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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

EDITH MAZZAFERRI, as Trustee, etc.,

Plaintiff and Respondent,

v.

RONALD MAZZAFERRO,

Defendant and Appellant.

A143446

(Sonoma County
Super. Ct. No. SPR 84785)

Ronald Mazzaferro appealed from a trial court order quieting title to two properties in Sonoma County in his mother, Edith Mazzaferri, as trustee for the Mazzaferri Living Trust, expunging encumbrances appellant had recorded against the properties, and enjoining appellant from further encumbering the properties. Despite prior court orders confirming respondent as the sole trustee of the trust and quieting title to the properties in respondent, appellant has repeatedly filed false encumbrances against them, including after one of the properties was sold.

Michelle Watson and Reiner Triltsch, trustees of the BIB Properties Trust, the current owners of one of the properties, moved to intervene in this appeal and for dismissal of the appeal. Respondent filed a statement of non-objection to intervention and joinder in the motion to dismiss.

We grant the motions and dismiss the appeal.

STATEMENT OF THE CASE AND FACTS

Joseph and Edith Mazzaferri created a revocable intervivos trust on May 10, 1978 (1978 Trust). In June 2013, the trial court held that the terms of the 1978 trust were

revoked and superseded by subsequent amendments and restatements and that, at the time of Joseph's death in 2007, the operable trust instrument was the Mazzaferri Living Trust as Amended and Restated in 2006 (2006 MLT). The court confirmed respondent as the sole trustee of all trusts created under the 2006 MLT, including the Mazzaferri bypass trust.

In an October 16, 2013 order the court reiterated that no one other than the trustee had a present estate, right, title or interest in any assets belonging to the bypass trust and quieted title to three properties in respondent, as trustee. The properties are 583 Curtin Lane (583 Curtin) and 599 Oregon Street (599 Oregon) in Sonoma County and 4581 E. Highway 20 (4581 E. Highway) in Lake County.

After respondent listed 583 Curtin and 599 Oregon for sale in March 2014, appellant recorded a series of "bogus" mechanic's liens and notices of pending action against the properties. Respondent entered into a contract to sell 583 Curtin to Michelle N. Watson and Reiner M. Triltsch, Trustees of the BIB Properties Trust (Intervenors). The closing date for the transaction initially was May 15 and was later extended until July 31.

On May 12, 2014, respondent filed an ex parte petition to expunge notices of pending action, for attorney fees, for an injunction and to consolidate this case with another one. This motion was denied the next day. On June 13, 2014, respondent filed a noticed motion to expunge notices of pending action and mechanic's liens, for an injunction, for attorney fees, and to consolidate.

Before a hearing set for July 30, 2014, the court issued a tentative decision granting the motion to expunge, indicating petitioners had not submitted authority for the requested injunction and requiring appearances on the other requests.

On the afternoon of July 30, just ahead of the hearing on the motion to expunge, appellant recorded another set of liens against the properties, as well as a grant deed (2014052666) purporting to transfer 583 Curtin from himself, as trustee for the 1978 Trust, to the "Private Ronald Mazzaferro Protection Against Elder Abuse Living Trust [RM Trust], of and to which Ronald Mazzaferro is Trustee," and a grant deed reflecting

the same transfer of interest for 599 Oregon (201452667). As stated above, the trial court had previously held the 1978 Trust was revoked and superseded by the 2006 MLT.

After the hearing on July 30, Judge Shaffer took the matter under submission. On August 4, 2014, the judge filed an order granting the motion to expunge notices of action and mechanic's liens and reserving ruling on the requests for injunction and attorney fees.

On the same date, August 4, 2014, respondent brought an ex parte motion before Judge Wick to expunge the four additional encumbrances appellant had recorded on July 30 and for an order enjoining appellant from further encumbering the properties. She stated that appellant had been filing encumbrances against the properties to prevent her from selling them, despite the court having previously cleared title in respondent; that ex parte relief was necessary because the sale of one of the properties would fall through if respondent could not obtain clear title in the next couple of days; and that the injunction was necessary to prevent appellant from continuing to encumber the properties to prevent their sale. Further, appellant's blocking of the property sales was causing respondent, then almost 90 years old, so much stress that her health was suffering. Respondent stated although Judge Shaffer had expunged notices of pending action and mechanic's liens appellant had recorded against 583 Curtin and 599 Oregon in the order filed on August 4, and her rulings made clear she intended to expunge all the encumbrances, the order did not identify all of the liens by instrument number. Respondent offered a proposed order identifying the instrument numbers of all the encumbrances to be expunged, including the liens and deeds recorded on July 30, as well as the liens and notices of action that had been ordered expunged by Judge Shaffer. Appellant filed a verified objection to the motion.

