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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

BILLY Z. EARLEY et al.,

Plaintiffs and Appellants,

v.

CVS CAREMARK CORPORATION  
et al.,

Defendants and Respondents.

E062872

(Super.Ct.No. RIC1308906)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge.

Affirmed.

Billy Z. Earley, in pro. per., and for Plaintiffs and Appellants.

Foley & Lardner, Tami S. Smason and Kimberly Klinsport for Defendants and Respondents.

## INTRODUCTION

Plaintiffs and appellants Billy Z. Earley and First Choice Clinica Familiar Physician Assistant appeal from a final judgment in their suit against defendants CVS Caremark Corporation, CVS Pharmacy, Inc. and Walgreen Co.<sup>1</sup> We can dispose of the appeal briefly because the issues they attempt to raise are not cognizable on appeal.

## STATEMENT OF THE CASE

Plaintiffs filed an action in the Riverside County Superior Court against defendants, alleging libel, slander per se, unfair business practices and discrimination under title 42 of the United States Code, section 2000 et seq. Defendants removed the action to the federal district court, and on June 2, 2014, the federal court dismissed the discrimination claim with prejudice and remanded the matter to the Riverside County Superior Court for further proceedings on the other three causes of action. Defendants then jointly filed a special motion to strike, or anti-SLAPP motion. (Code Civ. Proc., § 425.16.) The motion was granted. On August 29, 2014, all causes of action were stricken, and the entire action was dismissed with prejudice. Plaintiffs' subsequent motion for reconsideration was denied.

Plaintiffs appealed from the denial of the motion for reconsideration. On January 28, 2015, that appeal was dismissed by our court without opinion because orders denying reconsideration are not appealable and because the notice of appeal was not timely if it

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<sup>1</sup> For reasons not explained in the record on appeal, Walgreen Co. is not a party to this appeal.

were construed as an appeal from the August 29, 2014 order granting the special motion to strike.<sup>2</sup> (*Earley et al. v. CVS Caremark Corp. et al.*, E062657.)<sup>3</sup>

On December 4, 2014, defendants CVS Caremark Corporation and CVS Pharmacy, Inc., filed a motion for attorney fees and costs. On January 26, 2015, the court granted the motion, and on February 11, 2015, judgment was purportedly entered in favor of those two defendants. On February 3, 2015, plaintiffs filed a notice of appeal, stating that it was taken from the final judgment entered on January 26, 2015.

### ANALYSIS

Plaintiffs' February 3, 2015 appeal is not timely as an appeal from the "final judgment." An order granting a special motion to strike constitutes a final judgment when it disposes of the entire controversy between the parties. (*Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 992-997.) Here, the August 29, 2014 order striking all pending causes of action and dismissing the entire action is the final judgment, and we previously ruled that the notice of appeal filed on January 5, 2015, was not timely as an appeal from that order. Accordingly, the notice of appeal filed on February 3, 2015, is also not timely as an appeal from that judgment.

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<sup>2</sup> A special motion to strike is an appealable order. (Code Civ. Proc., §§ 425.16, subd. (i), 904.1, subd. (a)(13).)

<sup>3</sup> We take judicial notice of the record in case No. E062657. (Evid. Code, § 452, subd. (d).)

In *Russell v. Foglio* (2008) 160 Cal.App.4th 653, the court held that a notice of appeal from a “judgment” entered several months after issuance of an order granting a special motion to strike was timely only as an appeal from the subsequent order for attorney fees and costs. (*Id.* at pp. 658-661.) Moreover, an order for attorney fees is independently appealable as an order after judgment. (*Melbostad v. Fisher, supra*, 165 Cal.App.4th at p. 996; Code Civ. Proc., § 904.1, subd. (a)(2).) Plaintiffs’ notice of appeal states that it is taken from the order entered on January 26, 2015, and we will therefore construe it as being taken from the postjudgment order for attorney fees and costs, notwithstanding the description of that order as a final judgment.

However, plaintiffs do not make any arguments concerning the fee and cost award. Instead, they devote their briefing entirely to the deficiencies of the representation they received in the underlying action. Plaintiffs’ contentions concerning the quality of their attorney’s representation are not cognizable in a civil appeal. (*In re Marriage of Campi* (2013) 212 Cal.App.4th 1565, 1574-1575.) Because they have made no arguments concerning the fee award, they have not met their burden on appeal to affirmatively demonstrate error, and we may treat the issue as waived. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Accordingly, we will affirm the judgment.<sup>4</sup>

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<sup>4</sup> Defendants’ requests for judicial notice, filed July 28 and August 17, 2015, are denied as moot. Plaintiffs’ motion to augment the record, filed January 4, 2016, which we deemed to be a request for judicial notice, is also denied as moot.

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal.

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McKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

SLOUGH  
J.