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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

WILLIAM RUSSELL DOUGHERTY,

Plaintiff and Respondent,

v.

DAVID S. KARTON, A LAW
CORPORATION,

Defendant and Appellant.

B230074

(Los Angeles County
Super. Ct. No. BC336672)

**ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING**

[No change in the judgment]

IT IS ORDERED that the opinion filed in the above-captioned matter on October 11, 2012, be modified as follows:

1. On page 2, the first paragraph under Facts, add a footnote to the end of the sentence commencing with “By October 1999, Karton had collected roughly”

The footnote should read:

“There is some question whether the \$56,000 collected was applied to the default judgment or to the administrative claim for attorney’s fees. (*Id.* at p. 142, fn. 4.)”

This modification effects no change in the judgment.

The petition for rehearing filed by Appellant on November 13, 2012, is denied.

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(Los Angeles County
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APPEAL from an order of the Superior Court of Los Angeles County.

Ruth Ann Kwan, Judge. Affirmed.

Law Offices of Robert S. Gerstein, Robert S. Gerstein; The David Firm and Henry Stuart David for Defendant and Appellant.

Law Offices of James T. Duff, James T. Duff; Musick, Peeler & Garrett and Cheryl A. Orr for Plaintiff and Respondent.

The trial court ruled that a judgment was void, and, on that basis, entered an order setting aside the judgment. We affirm the trial court's order.

FACTS

The First Round of Litigation, Part 1

In March 1999, David S. Karton, a lawyer, sued William Russell Dougherty.¹ Karton's complaint alleged that Dougherty failed to pay for legal services provided in a divorce case. The complaint alleged that Dougherty owed Karton the sum of \$65,246.63, plus interest. On August 11, 1999, the trial court entered a default judgment in favor of Karton and against Dougherty in the principal amount of \$65,246.63, plus \$18,224.82 in accrued prejudgment interest, plus costs of \$679.50 and attorney fees of \$2,525.93, for a total judgment of \$86,676.88. (*David S. Karton, A Law Corp. v. Dougherty* (2009) 171 Cal.App.4th 133, 136-139 (*Karton*)). By October 1999, Karton had collected roughly \$56,000 on the default judgment (*id.* at p. 139), leaving Dougherty owing Karton about \$30,000. As we detail below, Karton subsequently claimed he spent more than \$1.2 million over a course of ensuing years, in actual out-of-pocket expenses and value of legal services, in efforts to protect and collect the \$30,000 remaining owed under the 1999 default judgment.

The First Round of Litigation, Part 2

Following entry of the 1999 default judgment described above, Dougherty pursued a number of unsuccessful procedural routes challenging the judgment. Karton defended the judgment, and also pursued further collection efforts against Dougherty in California, Pennsylvania and Tennessee. (*Karton, supra*, 171 Cal.App.4th at pp. 136-139.) In April 2003, Karton applied to the trial court for an award of supplemental attorney fees, costs and interest which he claimed he was due as a result of his efforts to beat back Dougherty's challenges to the 1999 default judgment, and to collect the unpaid portion of the judgment. In July 2003, the trial court entered an order increasing the principal amount of the 1999 default judgment to nearly \$350,000, plus interest of approximately

¹ Our references to Karton include his law corporation.

\$40,000. (*Id.* at pp. 141-142.) In February 2007, Karton again applied to the trial court for an award of supplemental attorney fees, costs and interest which he claimed he was due as a result of his ongoing efforts to defend and enforce payment on the 1999 default judgment. Karton asserted he was owed more than \$1.2 million. (*Id.* at p. 144.) On February 23, 2007, the court granted Karton's fee request, increasing the amount of the 1999 default judgment to a total of roughly \$1.3 million, and instructing the clerk to issue a writ of execution upon Karton's request. (*Ibid.*)

The First Round of Litigation, Part 3

In May 2007, Dougherty filed a motion to vacate the 1999 default judgment in the *Karton* first round of litigation, including the series of ensuing orders that had morphed it into a \$1.3 million award in favor of Karton. The motion argued a variety of grounds for vacating the judgment based upon Code of Civil Procedure section 473, subdivisions (b) and (d), and the trial court's inherent equitable powers. (*Karton, supra*, 171 Cal.App.4th at pp. 144-145.) In August 2007, the trial court entered an order denying Dougherty's motion. Dougherty appealed.

In February 2009, Division One of our court reversed the 1999 default judgment, in all its subsequent incarnations, ruling it was "void on the face of the record" because it had granted relief exceeding what was demanded in the complaint. (*Karton, supra*, 171 Cal.App.4th at pp. 149-151.)

