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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PERSONALIZED WORKOUT OF LA
JOLLA, INC., et al.,

Plaintiffs and Respondents,

v.

GARY RAVET,

Defendant and Appellant.

D059544

(Super. Ct. No. GIC819192)

APPEAL from a postjudgment order of the Superior Court of San Diego County,
Luis R. Vargas, Judge. Appeal dismissed.

Defendant and appellant Gary Ravet purports to appeal from a postjudgment order denying his motion to set aside a malicious prosecution judgment entered in February 2008 in favor of plaintiffs and respondents Personalized Workout of La Jolla, Inc. (PWL) and Nathan Poole (Poole), a judgment that this court affirmed in *Personalized Workout of La Jolla, Inc. v. Ravet* (Nov. 25, 2009, D051315, D052586 [nonpub. opn.] (*Ravet I*)).

Ravet's sole contention on appeal is that the trial court erred in denying his motion

because the malicious prosecution judgment is void and should have been set aside as it rests on another void judgment, namely, the underlying judgment on which the favorable termination element of malicious prosecution was assertedly based.

We asked the parties to provide supplemental briefing on the question of whether, in view of our prior decision affirming the February 2008 judgment, Ravet's appeal is from a nonappealable postjudgment order. Having considered their briefing, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The details of Ravet's original action against respondents and respondents' ensuing malicious prosecution action are reflected in our prior opinion in *Ravet I* and we need not repeat them in full here. It suffices to say that following Ravet's voluntary dismissal of his action against respondents for breach of contract and other claims and the trial court's entry of judgment in that underlying action, respondents commenced a separate action for malicious prosecution, an action that resulted in a judgment in respondents' favor following a jury trial (the February 2008 judgment). In the malicious prosecution trial, the trial court in effect directed a verdict on the favorable termination issue and instructed the jury that "[t]he prior proceedings terminated in favor of the plaintiff Nathan Poole and Plaintiff Personalized Workout of La Jolla, Inc." (*Ravet I, supra*, D051315, D052586.)

In our prior opinion, we held the trial court was without jurisdiction to enter judgment in the underlying action following Ravet's voluntary dismissal, which was filed well before the commencement of any trial, and thus that judgment was void. (*Ravet I supra*, D051315, D052586.) Nevertheless, we affirmed the February 2008 malicious

prosecution judgment. We did so in part based on our conclusion that Ravet had not shown the trial court erred by effectively granting a partial directed verdict on the issue of whether the underlying action had terminated in respondents' favor, and in so instructing the jury. More specifically, pointing out the parties had litigated the favorable termination issue, and explaining that the reason for and surrounding circumstances of the prior action's termination was a question of fact, we concluded Ravet had not on appeal set out any trial evidence reflecting the reasons why, on July 2, 2002, he had dismissed his underlying breach of contract action so as to challenge the trial court's partial directed verdict. (*Ravet I, supra*, D051315, D052586.) Because Ravet had not offered a fair statement of the trial evidence supporting his position on the trial court's partial directed verdict on the issue of favorable termination, we held he had forfeited an appellate challenge to the trial court's decision. (*Ravet I, supra*, D051315, D052586.) Our conclusion disposed of Ravet's contention on appeal that respondents could not establish a favorable termination as a matter of law; that his voluntary dismissal of the underlying action did not constitute a favorable termination in that it was not due to the plaintiffs' innocence, but because he had discovered he had not sued the correct entity. (*Ravet I, supra*, D051315, D052586.)

In February 2011, Ravet moved to set aside the February 2008 judgment in the malicious prosecution action. He argued the trial court had authority to set aside the judgment because it had assertedly relied on a void minute order and void judgment when it instructed the jury on the favorable termination element of wrongful termination. Ravet argued that because the void judgment was the predicate for the malicious

prosecution judgment, the malicious prosecution judgment was likewise void and of no effect. Ravet further argued the jury should have decided the issue of whether there was a favorable termination of the underlying action; that the trial court's instruction to the jury as to favorable termination was improperly based on the void judgment.

Respondents opposed the motion, arguing it was both untimely and without merit. They pointed out that following Ravet's voluntary dismissal of the underlying action, the trial court had jurisdiction to award costs and statutory attorney fees, and was empowered to determine whether respondents were prevailing parties within the context of a malicious prosecution action.

