

Hearing: Petitioner's Motion for Attorney Fees

Date: October 3, 2017

On July 24, 2017, the Court granted Denise Emerson (Emerson) a civil harassment restraining order against her neighbor William Powers III (Powers). Emerson was originally represented by attorney Michael Pick (Pick). On May 15, 2017, Pick substituted out as counsel for Emerson and Emerson elected to proceed in pro per. In a related matter, Powers and other members of his family bring a civil action against Emerson and her husband (*Powers v. Emerson* 16CVP0115). In that action, the Emersons are represented by attorney Christopher Mulder (Mulder).

On June 29, 2017, the Court jointly heard testimony related to the civil harassment order in this action and the Powers' request for preliminary injunction in the related matter. The Court specifically stated and affirmed that Mulder did not represent Emerson in this civil harassment action and could only participate in an "advisory role."

Pursuant to CCP §527.6, Mulder, apparently on behalf of Emerson as he is not counsel of record, now seeks \$5,254.63 in attorney fees and costs for his time and an additional \$39,337.23 in attorney fees and costs for legal work performed by former counsel Pick. Powers opposes the motion.

There are a number of issues with this motion. First, Mulder is not the attorney of record for Emerson in this case such that it is unclear whether the Court can even hear the matter. Second, even if Mulder was substituted in as counsel, he was not counsel for Emerson during the hearing on this matter so there is no basis to award any attorney fees for work performed by Mulder.

Third, the only evidence submitted in support of Pick's attorney fee request are his unauthenticated billing invoices that are attached to Emerson's declaration. Emerson states the invoices are those that Pick submitted to her and she paid in order to obtain the restraining orders. However, there is no declaration from Pick authenticating or verifying the invoices. (*Horsford v. Bd. Of Trustees Of California State Univ.* (2005) 132 Cal.App.4th 359, 396) Fourth, there is no affidavit from Pick establishing his role in the litigation, the scope of the work he performed or explaining why the work performed and the hourly rate billed were "reasonable."

"An attorney fee award must be based on a 'careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case.'" (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 487 quoting *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131) Here, there is a lack of admissible evidence to establish the reasonableness of Pick's requested attorney fees. This is especially true because Pick represented Emerson in a separate civil restraining action against his

companion Lindsey Keyes and many of the billing entries relate to that matter. The invoices also show that Pick performed legal services related to the criminal proceedings. Pick also billed time in this action related to an anti-SLAPP motion in which Emerson prevailed, but the Court denied her request for attorney fees and the appellate court in affirming the ruling only awarded costs to Emerson. Consequently, the billing invoices are unusable without explanation, review and authentication by Pick. In reply, Emerson fails to address these issues and simply states she will accept whatever the court believes is a reasonable number of hours and reasonable rate. Based on the evidence presented the Court cannot make that determination.

The motion for attorney fees is denied.