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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FRIENDS FOR FULLERTON'S FUTURE
et al.,

Plaintiffs and Appellants,

v.

CITY OF FULLERTON et al.,

Defendants and Respondents.

G044597

(Super. Ct. No. 30-2009-00307451)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

C. Robert Ferguson for Plaintiffs and Appellants.

Rutan & Tucker, Jeffrey M. Oderman and William H. Ihrke for Defendants and Respondents City of Fullerton, City Council of the City of Fullerton and Fullerton Redevelopment Agency.

Nicholas S. Chrisos, County Counsel, and James C. Harman, Deputy County Counsel, for Defendant and Respondent Auditor-Controller for the County of Orange.

* * *

Plaintiffs and appellants Friends for Fullerton’s Future and Tony Bushala (collectively, “Plaintiffs”) appeal from a judgment rejecting their challenges to the amended redevelopment plan defendants and respondents City of Fullerton, City Council of the City of Fullerton, and Fullerton Redevelopment Agency (collectively, “City”) adopted. The trial court entered judgment without reaching the merits of Plaintiffs’ claims after it denied their application for relief from their failure to timely serve the Attorney General as required by Health and Safety Code section 33501.3.¹

Section 33501.3 prohibits a court from granting relief in an action challenging a redevelopment plan unless the party files proof it served its pleading and briefs on the Attorney General within three days of filing those documents with the court. Section 33501.3 allows a court to permit a party to serve the Attorney General after this three-day period, but only upon showing (1) good cause for failing to timely serve the Attorney General and (2) the untimely service will not prejudice the Attorney General’s ability to review and possibly participate in the action.

Plaintiffs sought permission to serve the Attorney General more than a year after they filed this action based on their attorney’s declaration stating he did not know about section 33501.3 and its service requirements. The trial court denied Plaintiffs’ application based on its finding that the attorney’s mistake of law did not constitute good

¹ All statutory references are to the Health and Safety Code unless otherwise noted.

cause for failing to comply with section 33501.3. We agree and affirm the trial court's judgment.²

I

FACTS AND PROCEDURAL HISTORY

In September 2009, Plaintiffs filed this action to challenge the City's decision to amend its redevelopment plan to add nearly 1,200 acres to the City's redevelopment project. Plaintiffs alleged these new areas did not qualify for inclusion in a redevelopment project because they did not meet the statutory definition of blighted areas. According to Plaintiffs, the City improperly sought to use redevelopment to subsidize economic development in the areas rather than revitalize blighted areas. The complaint sought a judgment invalidating the ordinance the City adopted to amend its redevelopment plan and also requested injunctive and declaratory relief.

Plaintiffs served the City and published the summons as required for any challenge to a redevelopment plan or amendment. The City answered Plaintiffs' complaint in December 2009 and the defenses it alleged included Plaintiffs' failure to serve a copy of the complaint "on public entities, state agencies and/or third parties

² Assembly Bill No. 26, passed by the Legislature and signed by the Governor in June 2011, may render this action moot. In general, that bill dissolves all redevelopment agencies and prohibits future redevelopment projects. After the Supreme Court rejected various challenges to Assembly Bill No. 26 (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231), we asked the parties to submit supplemental briefing to address the issue. The parties, however, failed to provide us with sufficient information to determine whether Assembly Bill No. 26 definitively rendered this action moot and therefore we decide this appeal on the merits. In support of its supplemental brief, the City asked us to judicially notice documents regarding proposed legislation relating to Assembly Bill No. 26 and other litigation challenging the bill. Because we decide this appeal on the merits, these documents are irrelevant and therefore we deny the City's request. (*Rosen v. St. Joseph Hospital of Orange County* (2011) 193 Cal.App.4th 453, 457, fn. 2 (*Rosen*) ["Although a court may judicially notice a variety of matters [citation], only *relevant* material may be noticed" (original italics)].)

pursuant to applicable law, including but not limited to Health and Safety Code section 33500 *et seq.*, Code of Civil Procedure section 860 *et seq.*, and Code of Civil Procedure section 417.10.”

