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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

PATRICK A. MISSUD,

Plaintiff and Appellant,

v.

STATE BAR OF CALIFORNIA,

Defendant and Respondent.

A141459

(San Francisco City & County
Super. Ct. No. CPF-13-533811)

I.

INTRODUCTON

Patrick Massud (appellant) brought this action against the State Bar of California (respondent) seeking damages and other relief for defamation allegedly caused by respondent's publication of a State Bar Court recommendation to disbar appellant from practicing law in California. The trial court granted a special motion to strike the defamation complaint pursuant to section 425.16, subdivision (b) of the Code of Civil Procedure, the anti-SLAPP statute, and awarded respondent its attorney fees and costs.¹ We affirm.

¹ "SLAPP is an acronym for 'strategic lawsuit against public participation.' " (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.) All statutory references are to the Code of Civil Procedure.

II. STATEMENT OF FACTS

A. Background

Appellant was admitted to the California Bar in 2002. In 2004, appellant purchased a home in Nevada. During the seven years that followed, he engaged in litigation arising out of that purchase. Appellant filed at least eight separate lawsuits, and multiple motions and appeals in California and Nevada, but failed to prevail in any of that litigation. On March 22, 2012, a federal district court declared appellant a vexatious litigant and referred him to respondent for disciplinary action. Respondent also received referrals about appellant from several of his opposing counsel.

On July 1, 2013, the State Bar Court of California filed a decision and order placing appellant on involuntary inactive status and recommending that he be disbarred. The State Bar Court found, among other things, that appellant relentlessly pursued baseless litigation in California and Nevada; repeatedly used the media and websites to make false statements and baseless accusations against defendants in his lawsuits; communicated with defendants he knew were represented by counsel; and violated court orders. The State Bar Court also found that appellant's pattern of misconduct was willful, egregious and ongoing, and that he significantly harmed the public and the administration of justice.

B. The Present Action

On August 27, 2013, appellant filed this defamation action against respondent. In his first amended complaint (FAC), appellant alleged that respondent defamed him by publishing on its website the State Bar Court's order and recommendation to disbar appellant from practicing law. In addition to compensatory and punitive damages in the amount of \$192 million, appellant sought equitable relief including the dissolution of the California State Bar.

On December 9, 2013, respondent filed a special motion to strike appellant's complaint pursuant to section 425.16, subdivision (b)(1), which states: "A cause of action against a person arising from any act of that person in furtherance of the person's

right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”

On January 16, 2014, the trial court granted the special motion to strike, finding that (1) respondent carried its burden of establishing that conduct alleged in the FAC was protected activity, and (2) appellant failed to establish a probability of prevailing on the merits of his defamation claim.

On January 31, 2014, appellant filed a motion for reconsideration of the order granting the special motion to strike. To support this motion, appellant attached 20 exhibits which he described as self-authenticating court transcripts that speak for themselves about the “diamond-hard facts.” The first two exhibits attached to appellant’s motion were the transcript of the hearing on respondent’s special motion to strike and the trial order court order granting that motion. The remaining exhibits consisted of transcripts and pleadings from others cases in which appellant has been involved.

On February 14, 2014, respondent filed a motion for attorney fees under section 425.16, subdivision (c), which states that, with exceptions not relevant here, “in any action subject to subdivision (b), a prevailing defendant on the special motion to strike shall be entitled to recover his or her attorney’s fees and costs.” (§ 425.16, subd. (c)(1).) Appellant opposed the attorney fee motion and filed a “Countermotion” for private attorney general attorney fees and costs under section 1021.5.

On March 4, 2014, the trial court denied appellant’s motion for reconsideration of the order granting the special motion to strike appellant’s FAC. On March 26, the court granted respondent’s motion for attorney fees and ordered appellant to pay respondent reasonable fees and costs in the amount of \$10,705.00.

Appellant filed a timely notice of appeal, and, pursuant to an amended notice, seeks review of the January 16, 2014 order granting the special motion to strike; the

March 4, 2014 order denying his motion for reconsideration; and the March 26, 2014 order awarding respondent attorney fees and costs.²

III.

DISCUSSION

A. The January 16, 2014 Order

“Section 425.16 authorizes a defendant to file a special motion to strike any cause of action arising from an act in furtherance of the defendant’s constitutional right of petition or free speech in connection with a public issue. It establishes a procedure by which the trial court evaluates the merits of the lawsuit using a summary-judgment-like procedure at an early stage of the litigation. [Citations.]” (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1546-1547.) The purpose of this procedure is to create a mechanism “for the early dismissal of unmeritorious claims filed to interfere with the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. [Citation.]” (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 310; see also *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.)

“Section 425.16, subdivision (b)(1) requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant’s burden is to demonstrate that the act or acts of which the plaintiff complains were taken ‘in furtherance of the [defendant]’s right of petition or free speech under the United States or California Constitution in connection with a public issue,’ as defined in the statute. [Citation.] If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim.” (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

² On November 4, 2014, appellant filed a motion to augment the record on appeal with documents that have no relationship to or bearing on these appealed orders. That motion is denied.

