaintiff filed a “Motion to Punish [AHS]” for forcing her to file “a [f]rivolous and [u]nnecessary” petition.

³ This language complies with section 911.8, which requires that written notice of the denial of a request to file a late claim include a warning in substantially such form. (§ 911.8, subds. (a)–(b).)

She conceded therein that her August 20, 2018 claim was not a claim for money or damages, and she contended that AHS required her to file a frivolous petition.⁴ She sought punitive damages; monetary penalties; an order requiring AHS to pay for the litigation, her discovery (including the cost of hiring an attorney to conduct depositions), and a jury trial; an order requiring AHS to present her with documents regarding its public entity status; and a writ of mandate compelling AHS to answer the question of whether AHS employees told the DIR investigator that she had been fired for committing medical negligence. After considering the parties' briefing and hearing argument, the court denied plaintiff's "Motion to Punish" on the ground that plaintiff did not cite to any authority under which the court could order the relief sought.

The court then issued a briefing schedule for a trial/merits hearing on the verified petition. In her brief in support of the petition, plaintiff claimed for the first time that section 800 authorized the court to provide the relief she sought. After considering the petition and the parties' written and oral submissions, the court denied the petition on May 17, 2019. AHS submitted a proposed judgment on May 22, 2019, and the court entered a judgment of dismissal with prejudice on May 23, 2019. In the judgment, the court found that the petition was frivolous and that plaintiff had failed to present any authority under which the court could order the relief sought.

Plaintiff filed a motion to vacate the court's judgment pursuant to Code of Civil Procedure section 663. The court denied the motion, and plaintiff timely appealed.

⁴ On March 12, 2019, plaintiff filed a separate state court lawsuit for libel, abuse of process, and intentional infliction of emotional distress against AHS and its attorneys arising from the statement that plaintiff was fired for poor performance made in briefing by AHS before the Ninth Circuit Court of Appeals. This lawsuit is also currently on appeal.

II. DISCUSSION

The Government Claims Act (§ 810 et seq.) establishes certain conditions precedent to the filing of a lawsuit against a public entity. For example, a plaintiff must first file a timely claim for “money or damages” with the public entity and failure to do so bars the plaintiff from bringing suit against that entity. (§§ 945.4, 911.2⁵.) “ “[T]he claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action” [Citation.] “The policy underlying the claims presentation requirements is to afford prompt notice to public entities. This permits early investigation and evaluation of the claim and informed fiscal planning in light of prospective liabilities.” ’ ’ (*J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1219.) However, if the injured party fails to file a timely claim, a written application may be made to the public entity for leave to present such claim. (§ 911.4, subd. (a).) If the public entity denies that application, section 946.6 authorizes the injured party to petition the court for relief from the claim requirements. (*J.J.*, at p. 1220.) We review the trial court’s order under section 946.6 for abuse of discretion. (*Id.* at pp. 1220–1221.) Under this standard, the trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711–712.)

⁵ “A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) not later than one year after the accrual of the cause of action.” (§ 911.2, subd. (a).)

Plaintiff has conceded over and over again, both on appeal and below, that the claim she presented to AHS was “not for money or damages,” and, accordingly, her petition was unnecessary and frivolous. Given that her claim was not for money or damages, the court could not grant relief under section 946.6.⁶ In addition, plaintiff provides no authority pursuant to which the court could, in a proceeding under section 946.6, compel AHS to provide an explanation and evidence regarding the DIR investigator’s conversation with AHS employees. The trial court’s denial of plaintiff’s petition was not an abuse of discretion, and its denial of her motion to vacate the judgment was proper for the same reasons. (See Code Civ. Proc., § 663, subd. (1) [requiring an incorrect or erroneous legal basis for the decision to vacate a decision of the court].)