Division One's disposition reads: "The superior court's order of August 8, 2007, is reversed, and the superior court is directed to enter a new and different order both (1) granting Dougherty's motion for relief and (2) vacating the superior court's February 23, 2007, order on Karton's application for a second award of supplemental attorney fees and costs. The superior court is further directed to enter an order vacating and setting aside, nunc pro tunc, the default judgment entered on August 11, 1999." (*Karton, supra*, 171 Cal.App.4th at p. 152.) The Supreme Court denied Karton's petition for review. (*Ibid.*)

The Second Round of Litigation Giving Rise to the Current Appeal

In July 2005, in the midst of the events unfolding in the *Karton* first round of litigation summarized above -- and before Division One's decision in *Karton, supra*, 171 Cal.App.4th 133 was issued -- Dougherty filed a new and separate civil action against Karton, asserting a collateral attack on the 1999 default judgment entered in the *Karton* first round of litigation. Dougherty's "collateral attack complaint" alleged that the 1999 default judgment entered was "void" for a variety of reasons, including that the relief it granted exceeded the relief demanded in the complaint, and that the trial court had not obtained personal jurisdiction over Dougherty.

Karton filed a demurrer to Dougherty's collateral attack complaint. The demurrer argued that the 1999 default judgment entered in the *Karton* first round of litigation was long-final, which meant that the doctrines of res judicata and collateral estoppel barred Dougherty's collateral attack complaint.

In January 2006, the trial court entered an order sustaining Karton's demurrer to Dougherty's collateral attack complaint. On February 23, 2006, the trial court entered judgment in favor of Karton and against Dougherty, including an award of attorney fees. In April 2006, the court entered an order fixing the amount of attorney fees at roughly \$96,000.

Dougherty filed an appeal. In May 2006, our court dismissed the appeal pursuant to Code of Civil Procedure section 1030 because Dougherty did not post a bond on appeal. Karton thereafter filed a motion in the trial court for attorney fees incurred on appeal. In October 2006, the trial court entered an order awarding further attorney fees to Karton in the amount of roughly \$19,000. In sum, as a result of the second round of litigation, Dougherty owed a judgment debt of roughly \$120,000 to Karton. The judgment in the second round of litigation became final sometime in late 2006.

The Setup for the Current Appeal Arising from the Second Round of Litigation

Roughly two years after the 2006 judgment in the second round of litigation on Dougherty's collateral attack complaint became final, Division One of our court issued its opinion in *Karton, supra*, 171 Cal.App.4th 133. By its opinion, Division One vacated the 1999 default judgment entered in the *Karton* first round of litigation. Thus, by mid-2009 or so, Dougherty was free from the \$1.3 million default judgment from 1999 in the *Karton* first round of litigation, but still owed \$120,000 (plus accumulating interest) by virtue of the judgment for attorneys fees entered in 2006 in his collateral attack action against the 1999 default judgment.

In April 2010, Dougherty filed a motion for relief from the 2006 judgment on his collateral attack complaint in the second round of litigation, including the \$120,000 attorney fee award. The trial court thereafter held a number of hearings to address the issues raised by Dougherty's motion. Eventually, the court directed the parties to address the issue of the court's jurisdiction to vacate the 2006 judgment in Dougherty's collateral attack action.

By way of rounds of briefing and a series of hearings from September through November 2010, the parties presented their respective positions to the trial court on the issue of vacating the 2006 judgment on Dougherty's collateral attack complaint. On December 22, 2010, the court issued an order granting Dougherty's motion to vacate the 2006 judgment on his collateral attack complaint. The court set aside the 2006 judgment for the following stated reasons:

“[B]oth parties agree that the judgment in this case is final. [Citations.] However, the parties disagree as to whether the Court has jurisdiction to set aside the Judgment and Orders in this case. [¶] *Karton* argues that an unqualified affirmance ends the litigation, with limited exceptions. The only real exception at issue in this case is the one dealing with a collateral attack on a void judgment. . . . *Karton* contends that this case is one involving ‘judicial error,’ which is not an exception to the unqualified affirmance. In contrast, [Dougherty] argues that this case involves a void judgment [¶] The Court

finds that it has jurisdiction to hear Dougherty’s motion for relief from [the] Judgment and related Orders.

“An unqualified affirmance ends the litigation except as to a collateral attack on a void judgment or order (since affirmance of a void judgment or order is itself void). [Citations.] . . . A void order may be ‘set aside at any time’ and may be ‘attacked at any time, directly or collaterally.’ See [*Hager v. Hager* (1962) 199 Cal.App.2d 259,] 261 (‘a void judgment or order may properly be attacked at any time, directly or collaterally’) (emphasis added.) . . . Since affirmance of a void judgment or order is itself void, the Court finds that a an unqualified affirmance ends the litigation except as to a collateral or *direct* attack on a void order or judgment. As such, the Court has jurisdiction to hear Dougherty’s motion, which is a direct attack on a void judgment.