By order filed August 8, 2014, Judge Wick quieted title to 583 Curtin in respondent as Trustee for the 2006 MLT and expunged the deed appellant had recorded for that property (2014052666), as well as the other grant deed, two notices of pendency of action and eight mechanic's liens. The court prohibited appellant from "recording or causing to be recorded any document" against 583 Curtin, 599 Oregon or "any Mazzaferri Living Trust property whose title is held by Edith Mazzaferri as trustee," and

from interfering in any way with the sale of such property, without prior approval from the court.

On August 11, 2014, respondent transferred 583 Curtin to Intervenor; the grant deed was recorded on September 5, 2014.

On September 3, 2014, upon the request of respondent's attorney, Judge Wick filed a corrected order containing the same terms as his August 8 order but adding the instrument numbers for two of the liens being expunged, those numbers having been inadvertently omitted when counsel drafted the August 8 order.

On September 4, 2014, the Judge Shaffer filed an order on the issues reserved after the July 30 hearing, denying without prejudice the motions for injunction and for consolidation of cases.

On September 19, 2014, appellant, as trustee of RM Trust, recorded a correction deed purporting to grant 583 Curtin to the RM Trust (2014066376).

On October 28, 2014, appellant filed a notice of appeal from the September 3, 2014, order. Having previously been declared a vexatious litigant, appellant sought and obtained permission from this court to appeal the September 3 order. After an initial default for failure to deposit fees for the preparation of the record on appeal, this court granted relief from default on May 2, 2016.

On January 2, 2015, appellant, as trustee of RM Trust, recorded another correction deed purporting to grant 583 Curtin to the RM Trust (2015000244).

In March 2015, appellant wrote three letters to the contractor working on 583 Curtin, insisting that the work was unauthorized by the "title holder of record," whom he identified as himself as trustee for the RM Trust, under the grant deeds recorded on July 30 (2014052666), September 19, 2014 (2014066376) and January 2, 2014 (2015000244). Appellant stated that the deed transferring title to 583 Curtin from respondents to Intervenor was false and fraudulent. According to the declaration of Intervenor's attorney, Ronald posted stop work notices at the property, again purporting to be the legal owner under the recorded instruments just listed.

Intervenors filed the present motion on May 10, 2016, seeking to intervene in the appeal and moving for dismissal of the appeal. Respondent filed a statement of non-objection to intervention and joined in the motion to dismiss.

DISCUSSION

I.

Under Code of Civil Procedure section 387, “[u]pon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding.” “The right to intervention may be permissive or unconditional. It is permissive when a person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both of the parties. (Code Civ. Proc., § 387, subd. (a).) It is unconditional when the person seeking intervention claims an interest relating to the property or transaction that is the subject of the action, the disposition of the action may impair or impede the person’s ability to protect that interest, and the interest is not being adequately represented by existing parties. (Code Civ. Proc., § 387, subd. (b).)” (*Mylan Laboratories Inc. v. Soon-Shiong* (1999) 76 Cal.App.4th 71, 77-78.) As the current owners of 583 Curtin, Intervenors’ interests are uniquely and directly at stake in this case.

Appellant’s arguments against intervention are meritless. The first is based on the fact that Intervenors’ counsel, Fidelity National Law Group (FNLG), is the law division of Fidelity National Title Group, Inc. (FNTG), which recorded the grant deed transferring 583 Curtin to the Intervenors on September 5, 2014. Appellant asserts that FNTG necessarily knew when it recorded the deed that appellant had previously recorded a notice of pendency of action against 583 Curtin on August 18, 2013 (2013039927) and FNLG therefore should have sought to intervene in the trial court. According to Ronald, FNLG lacks standing to intervene on appeal. But FNLG’s standing is irrelevant. It is Intervenors who seek to intervene, not the counsel representing them.