The court originally set an October 2010 trial date, but continued it to December 2010 when the parties experienced delays in preparing the administrative record. Plaintiffs filed their trial brief on September 1, 2010, and the City filed its trial brief on October 14, 2010. The City’s brief argued section 33501.3 prohibited the court from granting Plaintiffs any relief because they failed to timely serve their complaint and trial brief on the Attorney General and could not establish good cause for their failure to do so. Plaintiffs served both their complaint and trial brief on the Attorney General by overnight delivery on October 18, 2010.

On November 2, 2010, Plaintiffs filed an *ex parte* application seeking “relief from an inadvertent non-compliance with Health & Safety Code §33501.3 in that the California Attorney General was not served with copies of their Complaint and Opening Brief within the three days allowed.” Plaintiffs sought relief based on section 33501.3’s good cause exception only. They did not request relief under either the mandatory or discretionary relief provisions in Code of Civil Procedure section 473, subdivision (b).

In support of the application, Plaintiffs’ counsel declared that he reviewed sections 33500 and 33501 to confirm that 2006 amendments to those sections extended the statute of limitations from 60 days to 90 days, but “I was unaware that any other changes had been made or that there were several new subdivisions. As a result, I inadvertently did not know of any reason to look further. Section 33501 is on page 330, but section 33501.3 is on page 334 of Deering’s Pocke[t] Supplement.” Plaintiffs’ counsel also declared that “I have commenced over sixty (60) reverse validation actions” and “have always worked diligently to make sure that all of the barriers placed in the statutes to discourage reverse validation actions are complied with.”

The trial court continued the hearing on Plaintiffs' ex parte application to give the parties an opportunity to submit further briefing. On November 16, 2010, the court denied Plaintiffs' application because it found they did not establish good cause for their failure to serve the Attorney General. The court explained:

“[I]t’s very clear from the cases that I can find that they split this concept of good cause for relief from some sort of procedural defalcation in terms of things like notice to the Attorney General and the element of no harm. There has to be good cause for the mistake, and there has to be no prejudice.

“I have no problem making the no prejudice finding in this case. But then you get down to what’s good cause. And the cases — you know, these cases seem to embrace [Code of Civil Procedure section] 473 as an analysis as to what good cause is. And the cases that seem to say uniformly that the attorney’s ignorance is not good cause, and that certainly is something that would have led to the Legislature to enact [Code of Civil Procedure section] 473[, subdivision] (b), that when the lawyer does make a mistake like that, you’re — in fact, you’re absolutely entitled to relief if it’s the attorney’s fault and they do a declaration of fault.^{3]} And in this case, you’ve effectively done that

³ Code of Civil Procedure section 473, subdivision (b), includes a discretionary relief provision and a mandatory relief provision. (*Henderson v. Pacific Gas & Electric Co.* (2010) 187 Cal.App.4th 215, 224-225.) The trial court’s reference to “473” refers to the discretionary relief provision and its reference to “473(b)” refers to the mandatory relief provision. Under the discretionary relief provision, an attorney’s mistake of law is charged to the client and is not a ground for relief when “the “mistake” is simply the result of professional incompetence, general ignorance of the law, or unjustifiable negligence in discovering the law” [Citation.]” (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206.) In other words, the mistake must be excusable. (*McCormick v. Board of Supervisors* (1988) 198 Cal.App.3d 352, 360, superseded by statute on other grounds as stated in *Torrey Hills Community Coalition v. City of San Diego* (2010) 186 Cal.App.4th 429, 441.) Under the mandatory relief provision, the court is required to grant a party relief from any default, default judgment, or dismissal entered against the party because of his or her attorney’s “mistake, inadvertence, surprise, or neglect.” Relief must be granted even if the attorney’s mistake is inexcusable provided the attorney files an affidavit taking responsibility for the mistake. (*Vaccaro v. Kaiman*

because you said, ‘Hey, I just didn’t see the new statutory requirement here. When they changed some of this stuff, I just didn’t see it.’ And it’s a lawyer’s nightmare. I mean that’s part of the reason that I’m somewhat empathetic. [¶] . . . [¶]

“But to the extent there’s any law talking about whether the Legislature would [e]ngraft [Code of Civil Procedure section] 473[, subdivision] (b) onto this type of requirement, the cases, to the extent there is — there are cases, seem to be to the contrary. So I believe as a matter of law there’s not good cause to grant relief.”

