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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CITY OF REDONDO BEACH et al., Plaintiffs and Respondents, v. ROB BONTA, as Attorney General, et al., Defendants and Appellants.	B338990 (Los Angeles County Super. Ct. No. 22STCP01143)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Curtis A. Kin, Judge. Reversed and Remanded.

Rob Bonta, Attorney General, Thomas S. Patterson, Assistant Attorney General, Mark R. Beckington, Supervising Deputy Attorney General, Kevin J. Kelly and James R. Bowen, Deputy Attorneys General, for Defendants and Appellants.

Aleshire & Wynder, Michelle L. Villarreal, Shukan A. Patel and Pam K. Lee for Plaintiffs and Respondents.

INTRODUCTION

In 2021, the Legislature enacted Senate Bill No. 9 (2021–2022 Reg. Sess.) (SB 9), which requires local agencies to ministerially approve the development and subdivision of urban lots previously zoned for single-family residences. In 2022, a group of charter cities in California filed a petition for writ of mandate against the State of California and Rob Bonta, in his capacity as the Attorney General of California (collectively the State), seeking to halt enforcement of SB 9 on the ground that it was an unconstitutional infringement on their municipal power. The trial court granted the petition, determining that SB 9 violated article XI, section 5, of the California Constitution. The trial court subsequently awarded the cities approximately $270,000 in attorneys' fees under Code of Civil Procedure section 1021.5.[1] In this consolidated appeal, the State challenges the trial court's ruling on the writ petition and subsequent award of attorneys' fees.

While the appeal was pending, the Legislature passed Senate Bill No. 450 (2023–2024 Reg. Sess.) (SB 450), which amended the language of SB 9 that the trial court relied on in granting the writ petition. The State argues we should vacate both rulings and remand the matter to the trial court for further proceedings under the amended statute. We agree and remand the matter back to the trial court to reconsider its rulings in light of the new statutory language.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND

I. *Statutory Framework*

SB 9 "made several changes to the Government Code for the stated purpose of 'ensuring access to affordable housing.' As most relevant here, it added Government Code section 65852.21, which provides that a 'proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing,' if it meets certain requirements. [Citation.]" (*City of Rancho Palos Verdes v. State of California* (2025) 114 Cal.App.5th 13, 17 (*Rancho Palos Verdes*), fn. omitted.) SB 9 also added Government Code section 66411.7, "which provides that a local agency . . . 'shall ministerially approve . . . a parcel map for an urban lot split' meeting certain conditions, including location 'within a single-family residential zone,' and 'approximately equal lot area' of the resulting parcels, each of which must be at least 1,200 square feet. [Citation.]" (*Ibid.*)

"Both sections limit local agencies to the imposition of 'objective zoning standards, objective subdivision standards, and objective design review standards' that 'involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.' [Citations.]" (*Rancho Palos Verdes*, *supra*, 114 Cal.App.5th at p. 17.) Taken cumulatively, the provisions of SB 9 permit an urban lot zoned for a single-family residence to be split into two lots with two housing units each, without requiring any discretionary review by local agencies. (*Id.* at pp. 17–18.)

II. *Litigation*

In March 2022, charter cities, the City of Redondo Beach, City of Carson, City of Torrance, and City of Whittier filed a petition for a writ of mandate and complaint for declaratory relief seeking to invalidate SB 9 as unconstitutional.[2] Specifically, the Cities invoked what is known as the "home rule" or "municipal affairs" doctrine under article XI of the California Constitution. This doctrine permits charter cities to "make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters." (Cal. Const., art. XI, § 5(a).) However, the deference afforded by the doctrine is not absolute, and a charter city's power to manage its own municipal affairs must give way to state legislation that is "reasonably tailored to the resolution of a subject of statewide concern." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 7 (*Cal. Fed.*).) In their petition for a writ of mandate, the Cities argued that SB 9 was not reasonably related to its stated purpose of ensuring access to affordable housing and therefore violated the home rule doctrine under the California Constitution.

A. *Hearing on Writ Petition*

The trial court applied the four-part test set forth by our California Supreme Court in *Cal. Fed.* to determine whether SB 9 violates the home rule doctrine. Under this test, "First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a 'municipal affair.' [Citation.] Second, the court 'must satisfy itself that the case presents an actual conflict between [local and state law].' [Citation.]

[2] The petition was subsequently amended to add the City of Del Mar as a petitioner. We refer to the five petitioner cities collectively as "the Cities."

Third, the court must decide whether the state law addresses a matter of 'statewide concern.' [Citation.] Finally, the court must determine whether the law is 'reasonably related to . . . resolution' of that concern [citation] and 'narrowly tailored' to avoid unnecessary interference in local governance [citation]. 'If . . . the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution [and not unduly broad in its sweep], then the conflicting charter city measure ceases to be a "municipal affair" pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments.' [Citation.]" (*State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 556, citing *Cal. Fed.*, *supra*, 54 Cal.3d at pp. 16–17, 24.)

