

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

WBFW ACQUISITIONS, LLC,

Plaintiff and Respondent,

v.

ARGYLL BIOTECHNOLOGIES, LLC,

Defendant and Appellant.

D057803

(Super. Ct. No. 37-2009-00083389-
CU-EN-CTL)

APPEAL from an order of the Superior Court of San Diego County, Richard S. Whitney, Judge. Affirmed.

INTRODUCTION

Argyll Biotechnologies, LLC (Argyll) appeals from a June 23, 2010, order directing: (1) Argyll to request Immunosyn Corporation (Immunosyn) cancel and reissue Argyll's Immunosyn stock; and (2) Immunosyn to comply with Argyll's request and deliver the reissued stock to the San Diego County Sheriff (Sheriff) for sale. Argyll challenges the portion of the order directed to Immunosyn, contending the trial court did not have jurisdiction as Immunosyn was not joined as a party to the trial court

proceedings and was an indispensable party. Argyll also contends the trial court did not have jurisdiction as any proceeding to compel Immunosyn to cancel and reissue Argyll's shares of Immunosyn's stock had to be brought in Delaware, where Immunosyn is incorporated. In addition, Argyll contends neither Delaware nor California law authorize a court, under the circumstances presented, to require Immunosyn to cancel and reissue stock to satisfy WBFW Acquisitions, LLC's (WBFW) debt. Argyll further contends Immunosyn must face and overcome federal securities law hurdles not recognized or addressed in the trial court's order before the Sheriff could sell the reissued stock.

As part of its response to Argyll's appeal, WBFW contends Argyll has no standing to raise these claims as they affect only Immunosyn.¹ We agree and affirm the order.

BACKGROUND

This appeal arises from efforts by WBFW to collect on a sister-state judgment by levying against Argyll's shares of Immunosyn stock. Pertinent to this appeal, WBFW unsuccessfully attempted to levy against the stock at Argyll's office and again at Argyll's broker's office. On both occasions, WBFW acted on misinformation about the stock's whereabouts provided by Argyll's chief executive officer.

WBFW subsequently applied for an order requiring Argyll to turn over the stock. Argyll opposed WBFW's application, indicating for the first time it had previously

¹ Argyll did not submit a reply brief and, consequently, did not avail itself of its opportunity to address WBFW's contention.

pledged the stock to a Texas law firm, which had possession of it.² The trial court granted WBFW's application and issued an order directing Argyll to turn over the stock to the Sheriff for sale.

Argyll failed to turn over the stock as ordered, purportedly because the Texas law firm did not respond to Argyll's request for the stock's return.³ WBFW subsequently applied for an order requiring: (1) Argyll to request Immunosyn cancel and reissue Argyll's Immunosyn stock, and (2) Immunosyn to comply with Argyll's request and deliver the reissued stock to the Sheriff for sale. Immunosyn, represented by the same counsel as Argyll, opposed the application raising the same arguments raised in this appeal. The trial court rejected Immunosyn's arguments and granted WBFW's application.

DISCUSSION

I

Argyll's appeal suffers from two related procedural infirmities. First, the record indicates Argyll did not oppose the application that resulted in the order it is appealing. The captions of the papers filed in opposition to the application only list Immunosyn as

² The record does not show precisely when the Texas law firm obtained Argyll's Immunosyn stock. Nonetheless, the record shows Immunosyn issued most of the stock possessed by the law firm shortly before Argyll's counsel informed the trial court and WBFW's counsel of the stock's location, which was well after WBFW commenced its collection efforts.

³ The same day Argyll's counsel informed the trial court and WBFW's counsel of the stock's location, the Texas law firm filed a declaratory relief action in Texas seeking an adjudication of the parties' rights and entitlement to the stock. The record does not show the status of the Texas litigation.

the opponent. In addition, the papers were filed by the "Attorneys for Third Party Immunosyn Corporation."

WBFW pointed out Argyll's apparent lack of opposition to the application in its reply papers. Additionally, at the application hearing, WBFW's counsel began her remarks to the court by stating, "[I]t appears that the objection to this [application] is filed by Immunosyn not Argyll. Any orders we would request against Argyll should be granted because [Argyll is] not here."

Argyll and Immunosyn's counsel objected, stating, "[T]hat lacks foundation, Your Honor. I've indicated we're here representing—I originally presented an argument related to Immunosyn because that is really who this order is directed against. It's not directed against Argyll." The court overruled the objection, implicitly finding Immunosyn was the only opposing party.

Argyll and Immunosyn's counsel effectively conceded the point later on in the hearing by asserting Argyll was present in the courtroom, but the issue before the court was whether Immunosyn could be lawfully subject to the order WBFW sought. As Argyll failed to oppose WBFW's application in the trial court, we conclude Argyll forfeited its challenges to the resulting order on appeal. (*In re Marriage of Hinman* (1997) 55 Cal.App.4th 988, 1002; *Cummings v. Cummings* (1929) 97 Cal. App.144, 149.)

II

Even if Argyll's mere presence at the hearing on WBFW's application preserved its right to appeal the resulting order, Argyll lacks standing to assert the issues presented in its brief. As Argyll's counsel acknowledged below, the issues presented affect

Immunosyn, not Argyll. It is well established that an appellant lacks standing to raise issues affecting only another's interests. (*In re D.S.* (2007) 156 Cal.App.4th 671, 674; *Estrada v. RPS, Inc.* (2005) 125 Cal.App.4th 976, 985; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1128.) "This is no mere technicality, but is grounded in the most basic notion of why courts entertain civil appeals. We are here to provide relief for appellants who have been wronged by trial court error. Our resources are limited and thus are not brought to bear when appellants have suffered no wrong but instead seek to advance the interests of others who have not themselves complained. The guiding principle is one often encountered in daily life: no harm, no foul." (*Rebney v. Wells Fargo Bank, supra*, at p. 1132.) Accordingly, we decline to decide the issues presented in Argyll's brief.

DISPOSITION

The order is affirmed. Respondent is awarded appeal costs.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

O'ROURKE, J.