The trial court then entered judgment against Plaintiffs because their “failure to serve timely the Attorney General and lack of good cause authorizing late-service pursuant to Health & Safety Code § 33501.3 [prevented] the Court [from] grant[ing] any relief, temporary or permanent, to Plaintiffs as prayed for in their Complaint” Plaintiffs timely appealed.

II

DISCUSSION

A. *Applicable Law Regarding Validation and Reverse Validation Actions*

Under the validation statutes, a public agency may seek a judicial determination regarding the validity of many of its actions, including its decision to adopt or amend a redevelopment plan. (Code Civ. Proc., § 860; §§ 33500, subds. (a) & (b), 33501, subds. (a) & (b); *Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1027-1028 (*Katz*.) “If the agency does not seek validation within the time required, any ‘interested person’ may file what is sometimes called a reverse validation action to test the validity of the matter. [Citation.]” (*Katz*, at p. 1028;

(1998) 63 Cal.App.4th 761, 770 (*Vaccaro*.) As discussed in section II.D. below, the mandatory relief provision does not apply to all defaults and dismissals caused by an attorney’s mistake, inadvertence, surprise or neglect. (*Nacimiento Regional Water Management Advisory Com. v. Monterey County Water Resources Agency* (2004) 122 Cal.App.4th 961, 967-969 (*Nacimiento*.)

Code Civ. Proc., § 863.) If neither the public agency nor an interested person files a lawsuit within the statutory period, “the agency’s action will become immune from attack whether it is legally valid or not.”⁴ (*City of Ontario v. Superior Court* (1970) 2 Cal.3d 335, 341-342 (*City of Ontario*)). Accordingly, “an agency may indirectly but effectively ‘validate’ its action *by doing nothing to validate it.*” (*Id.* at p. 341, original italics.)

“The validation procedure is intended to provide a uniform mechanism for prompt resolution of the validity of a public agency’s actions. [Citation.] The procedure ‘assures due process notice to all interested persons’ and settles the validity of a matter ‘once and for all by a single lawsuit.’ [Citation.]” (*Katz, supra*, 144 Cal.App.4th at p. 1028.)

The validation statutes include a number of strict procedural requirements, including publishing the summons and identifying a date certain for responding to the validation or reverse validation complaint. (*Katz, supra*, 144 Cal.App.4th at p. 1028.) Failure to follow the governing procedures may result in the action’s dismissal without a ruling on the merits. (*Id.* at pp. 1028, 1035.)

In actions challenging a redevelopment plan or amendment based on the agency’s blight determinations, section 33501.3 requires all parties to serve their pleadings and briefs on the Attorney General within three days of filing the documents with the court. If a party fails to file proof of timely service on the Attorney General, “[r]elief, temporary or permanent, shall not be granted to [the] party” (§ 33501.3.) “A court may, by court order, allow a party to serve the Attorney General after the three-day period, but only upon showing of good cause for not complying with the three-day notice requirement, and that late service will not prejudice the Attorney

⁴ Code of Civil Procedure section 860 establishes a general 60-day limitations period for validation actions, but section 33500, subdivisions (a) and (b), and section 33501, subdivisions (a) and (b), establish a longer, 90-day limitations period for validation actions regarding redevelopment plans.

General's ability to review, and possibly participate in, the action." (*Ibid.*) Accordingly, to obtain relief from failing to timely serve the Attorney General, a party must establish *both* good cause for the failure *and* lack of prejudice to the Attorney General.⁵

Here, Plaintiffs concede they did not serve the Attorney General until a year after they filed their complaint and one and one-half months after they filed their opening brief. Nonetheless, they contend they established good cause for these failures based on their attorney's declaration stating he did not know the complaint and brief had to be served on the Attorney General.