Appellant also argues that section 387 limits intervention to the trial court, quoting the statement in *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199, that the “trial court is vested with discretion to determine whether the

standards for intervention have been met.” This statement says nothing about whether *only* a trial court can consider requests for intervention. Appellant’s only other argument on this point is that FNLG lacks standing because it has not established it was aggrieved by the trial court’s order, and its only remedy is to file a postjudgment motion to intervene in the lower court and seek to vacate the judgment. Again, it is FNLG’s *client* who seeks to intervene, not FNLG. Intervenors had no basis to intervene in the trial court, before they became the legal owners of 583 Curtin. Nor would they have had reason to seek vacation of the trial court’s order—the order quieting title in respondent and enjoining appellant from encumbering the properties is what permitted respondent to transfer 583 Curtin to Intervenors. Intervenors’ interest in intervening in this litigation arose only when appellant appealed that order, threatening the validity of the transaction.

Accordingly, we grant the motion to intervene.

II.

The motion to dismiss this appeal is based on the “disentitlement doctrine,” under which a party who fails to comply with trial court orders may be precluded from pursuing an appeal.¹ (*Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 757 (*Gwartz*)). “An appellate court has the inherent power to dismiss an appeal by a party that refuses to comply with a lower court order. (*Stoltenberg v. Ampton Investments Inc.* (2013) 215 Cal.App.4th 1225, 1229) The doctrine of disentitlement is not jurisdictional, but is a discretionary tool that may be used to dismiss an appeal when the balance of the equitable concerns makes dismissal an appropriate sanction. (*Id.* at p. 1230.) The rationale underlying the doctrine is that a party to an action cannot seek the aid and assistance of an appellate court while standing in an attitude of contempt to the legal orders and processes of the courts of this state. (*Ibid.*) No formal judgment of contempt is required under the doctrine of disentitlement. (*Ibid.*) An appellate court may dismiss an appeal where the appellant has willfully disobeyed the lower court’s orders or engaged

¹ Intervenors initially sought to dismiss the appeal on the additional ground that appellant had failed to procure the record and prosecute the appeal. They withdrew this argument after appellant was granted relief from default.

in obstructive tactics. (*Ibid.*)” (*Gwartz*, at pp. 757-758.) “The disentitlement doctrine ‘is particularly likely to be invoked where the appeal arises out of the very order (or orders) the party has disobeyed.’ (Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2014) ¶ 2:340, p. 2–203.) Moreover, the merits of the appeal are irrelevant to the application of the doctrine. (See *Stone v. Bach* (1978) 80 Cal.App.3d 442, 448 [rejecting defendant’s claim that dismissal was not warranted because the orders he violated were ‘invalid’].)” (*Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 265 (*Ironridge*).)

In *Gwartz*, after the defendants appealed a judgment, the trial court issued several orders prohibiting them from transferring or concealing assets. (*Gwartz, supra*, 231 Cal.App.4th at pp. 755-756.) The plaintiffs moved to dismiss the appeal, listing 47 transactions violating the order prohibiting transfers of assets. (*Id.* at p. 757.) Although they opposed the motion, the defendants neither denied that any of the transfers occurred nor explained how they might have been permissible. (*Id.* at pp. 760-761.) The court concluded that the relevant equitable principles favored dismissal of the appeal because the record showed “the defendants are seeking the benefits of an appeal while willfully disobeying the trial court’s valid orders and thereby frustrating defendant’s legitimate efforts to enforce the judgment.” (*Id.* at p. 761.)

In *Ironridge*, while appealing an ex parte order requiring the defendant to issue stock to the plaintiff and prohibiting the defendant from transferring stock to any third parties until it had completed the required transfer to plaintiff, the defendant transferred millions of shares to third parties and none to plaintiff. The court found dismissal of the appeal an appropriate remedy for the “flagrant disregard” of the trial court’s order. (*Ironridge, supra*, 238 Cal.App.4th at pp. 261-262.) The defendant opposed the motion to dismiss the appeal by arguing the trial court’s orders were invalid. (*Id.* at p. 266.) *Ironridge* court noted that “ ‘[a] person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid’ ” (*Id.* at p. 267, quoting *In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35), but “ ‘may not assert as a defense that the order merely

was erroneous.’ ” (*Ironridge*, at p. 267.) Because the order was neither void nor voidable, the defendant “had no cause to disobey the court’s order, but did so, repeatedly.” (*Ibid.*)

Appellant has repeatedly violated both the specific trial court order he is now seeking to attack on appeal and various other trial court orders he did not appeal. After the August 8 and September 3, 2014, orders prohibited appellant from recording further encumbrances against the properties without prior court approval, appellant recorded two additional grant deeds purporting to transfer 583 Curtin property. This conduct directly violated the order from which the present appeal was taken. Moreover, after the trial court’s June 2013 and October 2013 orders establishing that the 1978 Trust had been superseded by the 2006 MLT, that respondent was the sole trustee and held all title to and interest in the trust property, and quieting title to 583 Curtin (and other properties) in respondent—orders which Ronald apparently did not appeal—Ronald had no legal basis for continuing to act as trustee or asserting an interest in the properties. He nevertheless continued to record deeds purporting to transfer trust property, to record other encumbrances against the properties and to interfere with the construction at 583 Curtin by purporting to own the property. Appellant’s flagrant refusal to abide by the trial court’s orders is precisely the conduct the disentitlement doctrine is intended to address.

