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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANDREW GOOSBY, JR.,

Plaintiff and Appellant,

v.

STEVEN S. SINGH,

Defendant and Respondent.

B233503

(Los Angeles County  
Super. Ct. No. BC454786)

APPEAL from an order of the Superior Court of Los Angeles County. William F. Fahey, Judge. Affirmed.

Andrew Goosby, Jr., in pro. per., for Plaintiff and Appellant.

Taylor Blessey, N. Denise Taylor, Barbara M. Reardon and Charleen P. Lau for Defendant and Respondent.

\* \* \* \* \*

Plaintiff and appellant Andrew Goosby, Jr., was previously declared a vexatious litigant and ordered to obtain a prefiling order before commencing further litigation. He did not do so before filing a complaint against defendant and respondent Steven R. Singh, D.D.S. For that reason, the trial court dismissed appellant's complaint without prejudice.

Treating appellant's appeal as a petition for writ of mandate, we deny the petition and affirm the order. Substantial evidence supported the order and the prefiling requirement does not violate due process principles

### **FACTUAL AND PROCEDURAL BACKGROUND**

In a 2006 action filed by appellant against Mike Chavarela, the trial court granted Chavarela's motion for an order declaring appellant a vexatious litigant within the meaning of Code of Civil Procedure section 391.<sup>1</sup> After reciting the requirements of section 391, the trial court ruled: "The Plaintiff has filed SEVENTEEN lawsuits since March of 1999 (seven in small claims court); he acted in pro per in all of them. All of the cases have been dismissed or decided against the Plaintiff. In two of those suits the Defendant in each brought a motion to declare the Plaintiff a vexatious litigant, but the Plaintiff dismissed both actions before the Court could hear the merits of the motions. The Plaintiff clearly falls within the Section 391 determination of a vexatious litigant." As part of the same order, the trial court also granted Chavarela's motion for a prefiling order pursuant to section 391.7 prohibiting appellant from filing new litigation in propria persona without leave of court.

In February 2011, appellant filed a complaint in propria persona against Singh alleging a claim for medical malpractice stemming from a root canal. Appellant did not obtain a prefiling order permitting the filing of the lawsuit, and Singh filed a notice of mistaken filing and also sought dismissal of the action on that basis. Appellant opposed the motion to dismiss.

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

Following a May 2011 hearing, the trial court issued a minute order dismissing appellant’s complaint without prejudice on the ground he did not obtain a prefiling order before filing his complaint. Appellant, again in propria persona, appealed from the dismissal.

Ordinarily, “an unsigned minute order granting a motion to dismiss a complaint is nonappealable. [Citations.]” (*Adohr Milk Farms, Inc. v. Love* (1967) 255 Cal.App.2d 366, 369.) Under unusual circumstances, however, we have authority to treat an appeal from a nonappealable order as a petition for a writ of mandate. (See Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2010) ¶ 2:7.1, p. 2–3.) We may do so where the consequences of dismissing the appeal would be ““unnecessarily dilatory and circuitous.”” (*Olson v. Cory* (1983) 35 Cal.3d 390, 401.) Because the parties have fully briefed the issues and provided a complete record, any delay in resolving this matter would be contrary to judicial efficiency. We will therefore treat the matter as a petition for writ of mandate.

## **DISCUSSION**

The vexatious litigant statutes were first enacted in 1963 to curb misuse of the court system by those acting in propria persona who repeatedly file frivolous lawsuits or attempt to relitigate issues previously determined against them. (§§ 391–391.6; *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 222–223.) The statutory definition of a “vexatious litigant” includes a litigant who “[i]n the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person . . . .” (§ 391, subd. (b)(1).)

“In 1990, the Legislature enacted section 391.7 to provide the courts with an additional means to counter misuse of the system by vexatious litigants. Section 391.7 ‘operates beyond the pending case’ and authorizes a court to enter a ‘prefiling order’ that prohibits a vexatious litigant from filing any new litigation in propria persona without first obtaining permission from the presiding judge. [Citation.]” (*Bravo v. Ismaj, supra*,

99 Cal.App.4th at p. 221.) The *Bravo* court explained: “The [prefiling order] is directed at precluding the initiation of a meritless lawsuit and the costs associated with defending such litigation. [Citations.] Thus, section 391.7 affords protection to defendants named in pleadings not yet filed with the court. If individuals named as defendants in these lawsuits were required to wait until the action was pending, the prefiling order provided for in section 391.7 would be illusory.” (*Id.* at pp. 222–223.)

Appellant challenges the dismissal of his complaint under section 391.7 on two grounds. First, he contends there was insufficient evidence to support the application of the vexatious litigant statutes. (See *Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1169 [applying substantial evidence standard of review].) We disagree. Rather, after the action was filed without a prefiling order, Singh proceeded as required by section 391.7 by filing a notice of mistaken filing. (See § 391.7, subd. (c) [“If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a)”].) While that provision required the automatic dismissal of the action unless appellant obtained a prefiling order within 10 days, Singh undertook the additional step of filing a motion to dismiss pursuant to section 391.7. (See § 391.7, subd. (c) [“The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b)”].) He also sought judicial notice of multiple documents establishing appellant’s status as a vexatious litigant.

In his opposition to the motion to dismiss, appellant did not claim or offer evidence to show that he had obtained a prefiling order. Instead, he attached a copy of the Vexatious Litigant List maintained by the Administrative Office of the Courts during 2008, which showed that his name was not on the list. (See § 391.7, subd. (e) [“The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state”].) While the omission of appellant’s name may explain why the clerk

permitted the filing of this action, it does not absolve appellant from the prefiling order requirement. Nothing in the language of section 391.7 suggests that the inclusion of a vexatious litigant's name in the Judicial Council records is a prerequisite to the application of the balance of the statute. (See generally *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 541–542 [recommending protocols to improve the Judicial Council's maintenance of the record of vexatious litigants].) Substantial evidence supported the trial court's determination that appellant's failure to obtain a prefiling order warranted the dismissal of his complaint.

We likewise reject appellant's second contention that section 391.7 violates due process. When faced with comparable claims, other courts have concluded: "Section 391.7 does not deny the vexatious litigant access to the courts, but operates solely to preclude the initiation of meritless lawsuits and their attendant expenditures of time and costs. [Citation.] Vexatious litigant statutes are constitutional and do not deprive a litigant of due process of law. [Citations.]" (*Bravo v. Ismaj, supra*, 99 Cal.App.4th at pp. 221–222; accord, *In re R.H.* (2009) 170 Cal.App.4th 678, 704 ["Neither section 391.7 nor our prefiling order violates due process because R.H. as the vexatious litigant has the right to seek the permission of the presiding judge or justice to file future litigation"]; *Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 60 ["To the extent Wolfgram complains that the 'prefiling' statute violates due process, we disagree"]; see also *First Western Development Corp. v. Superior Court* (1989) 212 Cal.App.3d 860, 868 [the vexatious litigant statutes "do not operate to deprive a litigant of due process of law"].) Accordingly, appellant's constitutional challenge affords no basis for reversing the dismissal of his action without prejudice.

**DISPOSITION**

The petition is denied and the order is affirmed. Singh is entitled to his costs on appeal.

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\_\_\_\_\_, Acting P. J.

DOI TODD

We concur:

\_\_\_\_\_, J.

ASHMANN-GERST

\_\_\_\_\_, J.

CHAVEZ