B. *Standard of Review*

No reported case addresses section 33501.3's good cause exception, but several reported cases address a good cause exception established by another statute in the validation action statutory scheme. Specifically, several cases address Code of Civil Procedure section 863's good cause exception, which allows a trial court to excuse a plaintiff's failure to complete publication of the summons within the statutory time period if the plaintiff shows good cause for that failure. (*City of Ontario, supra*, 2 Cal.3d at pp. 345-346; *Community Youth Athletic Center v. City of National City* (2009) 170 Cal.App.4th 416, 430-431 (*Community Youth*); *Katz, supra*, 144 Cal.App.4th at pp. 1031, 1036; *Card v. Community Redevelopment Agency* (1976) 61 Cal.App.3d 570,

⁵ In its entirety, section 33501.3 states, "If an action specified in Section 33501 challenging the validity of any finding and determination that the project area is blighted is filed in any court, each party filing any pleading or brief with the court in that proceeding shall serve, within three days of the filing with the court, a copy of that pleading or brief on the Attorney General. Relief, temporary or permanent, shall not be granted to a party unless that party files proof with the court showing that it has complied with this section. A court may, by court order, allow a party to serve the Attorney General after the three-day period, but only upon showing of good cause for not complying with the three-day notice requirement, and that late service will not prejudice the Attorney General's ability to review, and possibly participate in, the action."

575-576 (*Card*); *Community Redevelopment Agency v. Superior Court* (1967) 248 Cal.App.2d 164, 173-174 (*Community Redevelopment*).

These cases uniformly hold that whether a “plaintiff demonstrated good cause for failing to comply with the summons publication requirements [citation] is a question that is committed to the sound discretion of the trial court. Accordingly, we review the trial court’s decision on that point for abuse of discretion.” (*Katz, supra*, 144 Cal.App.4th at p. 1031; see also *City of Ontario, supra*, 2 Cal.3d at pp. 345-346; *Community Youth, supra*, 170 Cal.App.4th at pp. 430-431; *Card, supra*, 61 Cal.App.3d at pp. 575-576; *Community Redevelopment, supra*, 248 Cal.App.2d at pp. 173-174.) Indeed, because good cause for failing to perform a procedural requirement is a factual question based on the surrounding circumstances, the “proper decision “rests almost entirely in the discretion of the court below, and appellate tribunals will rarely interfere, and never unless it clearly appears that there has been a plain abuse of discretion.” [Citations.]” (*Katz, supra*, 144 Cal.App.4th at p. 1036, quoting *City of Ontario, supra*, 2 Cal.3d at p. 347.)

Plaintiffs acknowledge these authorities and the abuse of discretion standard they apply, but nonetheless argue we should independently review the trial court’s ruling because the court ruled “as a matter of law there’s not good cause to grant relief.” They are mistaken.

In analyzing whether a party’s excuse for failing to comply with a statute’s procedural requirements constitutes good cause, “the [trial] court has to utilize its discretion to analyze the circumstances before it.” (*Community Youth, supra*, 170 Cal.App.4th at p. 426.) Here, the trial court’s determination that the excuse Plaintiffs offered did not constitute good cause as a matter of law did not change the nature of the court’s analysis, or the standard under which we review the court’s ruling.

The trial court did not conclude it lacked the discretion to grant Plaintiffs relief from section 33501.3’s service requirements; it merely ruled the excuse Plaintiffs

offered could not satisfy the governing standards for good cause. To overturn that determination, we must conclude that Plaintiffs' excuse constituted good cause as a matter of law and therefore the trial court had no discretion to deny Plaintiffs relief. Plaintiffs do not contend the court erroneously interpreted section 33501.3 or applied an erroneous legal standard. Accordingly, we review the court's ruling under the abuse of discretion standard.⁶

C. *The Trial Court Did Not Abuse Its Discretion in Finding Plaintiffs Failed to Establish Good Cause*

Plaintiffs contend they established good cause for relief because their attorney declared he was unaware of section 33501.3's service requirements. The trial court, however, properly found this mistake of law did not constitute good cause for failing to serve the Attorney General.

As explained above, no reported decision addresses section 33501.3 and its good cause exception, but several cases address what amounts to good cause under Code of Civil Procedure section 863 for failing to timely publish the summons in a reverse validation action. Those cases explain that good cause "may be equated to good reason for a party's failure to perform that specific requirement [of the statute] from which he [or she] seeks to be excused." [Citation] . . . [Citation.]” (*Katz, supra*, 144 Cal.App.4th at p. 1036, quoting *Community Redevelopment, supra*, 248 Cal.App.2d at p. 174; see also *City of Ontario, supra*, 2 Cal.3d at pp. 345-346.)