Appellant asserts that the disentitlement issue is “moot” because the September 3, 2014 order from which the appeal was taken was issued *ex parte* without notice to him and therefore is void. As noted above, *Ironridge* indicates that the disentitlement doctrine would not apply if the orders violated by an appellant were void, as a person may refuse to comply with a court order and raise voidness of the order as a defense to sanctions. (*Ironridge, supra*, 238 Cal.App.4th at p. 267.) As described above, however, September 3 order only “corrected” the August 8 one by adding instrument numbers for liens being expunged. These were not newly addressed liens; they were the express subject of the August 4 motion, but not identified in the resulting order by instrument

number. Appellant does not claim lack of notice of the August 4 motion and hearing and in fact filed opposition to it.²

The same point resolves appellant's argument that because the September 3 order was unnoticed and no "injunction action" was filed against him under Code of Civil Procedure section 527, the injunction expired 15 to 22 days after issuance under Code of Civil Procedure section 527, subdivisions (c) and (d)(1) and (2).³ This argument ignores the fact that the injunction was imposed in Judge Wick's August 8 order, which was entered after a hearing of which appellant *did* have notice, on a motion to which appellant filed opposition. The correction made by the September 3 order did not affect the injunction previously imposed in the August 8 order.

Appellant also argues the disentitlement doctrine should not be applied because respondent obtained the injunction ordered by Judge Wick in the September 3 order through an "unnoticed" ex parte motion after Judge Shaffer had previously denied her request for an injunction. This is simply wrong. Judge Shaffer denied the request for

² Appellant additionally maintains that *all* the trial court orders in the underlying case are void, stating in a declaration in opposition to the motion to dismiss, on information and belief, that briefing in a different appeal, by a different party, from a March 23, 2016 order in the same underlying action (*Mazzafferri v. Mazzafferri*, A148076), will show that "due to complete failure of notices," the trial court "never acquired and did not have subject matter jurisdiction." This reference to an argument to be made by a different person in a different appeal is plainly insufficient to avoid application of the disentitlement doctrine to appellant in this appeal. The same is true of appellant's assertion, belatedly raised in a document entitled "Mandatory Notice of Mootness," that the trial court's lack of subject matter jurisdiction will be demonstrated by the briefing in appellant's own separate appeal from the March 23, 2016 order (*Mazzafferri v. Mazzafferri*, No. A148421). In fact, appellant himself states that the appeals in Nos. A149076 and A148421 "subsume[]" and "moot[]" the present appeal.

³ Code of Civil Procedure section 527, subdivision (c), provides that no temporary restraining order (TRO) may be granted without notice to the other party unless specified conditions are met. Subdivision (d) provides that if a TRO is granted without notice pursuant to subdivision (c), the matter must be made returnable on an order to show cause (OSC) no later than 15 days (or 22 days for good cause) from issuance of the TRO, and the party who obtained the TRO must serve a copy of the complaint and the OSC within five days.

injunction by order filed on September 4, 2014. This was *after* Judge Wick granted respondent's request for an injunction, initially in the August 8, 2014, order and reiterated in the corrected order filed on September 3, 2014. Additionally, the request for injunction Judge Shaffer ultimately denied was made in respondent's June 13, 2014 motion, the judge having reserved decision on the issue after the July 30, 2014 hearing. The request for injunction Judge Wick granted sought an injunction of the same substance but on additional facts—appellant's continued recording of encumbrances after the July 30 hearing.

Appellant has been repeatedly flouting the trial court's orders for years, unjustifiably interfering with the legal rights of his elderly mother, as trustee, and of the new owners of 583 Curtin. The equities compel application of the disentitlement doctrine and dismissal of this appeal.

DISPOSITION

The motion to intervene is granted.

The appeal is dismissed.

Costs on appeal to respondent and Intervenors.

Kline, P.J.

We concur:

Richman, J.

Stewart, J.