NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAMUEL LOVE, Plaintiff-Appellant, v. REZA KARDOONI, in individual and representative capacity as trustee of the Kardooni Trust dated December 13, 2005; et al., Defendants-Appellees.	No. 21-16685 D.C. No. 3:19-cv-04706-MMC MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Submitted September 20, 2022**
San Francisco, California

Before: GRABER, FRIEDLAND, and SUNG, Circuit Judges.

Plaintiff Samuel Love appeals the district court's order awarding Defendants Reza Kardooni, Cathleen Kardooni, and Redline Motor Sport, LLC, the attorney's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

fees and costs that they incurred in moving for summary judgment on the claims raised in Plaintiff's complaint. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court did not abuse its discretion in awarding Defendants attorney's fees and costs against Plaintiff, under 42 U.S.C. § 12205, and against his attorneys, under 28 U.S.C. § 1927. *See Armstrong v. Davis*, 318 F.3d 965, 970 (9th Cir. 2003) ("We review an award of attorney's fees for an abuse of discretion.").

In his complaint, Plaintiff asserted that Defendants violated the Americans with Disabilities Act ("ADA") and California's Unruh Civil Rights Act by "fail[ing] to provide accessible parking" at Pit Stop, their drive-through oil-change business. Through email exchanges with Defendants' counsel, Plaintiff and his lawyers were repeatedly informed that Pit Stop did not have any public parking associated with the facility and that Defendants were therefore not obligated to offer accessible parking under the ADA or Unruh Civil Rights Act. Later, the parties submitted to the district court a Joint Case Management Conference Statement ("CMC Statement"), in which Plaintiff stipulated "to the fact [that] Defendants have provided no parking, accessible or otherwise, at the Subject Property at all times relevant to this litigation." Despite that stipulation, Plaintiff vowed to continue the case, including by "filing a motion for partial summary

judgment on the issue of duty and liability under the ADA and the Unruh Civil Rights Act." Defendants moved for summary judgment, and in his opposition to that motion, Plaintiff "agree[d] that a business is not necessarily required under the ADA to provide parking." Plaintiff did not contest the merits of Defendants' arguments. Instead, Plaintiff stated only that the district court should not grant summary judgment because he intended to amend his complaint to add new theories of liability.

The district court reasonably concluded that "[P]laintiff's action was frivolous, unreasonable, or without foundation," given that he forced Defendants to move for summary judgment on claims that he acknowledged were completely insufficient. *See Kohler v. Bed Bath & Beyond*, 780 F.3d 1260, 1266 (9th Cir. 2015) (quotation marks omitted) (explaining the standard governing an award of attorney's fees under 42 U.S.C. § 12205). The district court also reasonably concluded that Plaintiff's attorneys had "unreasonably and vexatiously" prolonged the litigation by declining to dismiss their claims even after the stipulation and that they did so in "subjective bad faith." *See New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1306 (9th Cir. 1989) (explaining the standard governing an award of attorney's fees under 28 U.S.C. § 1927). We therefore discern no abuse of discretion in the district court's decision to require Plaintiff and his attorneys to bear the cost to Defendants of filing the summary judgment motion.

2. In their answering brief, Defendants ask us to award them additional fees and costs that the district court declined to grant. Defendants did not file a notice of cross-appeal of the district court's order, so we decline to consider their arguments. *See S.M. v. J.K.*, 262 F.3d 914, 923 (9th Cir. 2001) (noting that, although "the requirement to file a notice of cross-appeal 'can be waived at the court's discretion,' . . . the general rule [is] that we will not hear a challenge to a district court decision if a notice of cross-appeal is not filed" (quoting *Mendocino Env't Ctr. v. Mendocino County*, 192 F.2d 1283, 1298 (9th Cir. 1999))); *Jennings v. Stephens*, 574 U.S. 271, 276 (2015) ("[A]n appellee who does not cross-appeal may not attack the decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary." (quotation marks omitted)).

To the extent that Defendants argue that we should impose additional sanctions under Rule 11 for Plaintiff's conduct on appeal, we decline to address those arguments because Defendants have not filed a motion for sanctions. *See* Fed. R. Civ. P. 11(c)(2) ("A motion for sanctions must be made separately from any other motion.").

AFFIRMED.