The trial court determined it was undisputed that the first two elements of the test were satisfied. That is, there was a conflict between SB 9 and the Cities' municipal land use and zoning regulations.

Turning to the third element of "statewide concern," the court noted the parties framed this issue differently. The State argued SB 9 was meant to address the shortage of housing in California as a whole. The Cities argued SB 9 was instead directed at the more specific concern of ensuring access to *affordable* housing and not housing in general. The trial court looked to the plain language of the statute and determined that in section 4 of SB 9, "The Legislature plainly declared that the statewide concern addressed by SB 9 is 'ensuring access to affordable housing.'" Based on this statutory language, the trial court agreed with the Cities that SB 9 was specifically addressed at affordable housing, not in increasing the housing supply in general.

With this understanding of the "statewide concern" that SB 9 was meant to address, the court moved to the fourth step of the *Cal. Fed.*

analysis. The trial court began by interpreting the phrase "affordable housing" in the context of SB 9 to mean "below market-rate" housing. In doing so, the court rejected the State's argument that "affordable" referred to the promotion of housing affordability at all income levels in the short term and long-term affordability at lower income levels through the overall increase in housing supply.

Using its definition of "affordable," the court framed the fourth element of the *Cal. Fed.* test as "whether SB 9 is reasonably related to ensuring access to below market-rate housing and narrowly tailored to avoid unnecessary interference in local governance." The court examined the evidence submitted by the State and found "no evidence to support the assertion that the upzoning permitted by SB 9 would result in any increase in the supply of below market-rate housing." Therefore, the court determined, "the broad requirement of ministerial approval of duplexes and urban lot splits does not contain any connection to affordable housing." The court concluded that SB 9 violated the home rule doctrine because it was "neither reasonably related to ensuring access to affordable housing nor narrowly tailored to avoid unnecessary interference in local governance."

On June 18, 2024, the court entered a judgment holding that SB 9 is unconstitutional and ordering the issuance of a peremptory writ of mandate to cease implementation and enforcement of SB 9 against the Cities.

B. *Award of Attorneys' Fees*

On August 16, 2024, the Cities filed a motion seeking approximately $270,000 in attorneys' fees under section 1021.5, which authorizes fee awards to parties who successfully enforce important public rights and confer a significant benefit to the general public. The Cities argued their successful

writ petition invalidating SB 9 enforced important constitutional rights and conferred significant benefits on other similarly situated charter cities.

The trial court granted the motion, finding that the Cities' victory bestowed a significant benefit on the general public, justifying an award of attorneys' fees under section 1021.5. The court awarded the Cities approximately $270,000 in attorneys' fees, noting that the State did not "object to the reasonableness of the fees [requested by the Cities] on any ground."

III. *Appeal*

The State timely appealed both the trial court's judgment and the order awarding attorneys' fees to the Cities. We previously granted the State's motion to consolidate the appeals and address both issues in this opinion.

IV. *Subsequent Amendment of SB 9*

After the trial court entered judgment on the Cities' writ petition, the Legislature enacted SB 450, which amends SB 9 in several ways.[3] As relevant here, SB 450 significantly amends the language of section 4 of SB 9 that was central to the trial court's ruling on the Cities' writ petition.

As originally enacted, section 4 read, in pertinent part: "The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution." (Stats. 2021, ch. 162, § 4.)

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[3] We grant the parties' requests for judicial notice filed on May 22, 2025, and July 23, 2025.

As amended by SB 450, section 4 now reads: "The Legislature finds and declares all of the following: [¶] (1) The state faces a housing crisis of availability and affordability, in large part due to a severe shortage of housing. [¶] (2) Solving the housing crisis therefore requires a multifaceted, statewide approach which will include, but is not limited to, any or some of the following: [¶] (A) Encouraging an increase in the overall supply of housing. [¶] (B) Encouraging the development of housing that is affordable to households at all income levels. [¶] (C) Removing barriers to housing production. [¶] (D) Expanding homeownership opportunities. [¶] (E) Expanding the availability of rental housing. [¶] (b) Therefore, addressing the housing crisis and the severe shortage of housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution." (Stats. 2024, ch. 286, § 4.)

