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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JAMES R. DEARKLAND et al.,
Individually and as Trustees, etc.,

Plaintiffs and Respondents,

v.

GARY LEE HENSLEY,

Defendant and Appellant.

2d Civil No. B254270
(Super. Ct. No. 56-2012-422844-
CU-OR-VTA)
(Ventura County)

Gary Lee Hensley appeals a judgment (1) quieting title to real property in the name of James R. DeArkland and Gunilla DeArkland, individually and as trustees of the DeArkland Family Trust (the DeArklands); (2) declaring that Hensley and his mother have no interest in the property; and (3) permanently enjoining Hensley and his mother from entering the property, contacting the DeArklands, or attempting to evict their tenants, among other things.¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

Hensley's great-grandfather once owned the property that is located at 285 South Kalorama Street in Ventura (the property). The DeArklands have been sole owners since 1999.

¹ Hensley, a nonattorney acting in pro. per., purported to file the notice of appeal also on behalf of his mother, Wanda Renault Hensley, but was not authorized to do so. (Bus. & Prof. Code, § 6126, subd. (a).) Wanda Renault Hensley is not a party to this appeal.

A Ventura County superior court declared Hensley to be a vexatious litigant in 1994. (*Estate of Hensley* (Super. Ct. Ventura County, 1994, No. P68549).) A federal district court declared Hensley to be a vexatious litigant in 2006. (*Hensley v. United States* (C.D.Cal. 2006, No. CV 06-3144-R).)

In 2011, Hensley and his mother filed a probate petition in Los Angeles Superior Court in which they claimed to own the property. (*Estate of Poyer* (Super. Ct. Los Angeles County, 2011, No. SFP002307).) The court dismissed the petition for failure to comply with the pre-filing requirements for vexatious litigants. (Code Civ. Proc., § 391.7, subd. (a).) Hensley continued to try to file motions in the dismissed case.

In July and August 2012, Hensley posted notices on the property and repeatedly told the tenant to move out because he intended to move into it. He told the tenant that a "Writ of Attachment" required the tenant to vacate. In response, the DeArklands filed this action against Hensley to quiet title, for declaratory relief, and for slander of title.

In September 2012, the trial court issued a preliminary injunction, enjoining Hensley and his mother from entering the property, posting any notices on it, or contacting the DeArklands, their tenant, or their property manager. The court ordered the DeArklands to post a \$5,000 bond. They did so.

The DeArklands moved for summary judgment or adjudication. They presented certified copies of recorded documents showing the chain of title that led to their sole ownership. The DeArklands also presented evidence that Hensley falsely asserted ownership over the property and repeatedly harassed the property manager and the tenant.

Hensley did not file a memorandum of points and authorities or present evidence in opposition. He filed a "reply" to the DeArklands' separate statement of facts in which he asserted that a 1935 deed from his great-grandfather to the DeArklands' predecessor in interest was false. He also denied harassing the DeArklands, their tenant, or their property manager. He did not cite to any supporting evidence.

The trial court elected to treat all of the DeArklands' proposed undisputed material facts as established. On September 6, 2013, it granted summary adjudication of the causes of action for quiet title and declaratory relief. It denied summary adjudication of the cause of action for slander of title because the DeArklands did not establish any pecuniary loss. Subsequently, the court granted the DeArklands' request to dismiss the remaining cause of action for slander of title.

The trial court denied Hensley's first motion for reconsideration on October 15. It found that Hensley did not present any new facts or law, provide a satisfactory explanation for failing to present evidence sooner, or demonstrate entitlement to relief under any statute. The court also denied Hensley's "First Amended" motion for reconsideration. Hensley contended that the September 6 and October 15 orders were void because the DeArklands' bond was "out-of-effect." The DeArklands offered evidence that it was in effect and requested sanctions. The court denied the request for sanctions. It issued a permanent injunction and entered judgment.

DISCUSSION

The trial court properly granted summary adjudication as to the DeArklands' causes of action for quiet title and declaratory relief. The DeArklands presented competent evidence that demonstrated beyond dispute that they are sole owners of the property and are entitled to relief on their causes of action for quiet title and declaratory relief. Hensley presented no evidence in opposition to the motion. (Code Civ. Proc., § 437c, subd. (b)(3).) His failure constituted sufficient ground, in the trial court's discretion, to grant the motion. (*Ibid.*) There is no merit to Hensley's contention that the three deeds upon which the DeArklands rely are invalid because a joint tenant died. Hensley relies on Civil Code section 683.2, subdivision (c), which relates to a joint tenant's attempt to sever and does not apply here. There is also no merit to Hensley's contention that the DeArklands' predecessor in interest, Frank Mosher, could not act as both grantor and grantee. Civil Code section 683, subdivision (a) authorized Mosher's transfer from himself to himself and others.

The orders denying Hensley's requests for reconsideration are reviewable as part of the appeal from the order granting summary adjudication. (Code Civ. Proc., § 1008, subd. (g).) But the trial court did not abuse its discretion when it denied the motions because they were not supported by any new or different facts, circumstances or law or an explanation for failure to provide evidence sooner. (*Id.*, subd. (a).)

The trial court did not abuse its discretion when it granted a permanent injunction to prevent Hensley from further harassing the DeArklands, their tenant, or their property manager. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 390 [grant or denial of permanent injunction rests within trial court's sound discretion].) The DeArklands prevailed on the merits and the record supports the trial court's finding that equitable relief is appropriate. The record demonstrates that Hensley and his mother were reasonably likely to continue to trespass on the DeArklands' property, to post frivolous writs of attachment and notices to quit, and to contact the tenant and property managers with threats to evict and demands to vacate in the absence of injunctive relief. Hensley has not demonstrated a clear abuse of discretion. (*Ibid.*)

DISPOSITION

The judgment is affirmed. The DeArklands shall recover their costs on appeal.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Tari Cody, Judge

Superior Court County of Ventura

Gary Lee Hensley, in pro. per., for Defendant and Appellant.

Fidelity National Law Group, Susan M. Hutchison for Plaintiffs and
Respondents.