Plaintiff additionally urges error in the trial court’s denial of her “motion to punish,” and she contends that AHS should be sanctioned for misleading her into filing an unnecessary petition. We generally review a trial court’s grant or denial of monetary sanctions or prevailing party attorney’s fees for abuse of discretion. (See, e.g., *Zuehlendorf v. Simi Valley Unified School Dist.* (2007) 148 Cal.App.4th 249, 257–258 (*Zuehlendorf*) [award of prevailing party attorney’s fees under section 800]; *Dolan v. Buena Engineers, Inc.* (1994) 24 Cal.App.4th 1500, 1504 [where the trial court is vested with discretionary powers, such as the power to sanction under Code of Civil Procedure section 128.5, the appellate test is abuse of discretion].)

The trial court’s order was correct. Plaintiff did not cite any authority allowing the relief she sought in her motion. In her brief in support of her

⁶ At times, plaintiff characterizes the alleged statements made by AHS employees to the DIR investigator as defamatory, but she remains adamant that her August 2018 claim was not for money or damages and instead sought to require AHS to explain whether these statements were made and provide evidence thereof.

petition below, plaintiff argued that section 800 authorized her requests, and she makes the same argument on appeal. Not so. Section 800 permits a litigant who successfully challenges the award, finding, or determination of an administrative agency to recover attorney's fees if the litigant demonstrates that the agency acted in an arbitrary or capricious manner.⁷ (*Zuehlendorf, supra*, 148 Cal.App.4th at p. 255.) The statute sets out four conditions for the recovery of attorney's fees: 1) a civil action to review an award, finding or determination of an administrative proceeding; 2) the complainant prevailed against a public entity or official; 3) arbitrary or capricious action or conduct by a public entity or official; and 4) the complainant is personally obligated to pay the fees. (*Ibid.*) Because plaintiff was not the prevailing party on her petition, section 800 is inapplicable.⁸

Plaintiff poses a number of additional questions to this court in her briefing, including whether her government claim was timely because she allegedly did not know of the DIR investigator's conversation with AHS employees until March 2018; whether AHS is estopped from claiming

⁷ Section 800, subdivision (a) states: "In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law . . . if it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant if he or she prevails in the civil action may collect from the public entity reasonable attorney's fees, computed at one hundred dollars (\$100) per hour, but not to exceed seven thousand five hundred dollars (\$7,500), if he or she is personally obligated to pay the fees in addition to any other relief granted or other costs awarded."

⁸ Plaintiff notes in her briefing on appeal that a litigant may request an award of costs and attorney's fees under Code of Civil Procedure section 128.5. We do not address sanctions under this statute because plaintiff merely mentions it in passing, and she did not request sanctions thereunder below. (See *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1303 ["Contentions on appeal are waived by a party who fails to support them with reasoned argument and citations to authority"]; Code Civ. Proc., § 128.5, subd. (c).)

untimeliness; whether error occurred in the manner in which AHS processed her claim; and whether she has a right to a jury trial on what she contends are factual statute of limitations issues underlying her claim. As the claim procedures of the Government Claims Act do not apply to plaintiff's claim, we need not address these questions.⁹

We also reject plaintiff's argument that the judgment should be reversed because of the purported failure of AHS and the trial court to adhere to California Rules of Court¹⁰, rules 3.1590(f) and 3.1590(g) regarding a statement of decision and proposed judgment. A statement of decision may be requested in any "trial of a question of fact." (Code Civ. Proc., § 632.) When a trial is completed within one day, a request for statement of decision must be made before the matter is submitted for decision. (*Ibid*; rule 3.1590(n).) The hearing on the petition took place in less than a day, but the court minutes do not reflect that plaintiff requested a statement of decision.¹¹ Rules 3.1590(f) and 3.1590(g) thus did not apply. Further, in denying this petition, the court deemed the petition frivolous, noting that plaintiff failed to provide authority under which the court could order the relief sought. The court's decision was thus one of law for which a statement of decision is

⁹ Plaintiff also argues that AHS did not qualify for a public entity fee waiver under section 6103, and its failure to pay filing fees divested the trial court of jurisdiction over the matter. At the same time, however, she concedes that AHS is a local public entity (see Health and Saf. Code, § 101850), and she accepts that it should be treated as such for purposes of the Government Claims Act. Plaintiff does not provide persuasive authority explaining why AHS qualifies as a public entity under the Government Claims Act but not under section 6103.