In determining whether good reason exists for failing to comply with statutory requirements, courts apply the same standards used to decide whether to grant relief from a default or dismissal under the discretionary relief provision in Code of Civil Procedure section 473, subdivision (b). (*City of Ontario, supra*, 2 Cal.3d at pp. 345-346 [good cause under Code of Civil Procedure section 863 governed by same standard as

⁶ We would reach the same conclusion affirming the trial court's decision even if we applied the independent review standard Plaintiffs urge us to employ.

relief from default under Code of Civil Procedure section 473, subdivision (b)]; *Community Redevelopment, supra*, 248 Cal.App.2d at pp. 173-175 [relying on cases decided under Code of Civil Procedure section 473, subdivision (b), to decide good cause question under Code of Civil Procedure section 863]; see also *Community Youth, supra*, 170 Cal.App.4th at p. 430 [relying on *City of Ontario* and *Community Redevelopment* to evaluate good cause]; *Katz, supra*, 144 Cal.App.4th at p. 1036 [same]; *Card, supra*, 61 Cal.App.3d at pp. 575-576 [same].)

A mistake of law, like the one Plaintiffs present, “is not sufficient in itself to support a good-cause finding.” (*Katz, supra*, 144 Cal.App.4th at p. 1036.) “““The issue of which mistakes of law constitute excusable neglect presents a fact question; the determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law. [Citation.] Although an honest mistake of law is a valid ground for relief where a problem is complex and debatable, ignorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief.” [Citation.]’ [Citation.]” (*City of Ontario, supra*, 2 Cal.3d at p. 346, quoting *Community Redevelopment, supra*, 248 Cal.App.2d at p. 174; see also *Katz, supra*, 144 Cal.App.4th at p. 1036.) In short, “[i]gnorance of the law, at least where coupled with negligence in failing to look it up, will not justify a trial court in granting relief . . .” [Citation.]” (*Community Redevelopment, supra*, at pp. 174-175.)

In *Community Redevelopment*, the Court of Appeal concluded the trial court abused its discretion by finding good cause existed for the plaintiffs’ failure to publish summons under Code of Civil Procedure section 863. (*Community Redevelopment, supra*, 248 Cal.App.2d at p. 175.) The plaintiffs argued good cause existed based on their attorney’s “honest mistake of law” on whether Code of Civil Procedure section 863 applied to the challenges the plaintiffs brought against a redevelopment plan. (*Id.* at pp. 171-172.) The Court of Appeal rejected that argument because whether the publication requirement applied was not debatable and the statute’s

procedures were not complex. (*Id.* at pp. 174-175.) The *Community Redevelopment* court explained amendments to the Health and Safety Code enacted three years before the plaintiffs filed their action plainly made Code of Civil Procedure section 863 applicable to challenges regarding redevelopment plans, and the plaintiffs' attorney's failure to look up the "readily available" law did not constitute good cause under the foregoing standards. (*Ibid.*)

Here, as in *Community Redevelopment*, the Legislature amended the Health and Safety Code to add section 33501.3 approximately three years before Plaintiffs filed this action. That section's requirements are not complex and their application to this action is not debatable. Indeed, Plaintiffs' attorney does not claim he failed to understand section 33501.3's service requirements nor does he dispute they applied to this action. Plaintiffs' attorney acknowledged he knew the Legislature amended the Health and Safety Code provisions regarding challenges to redevelopment plans, but also conceded he did not look past the statutory provisions specifying the statute of limitations for those challenges. It appears Plaintiffs' attorney failed to find the plainly applicable law. As the trial court did, we empathize with Plaintiffs' attorney because the practice of law is filled with traps for the wary and unwary alike. Section 33501.3, however, requires a showing of good cause to grant relief from its service requirements and empathy is not enough.

Plaintiffs fail to cite any authority supporting their contention that an attorney's failure to find the plainly applicable law provides good cause for failing to comply with that law. They argue *Community Youth* and *Card* support their position, but neither case required the trial court to find Plaintiffs established good cause.

