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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

KAMRAN AZIZI et al.,
Defendants and Appellants,
v.
MAKTAB TARIGHAT OVEYSSI
SHAHMAGHSOUDI,
Plaintiff and Respondent.

A142552

(Alameda County
Super. Ct. No. RG1547879A)

Kamran Azizi, Carl A. Lindstrom, and James A. Otto (appellants) appeal from an order denying Azizi’s motion to set aside a default judgment against Azizi. We affirm.

FACTUAL AND PROCEDURAL HISTORY

This contentious case has a lengthy history and has generated several appeals and numerous writ proceedings. (Case Nos. A136883, A137846, A138115, A141515, A142519, A142555, A144113.) We provide a limited procedural summary, focusing only on the issues raised on appeal and omitting the trial court parties who are not parties on appeal.

Sufi religious school Maktab Tarighat Oveyssi Shahmaghsoudi (MTO) sued Azizi and Hadiyah Shoar (defendants) for allegedly embezzling funds from the school. The complaint alleged 12 causes of action against defendants, including breach of contract, fraud, and embezzlement. MTO sought equitable relief, compensatory damages exceeding \$25,000, and punitive damages. The parties began litigating discovery issues

soon after defendants answered the complaint. Lindstrom began representing defendants in June 2012 and Otto associated in as co-counsel in September 2012.

In November 2012, MTO moved for terminating, issue, or evidence sanctions based on misconduct by Azizi and his counsel at Azizi's deposition. In December 2012, the court denied the motion for terminating sanctions and treated the motion as one to "compel further deposition of [] Azizi[.]" It referred the parties to a discovery referee based on "the excessive number of discovery motions filed[.]" Azizi's withholding of documents, his refusal to appear for his deposition, and Otto's "obstructionist" and "uncivil and unprofessional" behavior. The court ordered Azizi to appear for his deposition, and ordered Lindstrom and Otto to pay \$3,750 in monetary sanctions. The order advised: "If Mr. Azizi, Mr. Lindstrom, and/or Mr. Otto fail to comply with this Order, then [Azizi's] case shall be terminated upon an appropriate motion for terminating sanctions filed by MTO." MTO again moved for terminating, issue, and/or evidence sanctions. In March 2013, the court denied the request for terminating and evidentiary sanctions, but ordered Lindstrom and Otto to pay \$10,500 in monetary sanctions and again advised appellants that Azizi's case "shall be terminated" if they failed to comply with the court's order.

In April 2013, MTO filed another motion for terminating sanctions. The notice of motion stated MTO was seeking "terminating sanctions and or any other sanctions the court deems appropriate" against Azizi because: (1) he and his counsel "intentionally withheld over 500 pages of records, after the close of discovery[;]" and (2) Azizi and his counsel repeatedly refused to appear at Azizi's court-ordered deposition. Azizi opposed the motion. Among other things, he argued MTO's notice of motion failed to identify the specific persons to be sanctioned, the grounds for imposing sanctions, and the nature and extent for imposing sanctions. Azizi also argued the court "lack[ed] jurisdiction to hear" the motion or to award sanctions. Lindstrom and Otto appeared for Azizi at the hearing on the motion.

In April 2013, the court granted the motion "on the basis of discovery abuse." The court catalogued Azizi's persistent and repeated refusal to appear for his court-ordered

deposition and Otto's obstructionist, disruptive, and obnoxious misconduct and discovery abuse. The court concluded Azizi, Lindstrom, and Otto "demonstrated a willful refusal to comply with their discovery obligations and with [the] Court's orders." The court struck Azizi's answer and entered his default. MTO's case against Shoar proceeded to trial and the jury found in favor of MTO. In January 2014, the court entered judgment ordering Shoar to pay restitution, damages, and MTO's costs, and ordering Azizi to pay MTO \$25,000 in damages.

In March 2014, Azizi moved to set aside the default judgment. He argued the default was "void on its face as a violation of due process for failure to give notice of the relief demanded before default was taken." In support of the motion, Lindstrom and Otto filed identical declarations averring: (1) they could not find documents giving Azizi notice of the "potential liability for damages in this case[;]" (2) MTO did not file a "document entitled 'Notice of Damages'" giving Azizi notice of his potential liability; (3) MTO's motion for terminating sanctions did not "give notice for any type of sanctions[;]" and (4) the court erred by issuing various discovery orders sua sponte. Azizi filed a similar declaration.

