Filed 3/28/12 Hernandez v. Marysville Joint Unif. School Dist. CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

DAVID S. HERNANDEZ, Plaintiff and Appellant, v. MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT, Defendant and Respondent.	C066946 (Super. Ct. No. CVCV090000976)

David S. Hernandez brings this pro se appeal from the judgment in favor of Marysville Joint Unified School District (MJUSD), entered after the court sustained its demurrer to his complaint without leave to amend.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hernandez alleges that, in November 2007, he went to his daughter's elementary school to "have an on[]site visit" with her. School employees contacted the child's mother, who called 911 and took the child from school.

The Stanislaus County Action

Hernandez sued MJUSD in the Superior Court of Stanislaus County (case No. 626686), seeking $25 million in damages for alleged wrongdoing by school personnel during his attempted school visit, on theories of "Civil/Vicarious Liabilities and Discrimination."[1]

After Hernandez served MJUSD with the complaint in the Stanislaus County action, MJUSD moved to change venue to Yuba County. Hernandez filed no opposition to the motion. The court granted the motion in December 2008 and ordered that the case be transferred to the Superior Court of Yuba County, and that Hernandez pay a case transfer fee in addition to attorney fees in the amount of $287.50.

Hernandez failed to pay the transfer fee and attorney fees within 30 days of the notice of entry of the order, the case was not transferred, and MJUSD moved to dismiss it. The court granted the motion and dismissed the Stanislaus action without prejudice in April 2009.

The Yuba County Action

In November 2009, Hernandez filed the instant complaint in the Superior Court of Yuba County. The allegations appear

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[1] This incident also gave rise to Hernandez's separate action against the Yuba County Sheriff's Department for its role in responding to the 911 call. We affirmed the judgment entered in favor of the Sheriff's Department in an unpublished opinion. (*Hernandez v. Yuba County Sheriff's Department* (Jul. 27, 2011, C065007) [nonpub. opn.].)

identical to those in the Stanislaus County action. A summons was issued by the clerk.

Hernandez purported to serve the summons on MJUSD, but was twice informed by the court that service of process was not complete. Hernandez attempted several times to take MJUSD's default, but his requests for entry of default were all rejected for defective service of process.

The summons was eventually served properly, and MJUSD demurred to the complaint on the grounds (among others) that Hernandez failed to comply with the claims presentation requirements contained in the California Tort Claims Act[2] (the Act; Gov. Code, § 810 et seq.; see § 900 et seq. for claim presentation requirements).[3]

In opposition to the demurrer, Hernandez argued that MJUSD was time-barred from demurring to the Yuba County complaint because the action had been served years earlier with the complaint and summons in the Stanislaus County action. Hernandez also asserted that his requests to enter MJUSD's default in the instant action should have been granted.

The court conducted a hearing on the demurrer, the transcript of which is not in the record on appeal.

After the hearing on the demurrer, Hernandez submitted a declaration "In Support of Compliance to Government[] Tort

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[2] MJUSD also moved to strike portions of the complaint.

[3] Undesignated statutory references are to the Government Code.

Claims Act . . . ," to which he attached as an exhibit a claim for damages signed September 2009 and submitted to Yuba County (not to MJUSD).

The trial court then entered a judgment in MJUSD's favor. It found that the complaint failed to state a cause of action because it did not allege compliance with the Act. The judgment further recited that, at the hearing on the demurrer, the court asked Hernandez whether he could plead compliance with the Act and, although Hernandez responded that the court's file showed compliance, the court found to the contrary. Although not required, the court also reviewed and considered one of the exhibits attached to the declaration belatedly filed by Hernandez (the claim for damages signed September 2009) after the hearing on the demurrer and found it failed to show compliance with the Act because it was directed to the County of Yuba, rather than to MJUSD; the date of the signature on the claim was more than six months after the acts alleged; and Hernandez never submitted a claim before filing a complaint.