¹⁰ All further rule references are to the California Rules of Court.

¹¹ The record also refutes plaintiff's assertion that AHS did not serve her with the proposed judgment, showing electronic service upon her on May 22, 2019 pursuant to her expressed desire to be served electronically.

unnecessary even if requested by one of the parties. (*Kroupa v. Sunrise Ford* (1999) 77 Cal.App.4th 835, 842.)

III. DISPOSITION

The judgment is affirmed.

BROWN, J.

WE CONCUR:

STREETER, ACTING P. J.

TUCHER, J.

Appendix C.

Order of the Court of Appeal for the First District, Division Four that denied my Petition for Rehearing in Appeal No. A157851, that denied my Petition for Mandatory Rehearing, and that denied my Motion to Supplement the Record on Appeal, April 16, 2020.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

TATYANA E. DREVALEVA,

Plaintiff and Appellant,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

A157851

(Alameda Super. Ct.
No. RG19002840)

BY THE COURT:

On March 30, 2020, appellant filed a "Petition for Rehearing," "Motion to Supplement the Record on Appeal," and "Petition for Mandatory Rehearing." The petitions and the motion are each denied.

Date: 04/16/2020 Streeter, J. Acting P.J.

ACTING PJ

Appendix D.

Order of the Superior Court of Alameda County
in case No. RG19002840 *Drevaleva v. Alameda
Health System* that denied my Motion to Punish
Alameda Health System, April 11, 2020.

Tatyana E. Drevalova
1063 Gilman Dr.
Daly City, CA 94015

Narayan Travelstead P.C.
Attn: Ku, Scott C
24301 Southland Dr.,
Suite 607
Hayward, CA 94545

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Drevalova

Plaintiff/Petitioner(s)

VS.

Alameda Health System

Defendant/Respondent(s)

(Abbreviated Title)

No. RG19002840

Order

Motion
Denied

The Motion was set for hearing on 04/11/2019 at 03:30 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and was contested.

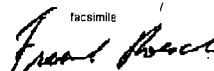
Petitioner and Moving Party Tatyana E. Drevalova appearing in pro per.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion is denied on the grounds that Petitioner has not cited authority under which the Court may order the relief sought.

Dated: 04/11/2019

Facsimile


Judge Frank Roesch

Order

Appendix E.

Order of the Superior Court of Alameda County that denied my Verified Petition for Relief from Government Code Section 945.4 in case No. RG19002840 *Drevaleva v. Alameda Health System*, May 17, 2019.

Tatyana E. Drevalova
1063 Gilman Dr.
Daly City, CA 94015 _____

Narayan Travelstead P.C.
Attn: Ku, Scott C
24301 Southland Dr.,
Suite 607
Hayward, CA 94545

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Drevalova	No. <u>RG19002840</u>
Plaintiff/Petitioner(s)	Order
VS.	Petition for Writ
Alameda Health System	Denied
Defendant/Respondent(s)	
(Abbreviated Title)	

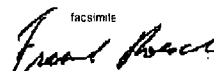
The Petition for Writ was set for hearing on 05/17/2019 at 02:00 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling required that the parties appear, and the matter came on regularly for hearing.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The Petition is Denied.

Dated: 05/17/2019

facsimile


Judge Frank Roesch

Appendix F.

Judgment Entered in case No. RG19002840

Drevaleva v. Alameda Health System, May 23,
2019.



FILED
ALAMEDA COUNTY

MAY 23 2019

CLERK OF THE SUPERIOR COURT
By _____ Deputy
**Filing by a public entity.
Exempt from filing fees.
Gov. Code § 6103.**

1 Timothy C. Travelstead, Esq. (SBN 215260)
2 Scott C. Ku (SBN 314970)
3 NARAYAN TRAVELSTEAD P.C.
4 24301 Southland Drive, Suite 607
5 Hayward, CA 94545
6 Telephone: (650) 403-0150
7 Facsimile: (650) 403-0157

8 Attorneys for Defendant
9 ALAMEDA HEALTH SYSTEM

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ALAMEDA, UNLIMITED JURISDICTION

12 TATYANA E. DREVALEVA,

13 Plaintiff,

14 v.

