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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

NATHAN HALL,

Plaintiff and Appellant,

v.

ZANE THOMAS et al.,

Defendants and Respondents.

A145111

(Marin County
Super. Ct. No. CIV1404385)

Nathan Hall, a prison inmate at San Quentin, filed suit against corrections officer Zane Thomas and the California Department of Corrections and Rehabilitation (CDCR), asserting damages claims for invasion of privacy and defamation based on an incident in which Thomas filed disciplinary charges against Hall for cheating on a college examination. The trial court sustained a demurrer to the complaint, and Hall appealed. We now affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

Hall elected to take a correspondence course in English offered to San Quentin inmates through Feather River College. The final examination for the course required students to write four essays. Thomas was the proctor for the exam. The exam was to be taken on a “closed book” basis, without reference to notes. Thomas later reported that

¹ We take these facts from pleadings and attached exhibits submitted by respondents to the trial court by a request for judicial notice in support of their demurrer. That request, which appellant did not oppose, was granted by the trial court in its order sustaining respondents’ demurrer. Appellant does not argue in this appeal that the granting of the respondents’ request for judicial notice was error.

five minutes into the exam he observed Hall with nine pre-written essays, pretending to write the essays during the exam. Since not enough time had elapsed for Hall to have produced the essays, and since Hall had only been given three blank sheets of paper, Thomas concluded that Hall cheated on the exam. Hall, for his part, had an explanation. He claimed that 30 minutes had elapsed before Thomas raised any issue concerning his essays; that the course instructor had passed out the essay questions to students in advance; and that he asked for and was given extra sheets of paper from at the exam site.

Thomas filed a Rules Violation Report (a so-called “CDC 115” disciplinary citation) accusing Hall of cheating on the exam and charging violation of two separate CDCR regulations (Cal. Code Regs., tit. 15, § 3041, subd. (a) [“Inmates must perform assigned tasks diligently and conscientiously. Inmates must not . . . avoid performance in assigned work, education and programs . . .”], and subd. (d) [“Inmates assigned to educational . . . assignments . . . or other training programs must cooperate with the instructor or the person in charge, and must comply with instructions . . .”].) After a hearing on the citation, the allegations were sustained but in light of certain “mitigating factors” reduced from a “Division F” offense classified as “Serious” to an administrative conduct violation under section 3041, subdivision (a) only.

Unsatisfied when he failed to convince CDCR to expunge the CDC 115 completely from his central file after pursuing administrative review, Hall filed a lawsuit against Thomas (*Hall v. Thomas I*), seeking damages for defamation. Thomas successfully demurred on grounds the claim was based on privileged conduct, and alternatively, since his alleged conduct was in his official capacity, he was immune from liability, no exception to immunity having been shown. Rather than appeal from the granting of the demurrer in *Hall v. Thomas I*, Hall filed another lawsuit, *Hall v. Thomas II*, naming as defendants both Thomas and the CDCR, and alleging defamation again, but this time adding a new claim for invasion of privacy based on the same allegation of having been falsely accused of cheating by Thomas.

The defendants in *Hall v. Thomas II* successfully demurred based on the argument that, because Hall’s second lawsuit arose out of the same operative facts as his first, it

was barred by res judicata. Hall now appeals, focusing not on the merits, but on what he contends is a fundamental procedural defect in how the demurrer was presented.

The defendants filed and served their demurrer on January 27, 2015, but failed to specify in the notice of demurrer any date for a hearing. They later secured a hearing date of March 10, 2015, but failed to serve an amended notice of demurrer advising Hall of the hearing date. Hall filed a written opposition to the demurrer 30 days after it was filed, on February 27, 2015, but having received no formal notice of the hearing date, was unable to arrange to appear telephonically for argument on March 10, 2015. He learned of the hearing date, he now claims, only because the court's tentative ruling granting the demurrer was faxed to San Quentin and delivered to him a few days before the scheduled hearing .

After the court adopted its tentative ruling granting the demurrer on March 23, 2015, Hall filed a motion for reconsideration, which was granted in part. In light of the defect in notice of the March 10, 2015 hearing date, the court vacated its March 23, 2015 order, reinstated its tentative ruling sustaining the demurrer, and gave the parties another opportunity to appear and present argument on the tentative ruling. Hall was able to arrange to appear telephonically at a re-scheduled hearing date set for April 28, 2015 and did present argument on that date, but after taking the matter under submission the court adhered to its original ruling and granted the demurrer on May 12, 2015.

II. DISCUSSION

Hall seeks reversal of the judgment against him in *Hall v. Thomas II* based on respondents' failure to serve notice of the hearing on their demurrer, a procedural defect which he claims violated not only the California Rules of Court but his state and federal constitutional rights to procedural due process. We see no error and no prejudice in any event. Hall was afforded a full opportunity to be heard in opposition to respondents' demurrer. He filed an opposition brief and a motion for reconsideration—a motion which was granted in part—and he eventually had a chance to present oral argument. Nothing in his written opposition to the demurrer, his motion for reconsideration, or the oral argument he was given the opportunity to present, persuaded the trial court to change

its determination that he had already litigated this case once and thus was barred on res judicata grounds from doing so again.

Assuming there might be grounds to complain where a trial court denies a litigant any opportunity to present oral argument on a demurrer (cf. *Mediterranean Construction Co. v. State Farm Fire & Casualty Co.* (1998) 66 Cal.App.4th 257, 265 [in deciding how to handle summary judgment motions, trial judges “retain extensive discretion regarding how the hearing is to be conducted, including imposing time limits and adopting tentative ruling procedures [citation], [but] they may not entirely bar parties from” presenting oral argument]), that is not what happened here. By his appearance on April 28, Hall had his day in court. Defects in a notice of a motion are waived by appearance and participation at the hearing. (*Hammond Lumber Co. v. Bloodgood* (1929) 101 Cal.App. 561, 563–564.)

III. DISPOSITION

The judgment is affirmed.

Streeter, J.

We concur:

Ruvolo, P.J.

Reardon, J.