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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

SILUS M. VALSON,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

F072065

(Super. Ct. No. CV279903)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. David R. Lampe, Judge.

Silus M. Valson, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Jonathan L. Wolff, Assistant Attorney General, Thomas S. Patterson and Giam M. Nguyen, Deputy Attorneys General, for Defendants and Respondents.

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Plaintiff Silus M. Valson, a prison inmate, was allegedly injured in his health because the water supply at the Kern Valley State Prison contained elevated amounts of arsenic. He filed a lawsuit for damages against public entity defendants, including the State of California, Kern Valley State Prison, and the California Department of Corrections and Rehabilitation (defendants). Defendants demurred to the complaint on the ground that plaintiff failed to timely comply with the Government Claims Act (Gov. Code, §§ 810, 900 et seq.). The trial court sustained the demurrer without leave to amend and ordered the case dismissed. Plaintiff did not appeal from the dismissal order, but instead filed a series of motions for relief from judgment in the trial court under Code of Civil Procedure sections 473 and 1008, each of which was denied.¹ Plaintiff now appeals from the latest order denying relief under section 473. On the record before us, we conclude that plaintiff has failed to demonstrate the trial court erred or abused its discretion. Accordingly, the rulings and judgment of the trial court are affirmed.

FACTS AND PROCEDURAL HISTORY

On July 24, 2013, plaintiff filed his complaint for damages. He alleged that in April 2012, while incarcerated at Kern Valley State Prison, he was exposed to unhealthy levels of arsenic in the prison drinking water. Defendants allegedly failed to alleviate the problem or to protect plaintiff from harm, which resulted in physical symptoms or injuries experienced by plaintiff to his heart and circulatory system. Defendants filed a general demurrer to the complaint on the ground that plaintiff did not comply with the requirements of the Government Claims Act. Based on records submitted for judicial notice in connection with the demurrer, defendants argued that plaintiff had failed to

¹ Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

present a timely tort claim to the California Victim Compensation and Government Claims Board (the Board) before filing his complaint.²

On June 25, 2014, the trial court sustained the demurrer without leave to amend. The trial court explained that (1) the general negligence and premises liability causes of action required plaintiff to have timely filed a claim with the Board or to timely petition the trial court for relief to file a late claim, (2) plaintiff failed to file a timely claim with the Board and also failed to timely request relief from the trial court to file a late claim, and (3) defendants were immune to the remaining federal civil rights causes of action under title 42 United States Code section 1983. By separate order, the trial court dismissed the case on July 24, 2014.

On September 10, 2014, plaintiff filed his first motion for relief from the judgment. His motion was based on section 473, subdivision (b), but he failed to present any facts showing mistake, inadvertence, surprise or excusable neglect. On December 4, 2014, the trial court denied plaintiff's motion without prejudice.

On December 19, 2014, plaintiff filed his second motion for relief from the judgment under section 473, subdivision (b). On February 6, 2015, the trial court denied plaintiff's second motion for relief, explaining that plaintiff had failed to show "why the court was compelled to overrule defendant's demurrer of June 25, 2014, had all plaintiff's information in opposition been timely presented to the court." (Capitalization omitted.) The trial court found that plaintiff failed to make such a showing because "the information presented [did] not change the fact that plaintiff's claim form of November 15, 2013, was filed late compared to the date of the incident" (Capitalization omitted.) The trial court further explained that plaintiff's recourse was to

² For monetary claims against the state or agencies thereof, the board to which a plaintiff must submit his or her claim was known as the Victim Compensation and Government Claims Board. The board is now referred to as the Department of General Services. (See Gov. Code, § 900.2, subd. (b) as amended by Stats. 2016, ch. 31, § 34.)

seek an order of the Board allowing him to file a late claim, and then to petition the trial court for an order relieving him of the Government Claims Act filing deadlines.

According to the trial court, plaintiff had failed to obtain any such relief from either the Board or from the trial court. “Instead plaintiff filed a complaint with the Superior Court on July 24, 2013, without first receiving relief from the Government Claims Act, and at no time presenting any request to the court for relief from the [Government] Claims Act Nothing in plaintiff’s showing changes the facts that plaintiff did not comply with the Government Claims Act procedure for litigating claims against the state such as to persuade the court that had the court timely possessed defendant’s opposition to the demurrer on June 25th, 2014, it would have been compelled to overrule the defendant’s demurrer.” (Some capitalization omitted.)

On February 20, 2015, plaintiff filed a third motion for relief from judgment. Plaintiff’s third motion was framed as a motion for reconsideration under section 1008 and/or as a motion for relief from judgment under section 473. On March 20, 2015, the trial court denied plaintiff’s third motion “for the reason plaintiff has not offered any new facts or law showing ‘mistake, surprise, inadvertence, or excusable neglect.’” (Capitalization omitted.) The trial court also denied the third motion on the additional ground that plaintiff’s motion was untimely or late.