The trial court denied the motion, ruling Ravet had not shown the malicious prosecution judgment to be void. It relied on our conclusions in *Ravet I* as to whether Ravet's voluntary dismissal met the requisite standards for a favorable termination, observing we had held that Ravet "did not demonstrate that [the] court erred in directing a verdict on the question of whether the underlying lawsuit terminated in Plaintiffs' favor."¹

¹ The court ruled: "Defendant Ravet has not shown the judgment in this case is void. The Court of Appeal in the underlying case (Case No. IC777030) found the trial court lacked jurisdiction to vacate the dismissal without prejudice and enter judgment for Personalized Workout of La Jolla, Inc. and Nathan Poole. [Citation.] However, the Court of Appeal held the trial court in the underlying case had jurisdiction, and was authorized to award fees and costs, despite Ravet's July 2, 2002 filing of a dismissal without prejudice. [Citation.] The Court of Appeal also stated that 'this defect, however, does not prevent us from deciding whether Ravet's July 2002 voluntary dismissal of the underlying action met malicious prosecution standards in that it " 'reflect[s] the merits of the action and the [malicious prosecution] plaintiff's innocence on the misconduct alleged in the lawsuit.' " ' [Citation.] The Court of Appeal determined that Defendant did not

Ravet filed a notice of appeal from the court's postjudgment order.

DISCUSSION

I. *Motion to Dismiss the Appeal*

Respondents contend Ravet's appeal of the order denying his motion to vacate is merely an attack on the same malicious prosecution judgment that we affirmed in *Ravet I, supra*, D051315, D052586, and thus the appeal must be dismissed even if the motion was styled as brought under Code of Civil Procedure section 473, subdivision (d).² They ask us to decline "as a purely procedural matter" to hear Ravet's arguments under principles of law of the case and res judicata, which preclude Ravet from raising issues that were already decided against him in his prior appeal.³ Respondents argue: "This is especially

demonstrate that this court erred in directing a verdict on the question of whether the underlying lawsuit terminated in Plaintiffs' favor [Citation.] [¶] Based on the Court of Appeal's determination, there is no basis to set aside the February 26, [2008] judgment for Personalized Workout of La Jolla, Inc. and Nathan Poole."

² All statutory references are to the Code of Civil Procedure unless otherwise stated. Section 473 provides in part: "The court . . . may, on motion of either party after notice to the other party, set aside any void judgment or order." (§ 473, subd. (d).) " ' "While a denial of a motion to set aside a previous judgment is generally not an appealable order, in cases where the law makes express provision for a motion to vacate such as under Code of Civil Procedure section 473, an order denying such a motion is regarded as a special order made after final judgment and is appealable under Code of Civil Procedure section 904.1, subdivision [(a)(2)]." ' " (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 1004, 1008.)

³ The law of the case doctrine provides that an appellate court's decision " 'stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.' " (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491.)

Res judicata "gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing

true where Ravet never even challenged in the first appeal the factual basis for the directed verdict entered against him, although he had every opportunity to advance those arguments at that time. He should not be allowed to do so now on this second appeal." Respondents ask us to affirm the trial court's order on the latter basis.

"It is established that an order denying a motion to vacate a judgment is deemed appealable only to the extent it raises new issues unavailable on appeal from the judgment. This restriction is imposed to prevent both circumvention of time limits for appealing and duplicative appeals from essentially the same ruling." (*Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1082.) "The denial of a motion to vacate a prior judgment or order is an order after final judgment that affects the judgment and therefore can be appealable under certain special circumstances. [Citation.] However, these circumstances are rare; most of the orders are nonappealable for compelling reasons: ¶ (1) *If the prior judgment or order was appealable, and the grounds on which vacation is sought existed before entry of judgment, the correctness of the judgment should be reviewed on an appeal from the judgment itself.* To permit an appeal from the order

vexation and expense to the parties and wasted effort and expense in judicial administration." (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment § 334, p. 938.) The doctrine of res judicata has two aspects. The second aspect of res judicata is commonly referred to as collateral estoppel or issue preclusion. The California Supreme Court summarizes the elements as follows: " 'First, the issue sought to be precluded from litigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.' [Citation.] Even if these threshold requirements are satisfied, the doctrine will not be applied if such application would not serve its underlying fundamental principles." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 849.)

refusing to vacate would give the aggrieved party two appeals from the same decision or, if the party failed to take a timely appeal from the judgment, an unwarranted extension of time starting from the subsequent order.' " (*Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1576, quoting 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 197, pp. 273-274.)