Community Youth reversed a trial court's finding that the plaintiff did not establish good cause for failing to properly publish summons in a reverse validation action. (*Community Youth, supra*, 170 Cal.App.4th at p. 432.) That case, however, did not involve an attorney's failure to find the plainly applicable law. Instead, the attorney mistakenly relied on an incorrect date in the published summons for the deadline to

respond to the complaint. (*Id.* at p. 423.) The Court of Appeal found good cause existed for allowing the plaintiff to republish the summons because the attorney’s mistake “was directly attributable to the administrative difficulties he encountered in obtaining an appropriate order for publication” (*Id.* at p. 431.) The difficulties the attorney encountered included the trial judge’s unavailability, a countywide wildfire closed the entire court for several days, and the newspaper in which the attorney sought to publish the summons changed the publication schedule the attorney relied on in calculating the return date. (*Id.* at pp. 423, 431.) Here, Plaintiffs present no comparable facts to excuse their attorney’s failure to discover the applicable law.

In *Card*, the Court of Appeal affirmed the trial court’s ruling that the plaintiffs established good cause for failing to publish the summons. There, the plaintiffs failed to publish the summons because they did not believe Code of Civil Procedure section 863 applied to their challenges regarding a city’s amended redevelopment plan. The *Card* court distinguished *Community Redevelopment* because “the action involved was simply a validation action and nothing more,” but the plaintiffs in *Card* sought injunctive and declaratory relief rather than relief under the validation statutes. (*Card*, *supra*, 61 Cal.App.3d at pp. 575-576.)

Nonetheless, the *Card* court explained the trial court was not *required* to find the plaintiffs established good cause for their failure to publish the summons. Indeed, based on the plaintiffs’ “noncompliance with a plainly mandated procedure” for publishing summons, the trial court could have found the plaintiffs failed to establish good cause and the Court of Appeal stated it would have upheld that ruling. (*Card*, *supra*, 61 Cal.App.3d at p. 576.) The trial court, however, exercised its discretion in favor of finding good cause and the Court of Appeal deferred to that decision based on the governing abuse of discretion standard of review. (*Ibid.*) Accordingly, *Card* does not support Plaintiffs’ contention that their attorney’s failure to look up the controlling law

required the trial court to grant relief. *Card* merely emphasized the importance of deferring to a trial court's reasonable good cause determination.

In a rather confusing attempt to establish good cause, Plaintiffs point to a related action Orange County filed to challenge the City's amended redevelopment plan. Plaintiffs argue the trial court granted Orange County relief in that action by entering a default against certain defendants despite the fact the register of actions did not include a proof of service showing Orange County served its complaint on the Attorney General. According to Plaintiffs, this leads to one of two possibilities: (1) Orange County served the Attorney General with its complaint and therefore "the Attorney General would have become aware of th[is] pending action" or (2) Orange County obtained relief without complying with section 33501.3. Neither of these possibilities, however, establishes good cause for Plaintiffs' failure to serve the Attorney General.

Plaintiffs did not present any evidence showing that Orange County served the Attorney General with its complaint or that Orange County's service prompted the Attorney General to discover Plaintiffs' action. Plaintiffs merely argue these are possibilities. Even assuming these facts exist, they speak to whether Plaintiffs' failure to serve the Attorney General prejudiced the Attorney General, not whether Plaintiffs had good cause for failing to serve the Attorney General.

It is not enough for Plaintiffs merely to show their failure to serve the Attorney General caused no prejudice. Section 33501.3 required Plaintiffs to show *both* good cause for failing to serve the Attorney General *and* no prejudice. These are separate requirements and Plaintiffs do not contend Orange County's service on the Attorney General caused their attorney to refrain from serving the Attorney General. To the contrary, Plaintiffs' attorney conceded he failed to serve the Attorney General because he did not know section 33501.3 required him to do so.

Moreover, whether a court clerk entered a default against some defendants in Orange County's action without requiring proof of service on the Attorney General is

irrelevant to this action. It establishes neither good cause for Plaintiffs' failure to serve the Attorney General nor a lack of prejudice to the Attorney General.⁷

Finally, Plaintiffs argue we should relieve them from their failure to serve the Attorney General because they worked diligently to properly publish the summons and satisfy all other procedural requirements for a reverse validation action. Plaintiffs emphasize that the foregoing cases defining good cause involve a statute that establishes requirements for serving summons to obtain jurisdiction over parties to the litigation, but section 33501.3 merely establishes a requirement to give a nonparty notice to allow it an opportunity to intervene in the action. None of that, however, alters the analysis regarding the trial court's decision to deny Plaintiffs' relief from section 33501.3's service requirements.