On May 11, 2015, plaintiff filed a fourth motion for relief from the judgment, labeled as a “Petition for Relief from the Government Claim[s] Act in Support of Plaintiff[’s] Motion for Relief from the Judgment” (Some capitalization omitted.) On June 19, 2015, the trial court ruled that “[d]ismissal and judgment ha[d] been rendered.” Accordingly, the trial court “denie[d] the motion and petition for lack of jurisdiction.”

Plaintiff’s notice of appeal followed.

II. Trial Court Properly Denied the Fourth Motion

Section 473, subdivision (b), provides that “[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” A party seeking relief under section 473, subdivision (b), must file the motion within a reasonable time but not longer than six months after the judgment, dismissal or order was taken. (*Ibid.*) “This six-month time limitation is jurisdictional; the court has no power to grant relief under section 473 once the time has lapsed.” (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 928; accord, *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42.)

“In reviewing the evidence in support of a section 473 motion, we extend all legitimate and reasonable inferences to uphold the judgment. The disposition of such a motion rests largely in the discretion of the trial court, and its decision will not be disturbed on appeal unless there has been a clear abuse of discretion. Although precise definition is difficult, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.] We have said that when two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court. [Citations.]” (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 597–598.) At the same time, because the law favors disposing of cases on their merits, a trial court’s order denying relief will be scrutinized more carefully than an order permitting trial on the merits. (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

Here, the trial court did not abuse its discretion in denying relief because the fourth motion was not brought on a timely basis. It was filed approximately 10 months after the July 24, 2014, dismissal order. As noted, the motion had to be filed “within a reasonable time,” but in no case later than “six months, after the judgment, dismissal,

order, or proceeding was taken.” (§ 473, subd. (b).) In its order denying relief, the trial court stated that “dismissal and judgment have been rendered” and that “the court denies the motion and petition for lack of jurisdiction.” The trial court correctly recognized that the time period for seeking relief under section 473, subdivision (b), had passed. (See *Manson, Iver & York v. Black, supra*, 176 Cal.App.4th at p. 42 [“The six-month time limit for granting statutory relief is jurisdictional and the court may not consider a motion for relief made after that period has elapsed.”].)

The same result is reached if the fourth motion were treated as a petition for relief under Government Code section 946.6. Under Government Code section 946.6, where an application for leave to present a late claim has been denied by the Board, a petition may be filed in the trial court for an order relieving the petitioner of the claims filing requirements of Government Code section 945.4. However, the petition must be filed in the trial court within six months after the application to the Board was denied or deemed to be denied. (Gov. Code, § 946.6, subd. (b).) Here, plaintiff’s application to file a late claim was denied by the Board on March 29, 2013. Plaintiff, therefore, had until September 29, 2013, to file a petition in the trial court under Government Code section 946.6. He did not do so. Plaintiff’s fourth motion for relief was not filed in the trial court until May 11, 2015, and must be rejected as untimely under Government Code section 946.6. ““A petition for such an order must be filed with the court within six months after the application is denied or deemed denied. [Citations.]’ [Citation.] The failure to timely comply with the Government Code requirements concerning claims bars a subsequent suit.” (*City of Los Angeles v. Superior Court* (1993) 14 Cal.App.4th 621, 627.) Therefore, not only did plaintiff fail to comply with the mandatory deadline for seeking relief under Code of Civil Procedure section 473, subdivision (b), he also failed to comply with the antecedent mandatory deadline for petitioning the trial court for relief under Government Code section 946.6 from the claims filing requirements.

In light of the untimeliness of the motion(s), we conclude the trial court did not abuse its discretion in denying relief. Whether the fourth motion is deemed a motion to vacate under Code of Civil Procedure section 473 or a petition for relief under Government Code section 946.6, or a combination of both, the result is the same: No abuse of discretion is shown.

III. Error Has Not Been Affirmatively Shown

A judgment or order of a trial court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Because a trial court's judgment or order is presumed to be correct, reversible error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, an appellant must affirmatively show prejudicial error based on adequate legal argument and citation to the record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557.) These requirements apply equally to an appellant who is acting without an attorney. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 523.)

In the discussion above, we have seen that the trial court did not abuse its discretion in denying the fourth motion for relief from judgment, since plaintiff failed to pursue that relief until after the mandatory time limits had expired. As stated by defendants in their brief on appeal, “[t]he trial court did not abuse its discretion by denying [plaintiff] the opportunity to circumvent the designated procedures for obtaining such relief.” This glaring fact provides a more than sufficient basis for us to affirm the judgment below.

But even assuming, hypothetically, that plaintiff had sought relief on a timely basis in the trial court (which he did not), he was still required to show a sufficient basis for any “mistake, inadvertence, surprise, or excusable neglect” to excuse his failure to comply with the Government Claims Act (Gov. Code, § 946.6, subd. (c)(1)). Plaintiff's brief as appellant has failed to adequately demonstrate that such grounds for relief

potentially existed. For this additional reason, no reversible error or abuse of discretion has been affirmatively shown.

DISPOSITION

The orders and judgment of the trial court are affirmed. Each party shall bear their own costs on appeal.

KANE, J.

WE CONCUR:

LEVY, Acting P.J.

POOCHIGIAN, J.