DISCUSSION

I. *Standard of Review*

A writ of mandate lies under section 1085 "to compel the performance of" a legal duty imposed on a government official or a public body. (§ 1085, subd. (a); *Public Employment Relations Bd. v. Bellflower Unified School Dist.* (2018) 29 Cal.App.5th 927, 939 (*Bellflower Unified*).) "To obtain relief under Code of Civil Procedure section 1085, '"the petitioner must show there is no other plain, speedy, and adequate remedy; the respondent has a clear, present, and ministerial duty to act in a particular way; and the petitioner has a clear, present and beneficial right to performance of that duty. [Citation.] A ministerial duty is one that is required to be performed in a prescribed manner under the mandate of legal authority without the exercise

of discretion or judgment.'" [Citation.]" (*Hayes v. Temecula Valley Unified School Dist.* (2018) 21 Cal.App.5th 735, 746.)

In reviewing a judgment granting or denying a petition for a writ of mandate, we apply de novo review to questions of law and review the trial court's factual findings for substantial evidence. (*Bellflower Unified*, *supra*, 29 Cal.App.5th at p. 939.)

"We review an attorney fee award under section 1021.5 generally for abuse of discretion. Whether the statutory requirements have been satisfied so as to justify a fee award is a question committed to the discretion of the trial court, unless the question turns on statutory construction, which we review de novo." (*Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 152.)

II. *Remand is Appropriate*

On appeal, the State filed a motion to dismiss this appeal and remand the matter to the trial court for further proceedings in light of SB 450's amendments to the statutory language of SB 9. For the reasons set forth below, we agree that remand is appropriate and grant the State's motion to remand the matter to the trial court.

A. *Petition for Writ of Mandate*

As the California Supreme Court has repeatedly recognized, "'if the courts have not yet finally and conclusively interpreted a statute and are in the process of doing so, a declaration of a later Legislature as to what an earlier Legislature intended is entitled to consideration.'" (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922; see also *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244 ["the

Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them"]; *Goldstein v. Superior Court* (2023) 93 Cal.App.5th 736, 748 ["'The Legislature's declaration of an existing statute's meaning, while not dispositive, is a factor entitled to consideration'"].)

Our California Supreme Court has not finally and conclusively interpreted SB 9. In the absence of such a determination, the Legislature is within its power to clarify its intent in enacting the statute, and that clarification is entitled to consideration by courts in interpreting the statute.

Here, there is no question that the amendments made by SB 450 directly impact the trial court's analysis under the *Cal. Fed*. test. The amended language of section 4 of the statute addresses the third and fourth elements of the *Cal. Fed.* by clarifying the "statewide concerns" that underpin the statute. The trial court's determination of the statewide concern under the third element of the *Cal. Fed.* test was thus based on "plain" language that no longer appears in the statute. The trial court's conclusions on the fourth element of the test similarly relied on the now-outdated language of section 4 of the statute.

On these facts, we agree that the amended language of SB 450 is an intervening change in law that is entitled to consideration by the trial court in determining the constitutionality of the statute. "'It is familiar appellate practice to remand causes for further proceedings without deciding the merits, where justice demands that course. . . . Such a remand may be made to permit . . . additional findings to be made upon essential points.' [Citation.]" (*Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 931.) As the trial court did not have the benefit of SB 450's amended findings at the time it ruled on the Cities' petition, we reverse the judgment

entered in the Cities' favor and remand the matter to the trial court to consider whether the statutory framework—as amended by SB 450—is unconstitutional. In doing so, we express no opinion on the merit of the Cities' petition under the amended statute.

B. *Section 1021.5 Fee Award*

Section 1021.5 provides that a trial court may award attorney fees to the successful parties "in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

Here, the trial court's award of attorneys' fees to the Cities was premised on the Cities' success on their petition for a writ of mandamus. As we have determined that the judgment in the Cities' favor on the writ petition must be reversed and remanded in light of the passage of SB 450, we must also reverse the award of attorneys' fees to the Cities as they can no longer be deemed "successful" parties under the statute. "[W]here an appellate court reverses a judgment ordering issuance of a writ of mandate, 'it follows' that the trial court's section 1021.5 attorney fees award must also be reversed." (*National Parks & Conservation Assn. v. County of Riverside* (2000) 81 Cal.App.4th 234, 238; accord *Klajic v. Castaic Lake Water Agency* (2004) 121 Cal.App.4th 5, 16.)

Therefore, we reverse the order granting the Cities' motion for attorneys' fees and remand the matter to the trial court pending further proceedings on the Cities' petition for a writ of mandate.

DISPOSITION

In light of SB 450, we reverse the judgment ordering issuance of a writ of mandate. The matter is remanded to the trial court to reconsider the Cities' writ petition under the statutory scheme as amended by SB 450. As we have reversed the judgment on which it was based, we also reverse the trial court's October 10, 2024, order granting the Cities motion for attorneys' fees under section 1021.5. The parties are to bear their own costs on appeal.

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ZUKIN, P. J.

WE CONCUR:

TAMZARIAN, J.

VAN ROOYEN, J.*

*Judge of the San Luis Obispo Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.