

Andrea Vargas, et al., v. Yolanda Gallizzi
2023 DJDAR 10311

Where the trial court had authenticated records at a pretrial hearing, yet defendant still denied numerous requests for admission, plaintiff was entitled to attorney fees and costs.

FACTS/PROCEDURE

In 2014 Andrea Vargas and her adult daughter, Ana Garcia, sued Yolanda Gallizzi for personal injuries related to an automobile accident in which Gallizzi rear ended Vargas' car. After trial on remand, a jury awarded Vargas and Garcia a total of \$15,125 in damages. Vargas and Garcia moved for attorney fees and costs pursuant to Code of Civil Procedure section 2033.420 on the ground that Gallizzi had unreasonably denied several requests for admission regarding the status of certain medical records as business records within the meaning of Evidence Code section 1271. The trial court denied the motion and awarded costs to Gallizzi pursuant to Code of Civil Procedure section 998.

At issue was the introduction of certain medical records by Plaintiffs. At the first trial, the court sustained Gallizzi's objection to the records based on hearsay, foundation, and authenticity grounds. In August 2019, in preparation for the second trial, Vargas and Garcia served requests for admission on Gallizzi requesting that she admit that the medical records were genuine and were business records within the meaning of California Evidence Code section 1271. Gallizzi served responses in which she admitted the genuineness of the medical records but denied they were business records. After failing to reach a stipulation, in September 2020 Vargas and Garcia served another set of requests for admission requesting Gallizzi admit the genuineness of the medical records and that the records were business records. These requests were denied. During hearings on the parties' motions in limine for the second trial, the Court ruled that the records would be considered business records. After a jury returned a verdict in favor of the plaintiffs, both parties filed post-judgment motions.

Vargas and Garcia moved for an award of more than \$350,000 in attorney fees and costs pursuant to section 2033.420 based on Gallizzi's failure to admit the requests for admission. The trial court ruled an award of expense regarding the medical records was not warranted because Garcia and Vargas had not proved the records were business records at trial within the meaning of Evidence Code section 1271. Plaintiffs appealed.

HOLDING/DISCUSSION

Holding: Reversed and remanded. Here, the California Court of Appeals reversed the order denying Vargas and Garcia's motion for expenses pursuant to section 2033.420. They held that the trial court's finding that Vargas and Garcia had not proved the business record exception at trial was an improper ground for the denial of an expense award. Under CCP section 2033.420, expenses shall be awarded if the party requesting the admission thereafter proves the genuineness of that document or the truth of the matter. There is no requirement that the proof be made at trial. Here, the trial court ruled during a pretrial hearing that the medical records would be considered business records. By proving evidence sufficient for the court to make these findings, Vargas and Garcia proved the matter. Accordingly, they met the threshold for reimbursement of expenses incurred following Gallizzi's denials. The case was remanded to the trial court to determine the amount to which Vargas and Garcia are entitled to for proving the medical records were business records.