Section 33501.3 allows a court to excuse a party's failure to serve the Attorney General only on a showing of good cause. Plaintiffs do not challenge section 33501.3's validity nor do they argue an alternative interpretation of the statute that would allow them to proceed with this action despite their failure to timely serve the Attorney General or establish good cause. Plaintiffs do not argue a substantial compliance exception should apply or that section 33501.3's requirements are directory rather than mandatory. Instead, Plaintiffs solely argue that they made an adequate showing of good cause and lack of prejudice to obtain relief from section 33501.3's service requirements. The foregoing authorities compel the conclusion that Plaintiffs did not establish good cause and therefore we need not reach the prejudice question. We affirm the trial court's ruling.

⁷ Plaintiffs request that we judicially notice (1) a notice Orange County filed claiming its action and this action are related; (2) a minute order taking notice that these two actions are related; (3) a default entered in Orange County's action; and (4) the register of actions from Orange County's action. We deny the request because these documents and Orange County's action are irrelevant to whether Plaintiffs established good cause for their failure to serve the Attorney General. (*Rosen, supra*, 193 Cal.App.4th at p. 457, fn. 2.)

D. *Plaintiffs May Not Obtain Relief Under the Mandatory Relief Provision in Code of Civil Procedure Section 473, Subdivision (b)*

The mandatory relief provision in Code of Civil Procedure section 473, subdivision (b) generally requires the court to vacate a default or dismissal entered against a party if the party's attorney declares that his or her mistake or neglect caused the default or dismissal. (*Vaccaro, supra*, 63 Cal.App.4th at p. 770 [“This provision requires the court to vacate a dismissal upon the attorney's sworn statement of neglect, regardless whether the neglect was excusable or whether other conditions for *discretionary* relief are satisfied” (original italics)].) Nonetheless, Plaintiffs may not obtain relief under this mandatory relief provision for two reasons.

First, they did not ask for relief under this provision in the trial court, and did not raise the issue in their opening brief. (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124-1125 [mandatory relief under Code of Civil Procedure section 473, subdivision (b) not required unless motion specifically requests relief under that provision].) Their reply brief on appeal includes a single paragraph discussing the mandatory relief provision, but that paragraph is not set off by any specific heading to distinguish it from Plaintiffs' request for relief under section 33501.3's good cause exception. (*Karlsson v. Ford Motor Co.* (2006) 140 Cal.App.4th 1202, 1216 [party waived arguments by raising them for the first time in the reply brief]; *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 51-52 [failure to apply a heading to an appellate argument results in a waiver of that argument].)

Second, granting Plaintiffs relief under the mandatory relief provision would render section 33501.3 meaningless and defeat the policies underlying validation statutes. “Although the language of the mandatory provision of section 473, subdivision (b), on its face, “affords relief from unspecified ‘dismissal’ caused by attorney neglect, our courts have, through judicial construction, prevented it from being used indiscriminately by plaintiffs' attorneys as a ‘perfect escape hatch’ [citations] to

undo dismissals of civil cases.” [Citation.] For example, ‘courts have held the mandatory provision [of section 473(b)] is inapplicable to voluntary dismissals [citation] and dismissals for lapsing of the statute of limitations [citation], failure to serve a complaint in a timely manner [citation], failure to prosecute [citation], and failure to file an amended complaint after a demurrer has been sustained with leave to amend. [Citation.]’ [Citation.]” (*Nacimiento, supra*, 122 Cal.App.4th at p. 967; see also *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 483 [“Section 473, subdivision (b) was never intended to be a ‘catch-all remedy for every case of poor judgment on the part of counsel which results in dismissal’”].)