“Although Karton argues that Dougherty’s claim is really one of judicial error (i.e., ‘that this Court and the Court of Appeal simply “got it wrong” in 2006’), such an argument is misplaced. [Citation.] The instant motion is based upon the existence of a *void* Judgment and Orders, not judicial error. As noted below, the Court’s ruling on the demurrer and subsequent Judgment were based on a Default Judgment [in the *Karton* first round of litigation] which was subsequently found to be void on its face by the Court of Appeal. Moreover, the 2006 Fee Awards directly pertain to this Court’s Judgment and Dougherty’s appeal. Therefore, the Judgment and 2006 Fee Awards are also void.

[¶] . . . [¶]

“Karton . . . argues the Judgment and Fee Awards in this case are not void. However, as discussed below in detail, Karton’s argument lacks merit. Specifically, Karton argues that [the] Judgment in this case was entered on a basis that one other court subsequently concluded was incorrect, which does not render the Judgment void. However, . . . what Karton fails to recognize is that Judgment in the instant case was based upon the 1999 Default Judgment [in the *Karton* first round of litigation] which was determined by the Court of Appeal to be void. [*Rochin v. Pat Johnson Manufacturing*

Co. (1998) 67 Cal.App.4th 1228, 1240 (*Rochin*)] (any order or judgment which gives effect to a void judgment, is itself void).

“It is clear that the Court’s February 26, 2006 Judgment, April 13, 2006 Fee Award, and October 3, 2006 Fee Award all arise out of the 1999 Default Judgment in the *Karton* case, which the Court of Appeal determined was void. As noted above, *Karton*’s demurrer [in the current collateral attack case] was sustained without leave to amend on the grounds that the ‘doctrine of collateral estoppel’ barred Dougherty’s claims. However the ‘doctrine of res judicata is inapplicable to void judgments. Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction or the subject matter or person, and perhaps for excess of jurisdiction, or where it was obtained by extrinsic fraud.’ *Rochin*[, *supra*, 67 Cal.App.4th] at 1239-1240. . . . ‘A void judgment . . . is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. *Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.*’ *Id.* at 1240 (citations omitted) (emphasis added). Here, the Court’s ruling on the demurrer and subsequent Judgment were based on a ‘void’ judgment. Moreover, the 2006 Fee Awards directly pertain to the Court’s Judgment and Dougherty’s Appeal. Therefore, the Judgment and 2006 Fee Awards are also void.

“Finally, *Karton* argues that the instant case involves issues different than those in the *Karton* case. However, *Karton*’s argument is without merit in light of the fact that the Court never decided the merits of the instant case. Instead, *Karton*’s demurrer was sustained without leave to amend on the grounds that Dougherty’s claims were barred by the doctrine of collateral estoppel. As discussed above, the Judgment and Fee Awards in this case are void in light of the Court of Appeal’s ruling [in the *Karton* first round of litigation case].” (Fns. omitted.)

Karton filed a timely notice of appeal.

DISCUSSION

Karton contends the trial court erred in 2010 when it set aside the 2006 judgment (“which had long been final”) in Dougherty’s collateral attack case challenging the 1999 default judgment entered in the *Karton* first round of litigation. Karton argues the trial court erred in ruling in 2010 that the 2006 judgment was and is “void.” Karton argues the 2006 judgment is no more than a judgment based upon an erroneous legal decision by the trial court. Karton argues that, because the 2006 judgment amounts to no more than a decision that is “wrong,” this means the trial court did not have jurisdiction in 2010 to vacate the 2006 judgment on Dougherty’s motion to set aside the 2006 judgment. In short, Karton argues that he should be allowed to keep a judgment that he does not dispute should never have been entered, including an award for attorney fees in the amount of \$120,000. Karton argues that principles governing the finality of judgments overrode the trial court’s jurisdiction to undo a final judgment, with the exception of a void judgment. In Karton’s words, an error in a judgment makes it “vulnerable to reversal on appeal, [but] does not render it vulnerable to being set aside as void.” Karton’s argument does not persuade us to reverse. We agree with the trial court that the 2006 judgment was and is void, making it, even under the rules cited by Karton, a proper subject for a motion to vacate.