DISCUSSION

I. Standards of Review

A demurrer may be sustained without leave to amend where the facts are not in dispute and the nature of the plaintiff's claim is clear but, under substantive law, no liability exists. (*Seidler v. Municipal Court* (1993) 12 Cal.App.4th 1229, 1233.) On appeal from a judgment of dismissal after an order sustaining a demurrer without leave to amend, we examine the complaint de novo to determine whether

it alleges facts sufficient to state a cause of action under any legal theory. (*McCall v. PacifiCare of Cal., Inc*. (2001) 25 Cal.4th 412, 415.) We accept as true all material facts properly pled in the complaint. (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co*. (2002) 29 Cal.4th 189, 193; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We give the complaint a reasonable interpretation and treat the demurrer as admitting all material facts properly pled, but we do not assume the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

When, as here, a court sustains a demurrer without leave to amend, our task on review is to "decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*).) It is the plaintiff's burden on appeal to show either that the demurrer was sustained erroneously or that the trial court's denial of leave to amend was an abuse of discretion. (*Savage v. Trammell Crow Co.* (1990) 223 Cal.App.3d 1562, 1576; *Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

The general rules of appellate practice also apply to our review of a judgment following a demurrer that has been

sustained without leave to amend. (See *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655.) Those rules include placing the burden on the appellant to follow the California Rules of Court by (among other things) supporting all appellate arguments with legal analysis and appropriate citations to the material facts in the record (Cal. Rules of Court, rule 8.204(a)(1)(B) & (C)), and showing exactly how the error caused a miscarriage of justice (Cal. Rules of Court, rule 8.204(a)(2)(A); Cal. Const., art. VI, § 13). If the appellant fails to comply with these rules, the contentions are forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(B), (e); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239-1240.)

Lack of legal counsel does not entitle an appellant to special treatment. (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055; *Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290.) A pro se litigant is held to the same restrictive rules of procedure as an attorney. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

II. The Order Sustaining the Demurrer and Judgment

Although he purports to appeal from the order sustaining the demurrer, Hernandez does not argue that the trial court erred in sustaining the demurrer.

Nevertheless, having reviewed the complaint de novo, we find no error. Under the Act, a person wishing to sue a public entity for damages arising from the actions of its employees must first submit a claim to the entity within six months of the date the cause of action accrued. (§§ 911.2, 945.4.) "The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year." (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) The failure to timely present a claim for money or damages to a public entity bars a plaintiff from filing a suit against the public entity. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1239.) We agree with the trial court that the record indicates Hernandez never presented a claim to MJUSD, and thus never complied with the Act's claims presentation requirements. His failure to do so warrants sustaining the demurrer to his complaint. (*Ibid*.)

And because Hernandez cannot demonstrate a reasonable possibility that the defect in his complaint can be cured by amendment, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend. (See *Schifando, supra*, 31 Cal.4th at p. 1081.)

III. Other Contentions

Hernandez questions whether the Superior Court of Stanislaus County properly maintained its court files, argues that the trial court judge in Stanislaus County should not have granted MJUSD's motion to change venue, and suggests he was denied due process when the Stanislaus Superior Court granted the motion to change venue and/or granted MJUSD's motion to dismiss the Stanislaus County action. However, Hernandez apparently never sought timely review of the 2009 orders of the Stanislaus Superior Court (Code Civ. Proc., § 400), and we cannot now review those orders in this appeal, which involves a subsequent order and judgment entered in Yuba County.

Hernandez also argues that the Superior Court of Yuba County should have granted one of his requests to enter MJUSD's default. However, he has not shown that the trial court erred in denying these requests, in concluding that service of the Yuba County complaint had not been properly effected, or in suggesting that Hernandez re-serve MJUSD. Accordingly, these arguments are forfeited.[4]

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[4] Many of the arguments made in Hernandez's brief on appeal appear to derive from a fundamental misunderstanding of what happened to the Stanislaus County action. Because Hernandez did not pay the fees required by the order granting the change of venue in the Stanislaus action, that action was never transferred to the Superior Court of Yuba County; instead, it was dismissed by order filed April 30, 2009. Once the Stanislaus County action was dismissed, that action was of no further effect, and the Superior Court of Stanislaus County had no jurisdiction to take any action concerning it. On October 7, 2009, Hernandez paid $287.00 to the Superior Court of Stanislaus

DISPOSITION

The order and judgment are affirmed. Marysville Joint Unified School District shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

MURRAY, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.

County, which the court clerk described as “sanctions.” That Hernandez made this payment in Stanislaus County did not reinstate the Stanislaus County action. It already had been dismissed. Thus, when Hernandez later filed a virtually identical action in Yuba County, the two cases could not be “conjoin[ed],” as Hernandez apparently believed.