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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE ex rel. DEPARTMENT OF
TRANSPORTATION,

Plaintiff and Respondent,

v.

JAMES CONSTANT,

Defendant and Appellant.

E058567

(Super.Ct.No. SCVSS96961)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge.

Affirmed.

James Constant, in pro. per., and for Defendant and Appellant.

Ronald W. Beals, Chief Counsel, Jerald M. Montoya, Deputy Chief Counsel, Eric

J. Fleetwood and Mark Berkebile, Deputy Counsel, for Plaintiff and Respondent.

This is the fourth appeal by Appellant James Constant in connection with the taking of his one and one-half acre parcel in Fontana (the property) by respondent California Department of Transportation (the State). In the first appeal heard by this court, Constant appealed the awarded compensation and the taking. In our unpublished opinion (*The People ex rel. Department of Transportation v. James Constant* (May 13, 2009, E044802, E045320 & E046012 [nonpub. opn.] (Opinion I)), we affirmed the taking and compensation, and remanded to the trial court for it to determine the costs to which Constant was entitled under Code of Civil Procedure sections 1268.710 and 1268.720 for both the trial and appeal.¹

Upon remand, the trial court awarded Constant his costs of suit, in the amount of \$1,736.82 and appellate costs in the amount of \$11,102.14, but denied some of his costs and attorney fees, which he appealed. On appeal, we affirmed the trial court's grant of the State's motion to tax costs to deny Constant's attorney fees and the costs of his exhibits. We also affirmed the trial court's denial of defendant's motion to set aside the judgment. We awarded Constant his costs of appeal pursuant to section 1268.720. (*The People ex rel. Department of Transportation v. James Constant* (November 16, 2010, E049886 & E049988 [nonpub. opn.] (Opinion II)).

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

On remand, the trial court granted the State's motion to tax costs based on Constant's failure to timely file his memorandum of costs pursuant to California Rules of Court rule 8.278. In our third unpublished opinion, we affirmed the trial court's ruling finding the trial court properly denied costs because Constant filed an untimely memorandum of costs. (*People v. ex.rel. Department of Transportation v. James Constant* (October 24, 2012; E054542) [nonpub. opn.] (Opinion III)).

This case involves an appeal from the denial of Constant's motion to dismiss filed in the trial court pursuant to section 1268.020, subdivision (b) in which Constant claimed that the State had failed to pay on the judgment. The trial court denied the motion finding that the State had properly deposited the funds and they were readily available to Constant.

Constant now claims in this appeal as follows:

1. "When the Federal and California Constitutions, laws and authorities, provide that no person shall be deprived of liberty or property without due process of law, does a court lose its jurisdiction when it precludes a pro per property owner from testifying and providing evidence of value of his property?"
2. "When the eminent domain law provides that the condemnee can choose to repossess the condemned property on an unpaid eminent domain judgment, can the State nullify the condemnee's choice merely by claiming that 'A deposit with the State Treasurer is deemed to be a deposit with the court, if the amount required by the judgment is deposited' and proposing non-statutory procedures for late payment?"

3. “Is making the condemnee into an involuntary lender on an unpaid eminent domain judgment, the ‘full and perfect equivalent’ of giving the condemnee back its property?”

We affirm the trial court’s order after judgment denying the motion to dismiss.

I

FACTUAL AND PROCEDURAL BACKGROUND

Opinions I, II and III in this case exhaustively documented the history of this case, and we incorporate it into this opinion by reference.² We see no reason to revisit the facts of the prior cases. This case only concerns the denial of Constant’s motion to dismiss the eminent domain action based on his claim of non-payment by the State. We need only discuss the facts occurring after the last appeal.

Remittitur issued on Opinion III on January 2, 2013. On March 1, 2013, Constant filed his motion to dismiss the eminent domain proceedings (motion) pursuant to section 1268.020, subdivision (b). He argued pursuant to section 1268.010, subdivision (a), that within 30 days of the final judgment in an eminent domain proceeding, he was to be paid by the State and it had not paid him. Pursuant to section 1268.020, subdivision (b), he sent notice to the State on February 3, 2013, informing it that it had failed to pay the judgment. According to the statutory language, the State had 20 days to pay the judgment after receiving Constant’s notice, but it had failed to do so.

² We take judicial notice of the records in case numbers E044802, E045320, E046012, E049886 and E049988.

Constant averred the final judgment was entered on January 2, 2013, when the remittitur issued on Opinion III. The judgment was originally filed on November 9, 2009, which awarded Constant \$97,064.50, plus interest. He was later awarded \$1,736.82 in costs and appellate costs of \$11,102.14. Defendant's brother, Robert, had been paid \$316,000 pursuant to a pre-trial settlement. Constant included as an exhibit an order of possession filed by the State prior to trial in which it deposited \$187,000 into the State Treasury pursuant to sections 1255.070 and 1255.010. Constant also submitted documentation of his estimated value of the property.

