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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

TRACY CALDERA,
Cross-complainant and Appellant,
v.
GARY CALDERA,
Cross-defendant and Appellant.

A142504

(Sonoma County
Super. Ct. No. SCV249954)

Cross-complainant Tracy Caldera and cross-defendant Gary Caldera¹ both appeal from the trial court's order vacating Tracy's default judgment against Gary. We affirm.

BACKGROUND

The parties used to be married; in April 2011, they divorced. In July 2011, a bank sued Tracy and Gary for debts arising from a business Gary owned and operated during their marriage.² Tracy filed a cross-complaint against Gary and Does for indemnification against the bank's claim based on the parties' marital settlement agreement, which addressed liability for the business's debts.³ Gary did not file a response to Tracy's

¹ Tracy Caldera has apparently changed her name to Tracy Francis; as her name remains Tracy Caldera in the trial court proceedings, we refer to her by her name of record. For convenience, we hereafter refer to the parties by their first names. We do not intend this informality to reflect a lack of respect.

² The business was also named as a defendant.

³ Although Tracy also brought the cross-complaint against the business, the appealed-from order vacated the default judgment only with respect to Gary.

cross-complaint. In May 2012, judgment issued against Tracy in favor of the bank for approximately \$144,000.⁴

On June 6, 2012, Tracy filed a request for dismissal of her cross-complaint. As we discuss below, Tracy contends the request dismissed solely the Doe defendants; Gary argues it dismissed Tracy's entire cross-complaint. On July 30, 2012, the court issued a default judgment against Gary on Tracy's cross-complaint for approximately \$154,000.

On March 27, 2014, Gary filed a motion to vacate the default judgment. He argued the default judgment was void or the result of extrinsic fraud or mistake because Tracy voluntarily dismissed her cross-complaint in June 2012. He argued in the alternative that the judgment was void because the attorney then representing Tracy in the litigation, Wallace Francis, was allegedly barred from representing her. The trial court agreed with the first ground, reasoning: "The dismissal of June 6, 2012 appears on its face to apply to [Gary]. Even if not, and even if such was not the apparent intent, this judgment is vacated based upon a showing of extrinsic fraud or mistake warranting an order vacating the judgment."

DISCUSSION

Tracy appeals the trial court's order vacating the default judgment. Gary cross-appeals, arguing this court can affirm the trial court's order on the alternative ground that Francis was barred from representing Tracy. Because we affirm the trial court's ruling finding the judgment void because of Tracy's dismissal, we need not decide whether it was also void because of Francis's representation.⁵

⁴ Tracy subsequently filed for bankruptcy and this judgment debt was apparently discharged.

⁵ Gary also contends Tracy's appeal is moot due to events occurring after the appealed-from order. In support of this argument, he attaches a document to his brief. Gary has not requested we take judicial notice of the document, much less filed the requisite separate motion making such a request. (See Cal. Rules of Court, rule 8.252(a); *Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 744 ["[w]e do not consider . . . [documents] attached to the respondent's brief in blatant disregard of . . . the California Rules of Court".]) We therefore decline to address this argument.

First, we find Tracy's cross-complaint against Gary was dismissed when she filed the request for dismissal. On June 6, 2012, Tracy filed a form request for dismissal without prejudice of her cross-complaint. The form includes a line indicating: "If dismissal requested is of specified parties only[,] of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed." Tracy left this line blank. The request for dismissal on its face dismissed her entire cross-complaint.

Tracy points to a docket entry for the same day stating: "Dismissal filed without prejudice as to named parties [¶] XC Caldera, Tracy [¶] XD Does 1-20." (Capitalization altered.) Tracy argues a dismissal is not effective until entered in the clerk's register; therefore, any dismissal with respect to Gary never took effect. We disagree.

An action may be dismissed prior to trial "upon written request of the plaintiff to the clerk." (Code Civ. Proc., § 581, subds. (b)(1), (c).) "A section 581 dismissal 'is available to [a] plaintiff as a matter of right and is accomplished by filing with the clerk a written request therefor. If in proper form, the dismissal is effective immediately.' " (*S. B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 380; see also *Aetna Casualty & Surety Co. v. Humboldt Loaders, Inc.* (1988) 202 Cal.App.3d 921, 931 ["the clerk [i]s without power to prevent entry of the dismissal" and the dismissal is therefore "effective upon tender of the request"].) "It has been held that the effect of the filing of a proper request for dismissal is '*ipso facto*, to dismiss the case, even though the clerk fails to make entry thereof in the register." (*Egley v. Superior Court* (1970) 6 Cal.App.3d 476, 479-480 (*Egley*).)⁶ Tracy's tender of her written dismissal request therefore effected dismissal of her cross-complaint in its entirety, regardless of the clerk's docket entry.

⁶ Tracy's citation to Code of Civil Procedure section 581d, which provides "[a] written dismissal of an action shall be entered in the clerk's register and is effective for all purposes when so entered," is unavailing in light of authorities holding the clerk is deemed to have entered a voluntary dismissal in the register at the time of filing. (See *Egley, supra*, 6 Cal.App.3d at p. 480 ["In the instant case it does not appear that the order of dismissal had been entered in the clerk's register. The duty to so enter it was ministerial and the failure to perform this duty should not be held to change the rights of

Second, we conclude that because the invalidity of the default judgment was apparent from the face of the record, Gary's motion to vacate was not untimely.

“[V]oluntary dismissal of an entire action deprives the court of both subject matter and personal jurisdiction in that case, except for the limited purpose of awarding costs and statutory attorney fees. [Citations.] ‘An order by a court lacking subject matter jurisdiction is void.’ ” (*Gogri v. Jack In The Box Inc.* (2008) 166 Cal.App.4th 255, 261.) The default judgment's invalidity is thus apparent from the dismissal request in the record.

Tracy argues a party may move to vacate a void judgment at any time only when the invalidity is apparent from the judgment roll, which does not include the dismissal request. (See Code Civ. Proc., § 670, subd. (a) [identifying papers constituting the judgment roll in default cases].) We disagree. Numerous cases have held there is no time limit to attack a void judgment where the invalidity is apparent from the judgment roll *or record*. (*Tearlach Resources Limited v. Western States Internat., Inc.* (2013) 219 Cal.App.4th 773, 779 [“ ‘It is well settled that a judgment or order which is void on its face, and which requires only an inspection of the judgment-roll or record to show its invalidity, may be set aside on motion, at any time after its entry, by the court which rendered the judgment or made the order.’ ”]; accord, *Hayashi v. Lorenz* (1954) 42 Cal.2d 848, 851; *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19; *Reid v. Balter* (1993) 14 Cal.App.4th 1186, 1194; *Andrisani v. Saugus Colony Limited* (1992) 8 Cal.App.4th 517, 523; see also *County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1226 [cases distinguish between “a judgment void on its face, i.e., when the defects appear without going outside the record or judgment roll, versus a judgment shown by extrinsic evidence to be invalid for lack of jurisdiction”].)⁷

the parties. We should regard that done which should have been done and measure the rights of the parties as though the required entry which amounted to a final judgment in the case had been made.’ ”].)

⁷ While Tracy cites cases stating judgments are void on their face when the invalidity is apparent from the judgment roll (e.g., *Ramos v. Homeward Residential, Inc.* (2014) 223

Accordingly, we affirm the trial court's order vacating the default judgment as void because of Tracy's dismissal.

DISPOSITION

The order is affirmed. Gary shall recover his costs on appeal.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

Cal.App.4th 1434, 1440; *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441), we disagree with these cases to the extent they hold facial invalidity cannot also be shown from an examination of the rest of the record.