In *Nacimiento*, the Court of Appeal held the mandatory relief provision did not apply to a dismissal entered in a California Environmental Quality Act (CEQA) action after the plaintiff’s counsel failed to timely request a hearing on the merits because he miscalculated the statutory deadline for doing so. (*Nacimiento, supra*, 122 Cal.App.4th at pp. 964-966.) CEQA requires public agencies to assess the environmental impacts of all activities they approve or carry out, but it also demands that any challenge to an agency’s environmental assessment must be expeditiously resolved. CEQA therefore contains several procedural provisions to ensure that all challenges are promptly filed and diligently prosecuted. These provisions include a short statute of limitation ranging from 30 to 180 days and the requirement that a plaintiff request a hearing on the merits within 90 days or be subject to dismissal. “‘Patently, there is legislative concern that CEQA challenges, with their obvious potential for financial prejudice and disruption, must not be permitted to drag on to the potential serious injury of the real party in interest.’ [Citation.]” (*Id.* at p. 965.)

In light of these policies underlying CEQA’s short statutory deadlines, the *Nacimiento* court concluded that mandatory relief under Code of Civil Procedure section 473, subdivision (b) was not available for the plaintiff’s failure to timely request a hearing. If mandatory relief was permitted, CEQA’s statutory deadlines “would

effectively be nullified, and the legislative intent that CEQA challenges be promptly resolved and diligently prosecuted would be defeated,” because a party could always avoid the deadlines by submitting a declaration from its attorney taking responsibility for failing to comply with the statutes. (*Nacimiento, supra*, 122 Cal.App.4th at p. 968.) That result, however, “is insupportable [because] ‘the repeal or abrogation of statutes by implication is disfavored, as is any construction of a statute which would render related statutes a nullity.’ [Citation.]” (*Ibid.*)

Similar to CEQA, validation and reverse validation actions “are based upon the important public policy of securing a speedy determination of the validity of certain actions taken by a public agency.” (*Community Youth, supra*, 170 Cal.App.4th at p. 427.) “The validating statutes should be construed so as to uphold their purpose, i.e., “the acting agency’s need to settle promptly all questions about the validity of its action.” [Citation.] ¶¶ . . . ¶¶ A key objective of a validation action is to limit the extent to which delay due to litigation may impair a public agency’s ability to operate financially. [Citation.]’ [Citation.]” (*California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1420-1421.)

“Validation actions are . . . subject to a shorter statute of limitations to further the important public policy of speedy determination of the public agency’s action” (*Hollywood Park Land Co., LLC v. Golden State Transportation Financing Corp.* (2009) 178 Cal.App.4th 924, 941.) In addition to a short statute of limitations — 90 days for actions challenging a redevelopment plan or amendment (§§ 33500, subs. (a) & (b), 33501, subd. (a) & (b)) — the plaintiff in a reverse validation action must complete publication of the summons within 60 days (Code Civ. Proc., § 863) and, when the action challenges a blight determination made to support a redevelopment plan, the plaintiff must serve the Attorney General with his or her complaint and briefs within three days of filing those documents (§ 33501.3).

As in *Nacimiento*, these short statutory deadlines would be rendered meaningless if a party could avoid them by simply submitting a declaration from its attorney stating he or she was unaware of the deadline or failed to properly calendar it. Here, the trial court did not enter judgment in this action based on Plaintiffs' failure to serve the Attorney General until 14 months after Plaintiffs filed this action. The mandatory relief provision in Code of Civil Procedure section 473, subdivision (b) allows an application for relief to be made at any time up to six months after the court dismisses the action and there is no diligence requirement. (*Milton v. Perceptual Development Corp.* (1997) 53 Cal.App.4th 861, 868.) Accordingly, applying the mandatory relief provision in this case could result in a delay of more than 20 months before the trial even begins. That clearly contradicts the important public policy of securing a speedy determination in validation actions.

Moreover, unlike the statute at issue in *Nacimiento*, section 33501.3 authorizes the trial court to grant a party relief from their failure to timely serve the Attorney General on a showing of good cause and lack of prejudice. When a statute defines the terms on which relief from its requirements may be granted, relief under the mandatory relief provision in Code of Civil Procedure section 473, subdivision (b) is generally unavailable. (See *St. Paul Fire & Marine Ins. Co. v. Superior Court* (1992) 2 Cal.App.4th 843, 852 [because the Discovery Act defined conditions on which a party may obtain relief from an order deeming requests for admissions admitted, relief under Code of Civil Procedure section 473, subdivision (b) was unavailable], overruled on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983.)

III

DISPOSITION

The judgment is affirmed. The City shall recover its costs on appeal.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.