In opposition, MTO claimed default judgment was not void. MTO argued: (1) it was not required to serve Azizi with a statement of damages because "this is not a personal injury action[;]" (2) the court properly granted MTO's motion for terminating sanctions and entered Azizi's default; (3) the judgment of \$25,000 was consistent with Code of Civil Procedure section 580;¹ and (4) the motion adequately notified Azizi of the sanctions being sought against him.

In June 2014, the court denied Azizi's motion to set aside the default judgment. Appellants filed a notice of appeal from the "Denial of Motion to Set Aside Default and Sanctions (06/03/14)."

¹ All further statutory references are to the Code of Civil Procedure.

DISCUSSION

I.

The Court Did Not Err by Granting MTO's April 2013 Motion for Terminating Sanctions and Entering Azizi's Default

California law “authorizes a range of penalties for conduct amounting to ‘misuse of the discovery process,’” including terminating sanctions. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 991, quoting § 2023.030.) Misuses of the discovery process include: “(d) Failing to respond or to submit to an authorized method of discovery. [¶] (e) Making, without substantial justification, an unmeritorious objection to discovery. [¶] (f) Making an evasive response to discovery. [¶] (g) Disobeying a court order to provide discovery.” (§ 2023.010.) Terminating sanctions may take the form of “[a]n order rendering a judgment by default against [the offending] party.” (§ 2023.030, subd. (d)(4).) The court has broad authority to impose discovery sanctions. (*Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 36, superseded by statute on another ground in *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573.)

A court may order a terminating sanction for discovery abuse “after considering the totality of the circumstances: [the] conduct of the party to determine if the actions were willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery.” (*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246 (*Lang*)). “[W]here a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.” (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280 (*Mileikowsky*)). Numerous courts have properly imposed terminating sanctions when parties have willfully disobeyed one or more discovery orders. (*Lang, supra*, at pp. 1244-1246 [discussing cases].) Here, the court was well within its discretion to grant MTO’s April 2013 motion for terminating sanctions and to enter Azizi’s default because there was ample evidence Azizi’s discovery violations were “willful, preceded by a history of

abuse, and . . . that less severe sanctions would not produce compliance with the discovery rules” (*Mileikowsky, supra*, at pp. 279-280.)

We reject Azizi’s claim that the court “violated due process” by granting MTO’s motion for terminating sanctions and entering Azizi’s default.² There was no due process violation. MTO’s notice of motion for terminating sanctions specified the nature of the relief sought — terminating sanctions — and the grounds for such relief — Azizi, Lindstrom, and Otto’s repeated and willful discovery violations. (§ 1010.) Azizi was given notice and an opportunity to be heard: he filed an opposition to the motion and his attorneys opposed the motion at a hearing. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2014) § 9:2.2, p. 9(1)-2.) Azizi was well aware of the grounds for MTO’s motion and his disagreement with the court’s order does not demonstrate an abuse of discretion.

II.

The Denial of Azizi’s Motion to Set Aside the Default Judgment Was Not an Abuse of Discretion

A court has inherent power to set aside a void judgment or order. (8 Witkin, *Cal. Procedure* (5th ed. 2008) Attack on Judgment in Trial Court, § 206, p. 811.) In addition, section 473, subdivision (d) provides that a court “may, on motion of either party after notice to the other party, set aside any void judgment or order.” This provision “gave express statutory recognition to [the] inherent power of the court.” (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19, fn. 11.)