On March 27, 2013, the State filed its opposition to the motion (opposition). The State contended it had deposited \$187,000 with the State Treasury on May 21, 2002. In addition, it appears the State deposited an additional \$114, 898.63 with the State Treasury to pay Constant, and an additional \$20,404.03 would be deposited. The State determined it owed Constant a total of \$135,302.66 with costs and interest.

According to a declaration from an employee of the State, Constant was sent a vendor payee form on February 28, 2008, asking Constant to complete the form, which included providing his taxpayer identification information. The taxpayer identification number was required anytime a check was written by the State Treasurer. Another form was sent to Constant on December 15, 2009 and he never returned it. A blank copy of the form was attached to the opposition.

The State argued that the amount to satisfy the judgment had already been deposited in the State Treasury. Section 1268.010, subdivision (b)(2) allowed an entity to satisfy a judgment with deposit of money with the court pursuant to section 1268.110.

The judgment in condemnation allowed for satisfaction of the judgment through deposit with the court.

The State was willing to execute whatever documents were necessary for Constant to withdraw the funds on deposit. The State could not give a check directly to Constant unless he provided his taxpayer identification number. Constant refused to seek or accept payment and could not obtain reversal of the condemnation on this basis.

On March 29, 2013, Constant filed a reply to the opposition. He argued that a prejudgment deposit under section 1268.110 did not satisfy the judgment because the State was ordered to make a post judgment deposit in the condemnation judgment. Constant argued that he had sought payment under section 1268.010, subdivision (a). Allowing the State to pay the judgment late would be unconstitutional. Constant argued that a refusal to dismiss the case would render him an unwilling creditor to the State. Constant argued that the value of the property was \$7,593,530. Constant sought dismissal of the eminent domain judgment and payment of that amount.

A hearing was conducted on April 10, 2013. Constant submitted written argument that he read into the record. Constant argued the “50-day” grace period for payment had ended. If Constant requested payment from the court, it would have to deny it. The State sought delay either by ordering the State Treasurer to pay him or by ordering him to provide taxpayer identification information. Constant argued that the pretrial settlement for \$316,000 with Robert had wiped out the \$187,000 deposit. Further, he argued the condemnation judgment required a post judgment deposit by the State. Further, he had sought payment by filing the motion.

Constant also argued that sections 1255.010 and 1268.110 were general statutes. Section 1268.020, subdivision (b) was a specific statute under eminent domain law. Section 1255.010, a general statute, could not prevail over section 1268.020, subdivision (b). Dismissal was required.

The trial court stated to Constant, “I assume you want to be paid. You have choices. You can be paid directly, but you have to submit your taxpayer I.D. information. Apparently, you don’t want to do that, and that’s your right. [¶] The other thing that you can do is the money that is on deposit, the plaintiff has indicated they have no objection to you withdrawing that. It’s on deposit with the state treasury. It does not - - pursuant to the statute, it does not need to be on deposit with the court. The deposit in the general fund is sufficient. All you need to do, sir, is ask for the money and it’s yours. [¶] Your motion is denied.”

Constant filed a notice of appeal from the motion on April 15, 2013.

II

ARGUMENT

Initially, we note that Constant, in conformity with his usual practice, attempts to raise an issue on appeal that is not proper. He claims that the trial court lacked jurisdiction because he has never been allowed to present evidence of the value of the land taken. This claim was rejected in Opinion I. Under the law of the case doctrine “a matter adjudicated on a prior appeal normally will not be relitigated on a subsequent appeal in the same case.” (*Davies v. Krasna* (1975) 14 Cal.3d 502, 507.) The only issue

to be addressed in this appeal is whether the trial court properly resolved Constant's motion.

A. *Standard of Review*

Constant's motion is appealable as an order after judgment under section 904.1, subdivision (a)(2). (*Community Redevelopment Agency v. Force Electronics* (1997) 55 Cal.App.4th 622, 629-630.) To the extent the issues presented involve questions of statutory construction, we review the claims de novo. (*Crosby v. HLC Properties, Ltd.* (2014) 223 Cal.App.4th 597, 602.) However, as for review of any disputed facts — such as the trial court's resolution that the full judgment amount was still on deposit — “we must presume the court found every fact and drew every permissible inference necessary to support its judgment, and defer to its determination of credibility of the witnesses and the weight of the evidence.” (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 923.)