Ravet's present appeal presents the situation described above. The malicious prosecution judgment was appealable, and in fact its correctness was appealed by Ravet. He is not entitled to a second appeal challenging the jury's special verdict or the trial court's directed verdict on the favorable termination issue leading to that verdict.

Although Ravet attempts to recharacterize his arguments, this appeal plainly only raises issues identical to those raised in his prior appeal, or that could have been raised there. As we have explained, Ravet specifically challenged in his prior appeal respondents' ability to prove a favorable termination of the underlying action, arguing the trial court lacked subject matter jurisdiction to enter further orders following his dismissal. This is the same ground on which he now challenges the malicious prosecution judgment, namely, that the very absence of the trial court's subject matter jurisdiction rendered the underlying judgment void. But in our prior opinion in *Ravet I*, we expressly concluded that, regardless of the trial court's inability to enter the underlying judgment, Ravet did not demonstrate the malicious prosecution judgment should be reversed. Rather, the judgment for malicious prosecution could be upheld, and we affirmed it, based on Ravet's voluntary dismissal of the underlying action, which was presumed to constitute a favorable termination. Though Ravet challenged in that appeal whether his voluntary dismissal could fulfill the favorable termination requirement, he

did not set out a fair statement of the trial evidence supporting his claim, and thus waived the issue. Accordingly, Ravet's challenge to the favorable termination element was squarely addressed in *Ravet I* and disposed of by our application of the presumption in respondents' favor. (See *Sycamore Ridge Apartments LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1400.) Our decision is conclusive on Ravet's rights in this appeal. (*Talley v. Valuation Counselors Group, Inc.* (2010) 191 Cal.App.4th 132, 146-147, fn. 11.)

Whether or not the trial court rested its directed verdict on the void judgment is of no moment.⁴ That is because it is a settled appellate principle that if a judgment is correct on any theory, the appellate court will affirm it regardless of the trial court's reasoning. (*Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956.) As we made clear in *Ravet I*, the partial directed verdict on the favorable termination issue (and by extension, the malicious prosecution judgment) was properly based on Ravet's voluntary dismissal of the action. Ravet recognized this in his prior appeal, as he argued there that the voluntary dismissal did not reflect the merits of the action and for that reason could not constitute a favorable termination, requiring reversal of the malicious prosecution judgment. Ravet's premise—that the trial court directed its verdict on the favorable termination element as a result of the void judgment entered in the underlying

⁴ Notably, the jury was not instructed that Ravet's underlying action favorably terminated because of the trial court's judgment; it was simply instructed that the action had terminated in respondents' favor.

action—even if true, is irrelevant to our prior conclusions in *Ravet I*, which are now law of the case.

Under these circumstances, the order denying Ravet's motion to vacate falls squarely within the general rule that such orders are not appealable. "To allow an appeal from the trial court's refusal to vacate its own ruling would, in effect, give [Ravet] two appeals from the same judgment." (*Payne v. Rader, supra*, 167 Cal.App.4th at p. 1576.)

II. *The Malicious Prosecution Judgment is Not Void*

In an attempt to avoid these limitations on appealability, Ravet styled his motion to vacate as challenging a "void" judgment. Ravet did not specify that his motion was brought under section 473, subdivision (d), though the motion argued the malicious prosecution judgment was void. An order denying a statutory motion to vacate a void judgment under section 473, subdivision (d) qualifies as an appealable order. (See fn. 2, *ante*; *Doppes v. Bentley Motors, Inc., supra*, 174 Cal.App.4th at p. 1008; *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181 [facially invalid judgment may be set aside " 'with no limit on the time within which the motion must be made' "].) However, as we have explained, the favorable termination element of the malicious prosecution judgment was premised on Ravet's voluntary dismissal, not on the trial court's unauthorized entry of judgment. Though subsequent orders or judgments founded on a void judgment are equally without legal effect (see *Moore v. Kaufman* (2010) 189 Cal.App.4th 604, 616), this is not the case with the malicious prosecution judgment we affirmed in *Ravet I*. Accordingly, we dismiss Ravet's appeal because his motion did not qualify as one

brought under section 437, subdivision (d), and such statutory relief was not available to him.⁵

DISPOSITION

The appeal is dismissed. Personalized Workout of La Jolla, Inc. and Nathan Poole shall recover their costs on appeal.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.

⁵ Of course, if Ravet's appeal was cognizable and we reached the merits, this conclusion alone—that the malicious prosecution judgment is not itself based on a void judgment—would permit us to hold the court did not abuse its discretion in denying Ravet's motion to vacate that judgment.