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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITIBANK, N.A.,

Plaintiff and Respondent,

v.

BRUCE MACK et al.,

Defendants and Appellants.

E053308

(Super.Ct.No. RIC10011245)

OPINION

APPEAL from the Superior Court of Riverside County. Mark Ashton Cope, Judge, and Paulette Barkley, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Affirmed.

Bruce Mack and Jamie Yvonne Mack, in pro. per., for Defendants and Appellants.

Musick, Peeler & Garrett, Barry D. Hovis and Erin M. Donovan for Plaintiff and Respondent.

INTRODUCTION

Defendants Bruce Mack and Jamie Yvonne Mack appeal from (1) an order declaring them vexatious litigants, (2) a subsequent pre-filing order prohibiting them from filing future litigation without court permission, and (3) an order denying their application to be removed from the “Judicial Counsel Vexatious Litigant List.” The Macks contend that they did not fit the criteria for vexatious litigants as set forth in Code of Civil Procedure section 391, subdivision (b). They further contend the trial court erred in relying on hearsay evidence, and in failing to rule on their objection to the hearing. Finally, in their reply brief, the Macks argue that because they appear in propria persona, they should not be held to the same standards as attorneys.

We find no abuse of discretion, and we affirm.

FACTS AND PROCEDURAL BACKGROUND

In June 2010, Citibank filed a complaint for preliminary and permanent injunction against the Macks, seeking to enjoin them from filing and recording false and fraudulent Uniform Commercial Code statements, maritime liens, and other documents against Citibank with various governmental agencies. Citibank alleged that in such documents, the Macks had asserted that they were secured party creditors of Citibank and that they were owed more than \$92 billion. Citibank alleged that the Macks had never been its secured party creditors, and Citibank had no record of any financial relationship with the Macks.

In November 2010, the Macks filed a motion to dismiss the complaint, arguing, among other things, that Citibank had failed to name proper defendants because it had

used capital letters in its complaint to define defendants as “BRUCE MACK,” “JAMIE YVONNE MACK,” and “THE MACKS.” The trial court denied the motion on December 2, 2010.

On December 3 and 6, 2010, the Macks filed documents entitled, “Writ of Error Quae Coram Nobis Resident” and “Summary Ruling Direct Contempt,” asserting that the trial court should have granted their motion to dismiss. On December 23, 2010, the Macks filed another document entitled, “Notice of Ruling on Writ of Error Quae Coram Nobis Resident,” stating the trial court had *granted* their motion to dismiss Citibank’s complaint, which misrepresented the trial court’s ruling. On January 3, 2011, the Macks filed a purported “Judgment” stating that Citibank’s action had been dismissed.

On January 5, 2011, Citibank filed a motion seeking, among other relief, an order determining the Macks to be vexatious litigants for repeatedly filing unmeritorious motions and pleadings against Citibank in the current action, for repeatedly litigating against Citibank and others after final determinations had been made against them, and for filing five prior lawsuits that had been determined adversely against them. Citibank also sought to enjoin the Macks from filing any false or fraudulent documents against it without authorization from the trial court.

On January 25, 2011, the Macks filed five separate replies in response to Citibank’s motions; in each reply, the Macks falsely stated that the trial court had entered judgment and dismissed Citibank’s action, and that Citibank’s motion should therefore be taken off calendar. On February 4, 2011, the Macks filed a document entitled, “Writ of

Error Quae Coram Nobis Resident 1 In Re ‘Memorandum of Decision and Order Denying Defendants’ ‘Writ of Error Quae Coram Nobis Resident, etc.’”

The trial court held a hearing on Citibank’s motion on February 7, 2011. Following argument, the trial court granted Citibank’s motion and determined the Macks to be vexations litigants. The same day, the Macks filed a “Notice of Unlawful Proceeding.” On February 9, 2011, Citibank filed a notice of ruling attaching the trial court’s order declaring the Macks to be vexatious litigants. On February 16, 2011, the trial court issued a “Prefiling Order—Vexatious Litigant” against the Macks. On March 7, 2011, the Macks filed an opposition to the order declaring them vexatious litigants. On April 7, 2011, the Macks filed a notice of appeal. The matter was stayed for more than two and a half years after Jamie Mack filed for bankruptcy.

On October 28, 2013, the Macks applied for an order to “Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List” on the grounds they did not meet the statutory criteria to be deemed vexatious litigants. The Presiding Judge of the Superior Court of Riverside County denied the application.