B. *Analysis*

“When the government exercises its power of eminent domain, and condemns or damages private property for public use, it must pay ‘just compensation’ to the owner. [Citation.] The just compensation is aimed at making the landowner whole for a governmental taking or damage to the owner's property. [Citations.]” (*Mt. San Jacinto Community College Dist. v. Superior Court* (2007) 40 Cal.4th 648, 653, fn. omitted.) ““This element of “just compensation” is constitutionally required and “cannot be made to depend upon state statutory provisions.” [Citation.]” (*Saratoga Fire Protection Dist. v. Hackett* (2002) 97 Cal.App.4th 895, 903.) “[J]ust compensation is the ‘overriding

principle’ that applies in eminent domain law. [Citation.]” (*Escondido Union School Dist. v. Casa Sueños De Oro, Inc.* (2005) 129 Cal.App.4th 944, 959.)

Section 1255.010, subdivision (a) provides, “At any time before entry of judgment, the plaintiff may deposit with the State Treasury the probable amount of compensation, based on an appraisal, that will be awarded in the proceeding.” The amount shall be held, deposited and invested until it is disbursed. (§ 1255.070.)

Once a judgment in condemnation is final or after the conclusion of any other court proceeding, the plaintiff shall pay within 30 days the full amount required by the judgment. (§ 1268.010, subd. (a).) “(b) Payment shall be made by *either* or both of the following methods: [¶] (1) Payment of money directly to the defendant (2) Deposit of money with the court pursuant to section 1268.110. Upon entry of judgment, a deposit made pursuant to Article 1 (commencing with section 1255.010) of Chapter 6 is deemed to be a deposit made pursuant to Section 1268.110 if the full amount required by the judgment is deposited or paid.” (§ 1268.010, emphasis added.)

Section 1268.140, subdivision (a) provides, “After entry of judgment, any defendant who has an interest in the property for which a deposit has been made may apply for and obtain a court order that he be paid from the deposit the amount to which he is entitled”

If it is established that the plaintiff failed to pay the amount required by the judgment entered in the proceeding within the time specified, the defendant may file in court and serve on the plaintiff, by registered or certified mail, a written notice of that failure. If the plaintiff has failed for 20 days after service of this notice to pay the full

amount required by the judgment, a court, on noticed motion of the defendant, must enter judgment dismissing the eminent domain proceeding. (§ 1268.020, subs. (b) & (c).)

Here, the statutory language is clear that a deposit of money at the beginning of the eminent domain proceeding in accordance with section 1255.010 satisfies payment of the judgment under section 1268.110. Here, there is no dispute that the State deposited \$187,000 in 2002, at the beginning of the eminent domain proceeding. As such, the State had satisfied its obligation under section 1268.010 to deposit money sufficient to satisfy the judgment. Constant does not dispute the State's calculation of the amount owed. As such, prior to Constant filing his motion, the State had satisfied its obligation. All Constant needed to do was ask the court to order that the money be released to him.

Constant contends that the State was required under section "1268.010(1)" to pay him directly. However, this completely ignores the statutory language and subdivision (b)(2) of section 1268.010. He also claims the initial deposit had been depleted to pay Robert in accordance with the pretrial settlement. However, the only evidence was that the deposit of \$187,000 was made and remained on deposit. The State's employee averred that the deposit remained and was available to Constant. Constant provided no evidence to the contrary that the amount was used to pay Robert.

Constant also claims that the trial court's finding "defers payment to some unspecified non statutory date and unspecified non statutory procedure in the future." This is belied by the record. All Constant needed to do was to ask to withdraw the money and the State agreed that it would execute whatever paperwork was necessary in order for Constant to be paid.

Constant argued that his notice pursuant to section 1268.010, subdivision (b) to the State to pay him was his request to withdraw the funds and that the State should have paid him at that time. Although this may at first glance be a reasonable argument, as set forth *ante*, the State had already complied with its obligations under section 1268.010 when the notice was sent. Moreover, the State had repeatedly requested that Constant provide information so they could issue him a check and he refused to disclose his taxpayer identification. The State had the money on deposit to pay Constant and Constant needed merely to request that the court release it.³

Here, Constant was notified that \$187,000 was deposited at the beginning of the case to pay the just compensation once the action was final. Constant merely needed to make a request for the funds and he would have received payment. The State satisfied its obligation to deposit the proper amount to pay the judgment. The motion was properly denied by the trial court.

³ Constant makes other arguments that he was an unwilling lender to the State due to the nonpayment and an argument about general and specific statutes. These arguments are specious and require no further discussion.

III

DISPOSITION

We affirm the order after judgment. The State’s contention that each party should pay their own costs on appeal is well taken. (See *Eastern Municipal Water Dist. V. Superior Court* (2007) 157 Cal.App.4th 1245, 1256 [Fourth Dist., Div. Two].) Although it is a departure from the general rule that under Code of Civil Procedure section 1268.720 a landowner is entitled to his costs on appeal in an eminent domain action, this court does have discretion to hold otherwise, although such departures “should be rare.” (*Ibid.*) This case presents such a rare circumstance. The parties shall bear their own costs on appeal.

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RICHLI
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.