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Appellate Division, Superior Court,
Los Angeles County.

12300 SHERMAN WAY LLC,
Plaintiff and Respondent,

v.

Sergio HARFORD, Defendant and Appellant;
Sarah Truesdell Shipitsyna, Objector and Appellant.

No. BV 028470.

|
Sept. 7, 2010.

OPINION

*1 Attorney Sarah Truesdell Shipitsyna (appellant) seeks reversal of the trial court's order directing her to pay the jury fees owed by her client, defendant Sergio Harford (Harford),¹ and the subsequent order imposing monetary sanctions in the amount of \$1,050 for failing to comply. We reverse both orders.

BACKGROUND

This appeal arose from an unlawful detainer complaint filed by plaintiff and landlord 12300 Sherman Way, LLC, against tenant Harford. Representing himself, Harford applied for a fee waiver when he filed his answer on July 30, 2009. The request was granted. Thereafter, Harford retained appellant's law firm, BASTA, Inc., to represent him. On September 9, 2009, Harford filed a request to waive jury, court reporter and other fees. At the same time, the law firm deposited \$150 in jury fees with the court on his behalf. The court denied Harford's fee waiver request on September 11, 2009.

Jury trial began on Friday, September 18, 2009, with Harford being represented by appellant. On the same date, Harford requested a hearing on the court's denial of his fee waiver request. The court held a hearing on the morning of

Monday, September 21, 2009, reaffirmed its prior ruling, and ordered Harford to pay the jury fees forthwith. Jury trial resumed on the afternoon of September 21, and continued through September 22.

On September 23, 2009, before the jury returned to the courtroom, the following colloquy occurred between the court and appellant;

“THE COURT: ... I want to clarify that, after the fee waiver hearing on Monday, September 21st, defense counsel was ordered to go pay the jury fees.² Have they been paid, Counsel?”

[APPELLANT]: They have not, [y]our Honor.

THE COURT: And do you have a reason why you violated the Court's order to go pay that?

[APPELLANT]: My client does not have the money. He cannot afford to pay those fees.”

After further discussion concerning the merits of the court's ruling on Harford's fee waiver request, the court reiterated that appellant was ordered to pay the jury fees, and stated its intent to consider imposing sanctions for noncompliance. Appellant objected on various grounds, including the court's lack of authority to order an attorney to pay fees for a client. The court then recessed for lunch.

After the recess, the court inquired whether appellant had paid the fees as ordered. Appellant responded that she had not. The court then stated that it would not resume the jury trial until the fees were paid, and that it would sanction appellant personally \$150 for every 15-minute period in which she failed to comply with its order to pay the jury fees. Between 2:00 p.m. and 4:00 p.m., the court inquired approximately every 15 minutes as to whether appellant had paid the jury fees. Each time, appellant responded that she had not paid, and the court imposed an additional sanction of \$150 on her, for a total of \$1,050. After the last sanction was imposed, the court discharged the jury and the matter proceeded as a court trial, culminating in a judgment for plaintiff. The court issued a written sanction order on September 25, 2009, which contained a recitation of the foregoing events. Appellant paid the full amount of the sanctions.

CONTENTION ON APPEAL

*2 The trial court lacked authority to order appellant to pay the fees owed by her client, and to enforce such order by sanctioning appellant.

DISCUSSION

The court imposed sanctions against appellant pursuant to Code of Civil Procedure section 177.5, which provides in pertinent part as follows: “A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification.” The lawfulness of the court's order is therefore a prerequisite for the imposition of sanctions for violating the order. Since this appeal challenges the lawfulness of the underlying order that appellant pay Harford's jury fees, it presents a question of law that we review de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

The right to a jury trial in civil cases is guaranteed by article I, section 16 of the California Constitution. A party demanding a jury trial is required to make a timely deposit of advanced jury fees, and to pay the daily jury fees during trial prior to the start of each court session. (Code Civ. Proa, § 631, subs. (b) & (c).) If the party fails to pay the required jury fees during trial, the court may deem such action a waiver of the right to jury trial. (Code Civ. Proc., § 631, subd. (d)(6).)

A trial court generally has no authority to order an attorney to pay fees, including jury fees, that are owed

by the attorney's client. (*Isrin v. Superior Court* (1965) 63 Cal.2d 153, 154–155 (*Isrin*).) In *Isrin*, the plaintiff's request to proceed in forma pauperis was denied on the ground that she was represented by an attorney on a contingent fee basis, and that the attorney should be therefore responsible for advancing the court fees. The *Isrin* court reversed the trial court's order, holding that requiring an attorney to advance fees for an indigent client would have “the practical effect of restricting an indigent's access to the courts because of his poverty,” and thus “contravene[] the fundamental notions of equality and fairness” which are the basis for allowing individuals to proceed in forma pauperis. (*Id.* at p. 165; accord, *Adkins v. E.I. Du Pont de Nemours & Co.* (1948) 335 U.S. 331, 342–343.)

The rule set forth in *Isrin* is equally applicable here. When Harford's second fee waiver application was denied, the court had the authority to order Harford—but not his attorney—to pay the jury fees. No statute, rule or case authorized the court to order appellant to pay fees on behalf of her client. Because the court's order that appellant pay Harford's fees was unlawful, it follows that the order sanctioning her for failing to comply with its mandate, must be reversed.

The orders directing Sarali Truesdell Shipitsyna to pay the jury fees owed by her client, and to pay monetary sanctions in the amount of \$1,050, are reversed. Appellant to recover her costs on appeal.

We concur. DYMANT, J., P. McKAY, P.J. and KALIN, J.*

All Citations

Not Reported in Cal.Rptr.3d, 2010 WL 9036390

Footnotes

- 1 Harford's appeal from the judgment entered against him was dismissed as moot.
- 2 The record does not include a reporter's transcript of the fee waiver hearing on the morning of September 21, 2009. The minute order for that proceeding reflects that the court ordered Harford to pay the fees. However, appellant later acknowledged on the record that the court had ordered her, and not her client, to pay the fees, and that such orders had been made on September 21 and 22.

* Retired judge of the Los Angeles Superior Court sitting under assignment by the Chairperson of the Judicial Council.