We find the trial court correctly applied *Rochin, supra*, 67 Cal.App.4th 1228 in support of its ruling in 2010 that the 2006 judgment in Dougherty’s current collateral attack case *was and is void because it gave effect to a void judgment*, i.e., the underlying 1999 default judgment in the *Karton* first round of litigation case. We understand but reject Karton’s argument that the 2006 judgment at issue here amounts to something *less than a void judicial ruling*. The trial court did have and exercised its given judicial powers in the context and at the time it rendered the 2006 judgment. It makes no difference that the 2006 judgment is based upon the court’s legally incorrect decision in 2006 to sustain Karton’s demurrer to Dougherty’s collateral attack complaint challenging the 1999 default judgment in the *Karton* first round of litigation.

Karton's reliance on *Talley v. Valuation Counselors, Inc.* (2010) 191 Cal.App.4th 132 and similarly aligned cases for a different result is not persuasive. The rule to be taken from the cases upon which Karton relies is that the policy favoring the finality of judgments overrides any harm or incongruity that may result or that may be perceived to result from keeping a final judgment in place even though the *precedent* upon which the case was decided is ruled erroneous in a later proceeding. We have no quarrel with a rule of this nature. When a party has properly lost a case under the law as it existed at the time of judgment, or even as result of an erroneous ruling under the law as it existed at the time of judgment, the principle of finality of judgments precludes the losing party from later reviving the case, after the law has changed. However, this type of situation is not what occurred in Dougherty's current collateral attack case.

It is an incontrovertible and immutable that the 1999 default judgment in the *Karton* first round of litigation was a void judgment on its face from the beginning. The Court of Appeal concluded as much. It did not result from the application of any rule of law later changed; it did not result from any judicial error in applying the governing law in 1999. As legal nullity, the 1999 default judgment was subject to being vacated at any time. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 574; *Baird v. Smith* (1932) 216 Cal. 408, 410.)

As a result, we conclude the 2006 judgment in Dougherty's current collateral attack action is itself a void judgment because it gives effect -- and a significant money award for attorney fees -- to an underlying void judgment.

Rochin, supra, 67 Cal.App.4th 1228 guides our decision. There, Rochin sued Pat Johnson Manufacturing Co. (PJMC) for personal injuries. A jury returned a verdict in favor of Rochin, and the trial court entered judgment in the amount of \$344,000. PJMC thereafter submitted an amended judgment which reduced the amount of the judgment to the sum of roughly \$109,000. The trial court signed the amended judgment. Following a series of events which need not be stated in detail except to note that PJMC claimed the amended judgment in the amount of \$109,000 controlled, Rochin filed an equitable

action to set aside the amended judgment and to declare the original judgment reinstated -- a the collateral attack action. PJMC filed a demurrer to Rochin's collateral attack complaint, arguing res judicata. The trial court sustained PJMC's demurrer without leave to amend. Rochin appealed. (*Id.* at pp. 1231-1232.) Division Four of this court reversed the judgment in Rochin's collateral attack action, ruling that the amended judgment in the initial personal injury action was void, and, thus, could have no res judicata effect in Rochin's collateral attack action. (*Id.* at pp. 1237-1238.) In short, Division Four ruled: "The doctrine of res judicata is inapplicable to void judgments." (*Id.* at p. 1239.)

Here, it goes without question that, if Dougherty pursued a direct appeal from the 2006 judgment, then *Rochin* would be directly on point, and would dictate that the 2006 judgment could be set aside. However, the question here takes the issue one step further. Here, the issue is whether it makes a difference that Dougherty did not pursue to the end his direct appeal of the 2006 judgment, but, instead, pursued a motion to set it aside long after the 2006 judgment became final. Karton's arguments do not persuade us that it should make a difference.

"A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings upon it are equally worthless." (*Rochin, supra*, 67 Cal.App.4th at p. 1240, quoting from *Bennett v. Wilson* (1898) 122 Cal. 509, 513-514.) It is undisputed that the 1999 default judgment in the *Karton* first round of litigation was void from the moment it was entered. By it, none of Dougherty's rights could be divested. From it, Karton could obtain no rights. Being a worthless nullity in itself, all proceedings upon the 1999 default judgment were, are, and must be deemed equally worthless. We would agree with Karton that the trial court did not have jurisdiction in 2010 to vacate the 2006 judgment on the ground that the ruling on demurrer that underpinned the 2006 judgment was infected with legal error. But that is not what happened. We agree with Dougherty that the trial court did not vacate the 2006 judgment because it was infected with legal error, but for the reason that the 2006 was void. Because the 2006 judgment gave legal effect to an earlier void judgment, and

resulted in an award of attorneys fees and costs in favor of Karton based on the earlier void judgment, we conclude the 2006 judgment should be put aside as well. In our view, *Rochin* supports the proposition that such a result cannot stand.

DISPOSITION

The order vacating the 2006 judgment in Dougherty's current collateral attack case is affirmed. Dougherty is awarded costs on appeal.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.