When, as here, an order granting a special motion to strike is challenged on appeal, we independently review the trial court's findings under the two-step process outlined above. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.)

Under the first step of the section 425.16 inquiry, we find that appellant's defamation claim arises out of protected activity. A disciplinary proceeding before the State Bar Court is an official proceeding authorized by law. (§ 425.16, subds. (e)(1), (e)(2).) The "purpose of a disciplinary proceeding under the State Bar Act is to protect the public [Citations.]" (*Hyland v. State Bar of California* (1963) 59 Cal.2d 765, 774.) Furthermore, an attorney's disciplinary history is a "public record" which may lawfully be published on line. (*Mack v. State Bar* (2001) 92 Cal.App.4th 957, 961-964; see also *Canatella v. Van De Kamp* (2005) 2005 U.S. Dist. LEXIS 40093 *6-*9.) Thus, an attorney's discipline record is a matter of public interest.

Because the FAC challenged protected activity, we turn to the second step of the section 425.16 inquiry. Appellant had the burden to produce evidence of a probability of prevailing on his defamation claim against respondent. (*Equilon, supra*, 29 Cal.4th at p. 67.) To meet that burden, appellant was required to demonstrate that his FAC " " "is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." [Citations.]' " (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 19-20.) " " "Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact which is false, unprivileged, and has a natural tendency to injure or which causes special damage." [Citation.]' [Citation.]" (*Burrill v. Nair* (2013) 217 Cal.App. 4th 357, 382.)

In the present case, appellant failed to demonstrate that his FAC is legally sufficient and supported by a prima facie showing of facts required to show a probability of prevailing on his defamation claim against respondent. Although appellant disputes this conclusion, his only argument on appeal is that respondent filed a special motion to strike in order to prevent appellant from exposing widespread corruption among attorneys, judges and the courts. First, we find no evidence to support these

inflammatory accusations. Second, appellant can neither satisfy nor avoid his burden of proving a probability of prevailing on the merits of his claim by questioning respondent's motivation for defending itself in this action.

B. The March 4, 2014, Order

Section 1008 allows the trial court to reconsider and “modify, amend or revoke” its prior order based upon a showing of “new or different facts, circumstances, or law.” “A trial court’s ruling on a motion for reconsideration is reviewed under the abuse of discretion standard. [Citation.]” (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457.)

In the present case, appellant did not support his motion for reconsideration with new legal authority or with any new evidence that was relevant to the court’s inquiry under section 425.16, subdivision (b). Thus, the trial court did not abuse its discretion by denying the motion for reconsideration.

Appellant contends the trial court erroneously refused to take judicial notice of transcripts and documents from other cases which allegedly support appellant’s theory of widespread corruption in the judiciary. However that collateral matter had no bearing on the special motion to strike. Thus, the superior court did not abuse its discretion by denying appellant’s motion for reconsideration.

C. The March 26, 2104, Order

“Section 425.16, subdivision (c) authorizes an award of attorney fees and costs to the prevailing party. Further, the right of a prevailing defendant to recover attorney fees and costs adequately compensates him for ‘the expense of responding to a baseless lawsuit.’ [Citation.]” (*Conroy v. Spitzer* (1999) 70 Cal.App.4th 1446, 1454-1455.) Here, respondent was the prevailing defendant on the special motion to strike and, therefore, its motion for attorney fees was properly granted. (§ 425.16, subd. (c).)

Appellant contends that the trial court did not have jurisdiction to award attorney fees to respondent. To support this contention, appellant mistakenly relies on *Barry v. State Bar of California* (2013) 218 Cal.App.4th 1435, review granted November 26, 2013, S214058, , a case that is not properly cited to us because the Supreme Court has

granted a petition to review it. Aside from this improper citation, appellant fails to provide any explanation for his jurisdictional challenge.

The California Supreme Court has primary, inherent power over attorney admission and discipline. (*O'Brien v. Jones* (2000) 23 Cal.4th 40, 48) Thus, there may be a jurisdictional limitation on a superior court's authority to award attorney fees in a lawsuit seeking to overturn a decision in a State Bar disciplinary proceeding. However, that jurisdictional question did not arise in this case because appellant's complaint did not seek to overturn the State Bar Court's recommendation. Rather, appellant filed a SLAPP complaint premised on common law defamation, and, as the prevailing defendant on the special motion to strike that complaint, respondent has an express statutory right to recover attorney fees. (§ 425.16, subd. (c).)

Appellant also contends that he is entitled to attorney fees under section 1021.5 because he is a private attorney general providing a significant benefit to the general public. Section 1021.5 authorizes an award of attorney fees to "a successful party" when specific conditions are met. Appellant is not the successful party in this action.

IV. DISPOSITION

The orders are affirmed.

RUVOLO, P. J.

We concur:

REARDON, J.

BOLANOS, J.*

* Judge of the San Francisco City and County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.