APPEALABILITY

An order determining a party to be a vexatious litigant is not directly appealable. (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 635.) However, a prefiling order against a vexatious litigant may be considered a preliminary injunction that is appealable under certain circumstances. (*Luckett v. Panos* (2008) 161 Cal.App.4th 77, 90.) Here, the local presiding judge denied the Macks’ application to vacate the prefiling order. In *Luckett*, the Court of Appeal treated such an order as appealable as the denial of a request to

dissolve an injunction. (*Ibid.*) We will therefore address the Macks' appeal on the merits.

DISCUSSION

Determination that the Macks Are Vexatious Litigants

The vexatious litigant statutes (Code Civ. Proc., §§ 391-391.8) “are designed to curb misuse of the court system by those persistent and obsessive litigants who, repeatedly litigating the same issues through groundless actions, waste the time and resources of the court system and other litigants.” (*Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1169.) “A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court’s ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment.’ [Citations.] Questions of statutory interpretation, however, we review de novo.” (*Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1498-1499.)

Code of Civil Procedure section 391, subdivision (b)(1), defines a vexatious litigant as a person 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” Subdivision (b)(3) of that section defines a vexatious litigant as a person who, “while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.”

The Macks argue they did not fit within Code of Civil Procedure section 391, subdivision (b)(1), because Bruce Mack was not a party to one of the five actions identified in Citibank's motion and Jamie Mack was represented by counsel in that action. Even if we accept that position for purposes of argument, we nonetheless conclude that the trial court's ruling was proper under section 391, subdivision (b)(3). The Macks repeatedly filed documents in the instant case misrepresenting the trial court's ruling on their motion to dismiss. The trial court unequivocally denied that motion, yet the Macks filed a purported "Judgment" stating that the motion had been granted and argued in other documents that the trial court should dismiss Citibank's motion to have them declared vexatious litigants because the underlying complaint had been dismissed. The trial court could properly determine that the Macks' repeated filings were both unmeritorious and frivolous within the meaning of Code of Civil Procedure section 391, subdivision (b)(3). We therefore find no abuse of discretion either in the order declaring them to be vexatious litigants or in the subsequent order of the presiding judge denying their application to remove them from the vexatious litigant list.

Hearsay Evidence

The Macks contend that the trial court based its ruling on hearsay.

Citibank supported its motion with, among other things, a request for judicial notice of the documents the Macks had filed in the instant action and the declaration of counsel identifying the docket sheets for five cases in which the Macks had been plaintiffs. The Macks have not provided any citation to the record indicating that they raised a hearsay objection in the trial court. They have therefore forfeited any such

assertion on appeal. (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 331.)

Fair Hearing

The Macks contend they did not receive a fair hearing because the trial court did not review the evidence before issuing its ruling.

The Macks filed numerous pleadings in opposition to Citibank's motion. They were present at the hearing and argued their case. The trial court took a brief recess to consider a document the Macks presented at the hearing. In the absence of evidence to the contrary, we presume the trial court regularly performed its official duty and considered all relevant evidence in reaching its conclusions. (Evid. Code, § 664.) Moreover, the Macks have not identified any evidence they were precluded from presenting. We conclude the Macks have failed to show that they did not receive a fair hearing.

Ruling on Objection

The Macks contend that the trial court erred in failing to rule on their objection to the proceedings below. At the hearing on Citibank's motion for a determination that the Macks were vexatious litigants, the trial court stated its intended disposition and explained what the Macks would be required to do if they filed any future actions. Bruce Mack stated, "For the record, we object to the ruling." The trial court responded, "I appreciate that. That's on the record."

It is not enough for a party to merely assert an objection in the trial court. Rather, the party must identify the specific legal grounds for its objection. (See, e.g., *Uzyel v.*

Kadisha (2010) 188 Cal.App.4th 866, 896.) Because the Macks failed to do so, any error has been forfeited.

Propria Persona Status

In their reply brief, the Macks argue that because they appear in propria persona, they should not be held to the same standards as attorneys. While they cite various federal decisions to support their argument, those decisions merely stand for the principle that propria persona litigants should not be held to stringent standards in drafting complaints. However, our law is clear that litigants who act as their own attorneys must comply with the same rules of evidence and procedure as apply to licensed attorneys. (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055-1056 [“When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys”].)

DISPOSITION

The orders appealed from are affirmed. Costs are awarded to respondent.

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McKINSTER
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.