15 ALAMEDA HEALTH SYSTEM,

16 Defendant.

Case No. RG19002840

ASSIGNED FOR ALL PURPOSES TO
JUDGE Frank Roesch
DEPARTMENT 17

**JUDGMENT OF DISMISSAL WITH
PREJUDICE**

Date Action Filed: January 16, 2019
Merits Hearing Date: May 17, 2019

17 The trial/merits hearing on Petitioner Tatyana Drevaeva's Petition for Relief from the
18 Government Claims Act (Government Code section 945.4) pursuant to Government Code
19 section 946.6, filed on January 16, 2019, was heard on May 17, 2019 at 2:00 p.m. in Department
20 17 before the Honorable Frank Roesch.

21 Petitioner Tatyana E. Drevaeva appeared *in pro per*. Timothy C. Travelstead, Esq.
22 appeared on behalf of Respondent Alameda Health System.

23 The Petitioner admitted, and the Court found, after full consideration of Petitioner's
24 Petition and the written and oral submissions of the parties, that Petitioner's Petition was

1 frivolous. The Court also found that Petitioner failed to present any authority under which the
2 Court may order the relief sought.

3 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's
4 Petition is DENIED and Judgment of Dismissal with Prejudice be and is entered in favor of
5 Defendant Alameda Health System, and against Petitioner Tatyana Drevaleva.

6
7
8 Dated: May 23, 2019


JUDGE OF SUPERIOR COURT

9
10
11 APPROVED AS TO FORM AND CONTENT:

12
13
14
15
16
17
18
19
20
21 Dated: May 22, 2019

22 NARAYAN TRAVELSTEAD P.C.

23 

24
25 Timothy C. Travelstead
26 Scott C. Ku
27 Attorney for Defendant
28 ALAMEDA HEALTH SYSTEM

CLERK'S CERTIFICATE OF MAILING

RE: RG19-002840 Drevaleva vs Alameda Health System

I certify that the following is true and correct: I am the Clerk of the above-named court and not a party to this cause. I served this **Judgment**, by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Oakland, California, following standard court practices.

Dated: 5/23/19

Chad Finke
Executive Officer/Clerk of the Superior
Court

By


Param Bir, Deputy Clerk

Tatyana E. Drevaleva
792 N. Mayfair Ave.,
Daly City CA 94015

Timothy C. Travelstead Esq.,
Narayan Travelstead PC
24301 Southland Drive
Suite 607
Hayward CA 94545

Appendix G.

Order of the Superior Court of Alameda County that denied my Motion to Vacate the Judgment in case No. RG19002840 *Drevaleva v. Alameda Health System*, July 11, 2019.

Narayan Travelstead P.C.
Attn: Ku, Scott C
24301 Southland Dr.,
Suite 607
Hayward, CA 94545

Tatyana E. Drevaleva
792 N. Mayfair Ave.
Daly City, CA 94015

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Drevaleva	Plaintiff/Petitioner(s)	No. <u>RG19002840</u>
VS.		
Alameda Health System	Defendant/Respondent(s) (Abbreviated Title)	Order Motion to Vacate/Set Aside Denied

The Motion to Vacate/Set Aside was set for hearing on 07/11/2019 at 03:30 PM in Department 17 before the Honorable Frank Roesch. The Tentative Ruling was published and was contested.

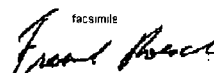
Debtor and Moving Party Tatyana E. Drevaleva appearing in pro per. Moving Party Tatyana E. Drevaleva appearing in pro per.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The motion is denied.

Dated: 07/11/2019

 facsimile

Judge Frank Roesch

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG19002840
Order After Hearing Re: of 07/11/2019

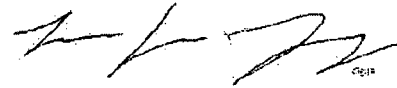
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 07/12/2019.

Chad Finke Executive Officer / Clerk of the Superior Court

By



Deputy Clerk