Appellants appeal from the denial of Azizi’s motion to set aside the default judgment. As MTO correctly observes, Lindstrom and Otto do not have standing to

² Lindstrom and Otto do not have standing to challenge the April 2013 order granting MTO’s motion for terminating sanctions and entering Azizi’s default because they were not “aggrieved” by the order. (§ 902 [“[a]ny aggrieved party may appeal”].) “Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal. [Citations.] An aggrieved person . . . is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision. [Citations.]” (*In re K.C.* (2011) 52 Cal.4th 231, 236.) Appellants’ opening brief makes no attempt to establish Lindstrom and Otto were aggrieved by the April 2013 order.

appeal from the denial of Azizi’s motion because they are not “aggrieved” by the denial. (§ 902.) Lindstrom and Otto do not contend — and cannot establish — they are aggrieved by the order denying Azizi’s motion to set aside the default judgment. As an “aggrieved” party under section 902, Azizi has standing to challenge the denial of his motion to set aside the default judgment, and we review that denial for abuse of discretion. (*Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1318-1319.) Azizi bears the burden of demonstrating an abuse of discretion. (*H.A. Pulaski, Inc. v. Abbey Contr. Specialties, Inc.* (1969) 268 Cal.App.2d 883, 886.)

He cannot satisfy that burden. As he did in the court below, Azizi claims the default judgment is void because MTO did not serve a statement of damages in accordance with section 425.11, which requires a plaintiff in a personal injury or wrongful death action to provide a defendant with a statement “setting forth the nature and amount of damages being sought . . . [¶] before a default may be taken.” (§ 425.11, subds. (b), (c).) Azizi is wrong. “Statements of damages are used only in personal injury and wrongful death cases, in which the plaintiff may not state the damages sought in the complaint. [Citation.]” (*Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th 199, 206, fn. 4 (*Sole Energy*)). MTO was not required to serve a statement of damages because the complaint did not allege any causes of action for personal injury or wrongful death. The court did not err by denying Azizi’s motion to set aside the default judgment.

III.

We Decline to Consider Appellants’ Challenge to the March 2013 Order Directing Lindstrom and Otto to Pay Monetary Sanctions

Appellants also challenge the court’s March 2013 order directing Lindstrom and Otto to pay \$10,500 in monetary sanctions.³ We decline to consider this claim for several reasons. First, Azizi does not have standing to appeal this order because he was not

³ Throughout their opening brief, appellants urge us to order the trial court to “void its order[] of December 31, 2012.” Appellants fail to support their contention with any cogent or persuasive argument. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 [issue unsupported by cognizable legal argument “may be deemed abandoned and discussion by the reviewing court is unnecessary”].)

ordered to pay sanctions. As a result, Azizi was not “aggrieved” by the March 2013 order. (§ 902; *People v. Indiana Lumbermens Mutual Ins. Co.* (2014) 226 Cal.App.4th 1, 10 [client was not “aggrieved by the sanctions ruling because it was not ordered to pay sanctions”].)

Although Lindstrom and Otto were “aggrieved” by the March 2013 order (§ 902), we decline to consider their challenge because they failed to timely appeal. The order directing Lindstrom and Otto to pay \$10,500 in monetary sanctions was immediately appealable under section 904.1, subdivision (a)(12), which authorizes an appeal from “an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).” Lindstrom and Otto did not timely appeal from that order. (Cal. Rules of Court, rule 8.104(a).)

We decline to consider Lindstrom and Otto’s challenge to the March 2013 order for the additional reason their notice of appeal does not mention the order. Appellants’ notice of appeal states the appeal is taken from the “Denial of Motion to Set Aside Default and Sanctions (06/03/14).” “[W]here several judgments and/or orders . . . are separately appealable . . . each appealable judgment and order must be expressly specified—in either a single notice of appeal or multiple notices of appeal—in order to be reviewable on appeal.” [Citations.] The policy of liberally construing a notice of appeal in favor of its sufficiency [citation] does not apply if the notice is so specific it cannot be read as reaching a judgment or order not mentioned at all. [Citation.]” (*Filbin v. Fitzgerald* (2012) 211 Cal.App.4th 154, 173.) We lack jurisdiction to consider any challenge to the March 2013 order because appellants failed to include that order in their notice of appeal. (*Sole Energy, supra*, 128 Cal.App.4th at p. 239.)

DISPOSITION

The order denying Azizi’s motion to set aside the default judgment is affirmed. MTO shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

Jones, P.J.

We concur:

Simons, J.

Needham, J.