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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

WILLIAM S. LUND,

Objector and Appellant,

v.

DOMINIQUE MERRICK,

Defendant and Respondent.

G049438

(Super. Ct. No. 30-2011-00464163)

O P I N I O N

SHERRY L. LUND,

Plaintiff and Appellant,

v.

DOMINIQUE MERRICK,

Defendant and Respondent.

G049452

Appeal from orders of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Reversed.

Grobaty & Pitet, Christopher L. Pitet and Erica P. Herczeg for Objector and Appellant.

Bohm Wildish, James G. Bohm and Matthew Troncali for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Brian M. Daucher and Adrienne W. Lee for Defendant and Respondent.

* * *

INTRODUCTION

This is the third appellate skirmish in the long-running battle between appellant Sherry Lund and respondent Dominique Merrick. In this appeal, Sherry’s husband, William Lund, joins her to protest an order assigning to Merrick his payments from a trust under the jurisdiction of the Los Angeles Superior Court (the Los Angeles trust).¹ The assignment order allowed Merrick to collect from William the attorney fees awarded to her after she obtained a dismissal of Sherry’s complaint against her pursuant to the anti-SLAPP statute.² Merrick argued that the money going to William from the Los Angeles trust was community property and therefore available to pay off Sherry’s debt to her. The trial court assigned the payments from the Los Angeles trust to her until the amount of the attorney fee award, plus interest, was paid off.

We reverse. Merrick applied for this assignment and got her order *before* we ruled on Sherry’s appeal from the attorney fee award, which, as it happened, we reversed for lack of evidence. After we reversed the fee award, there was nothing upon which to base the assignment order, so it too must be reversed.

¹ We refer to the Lunds by their first names for clarity. No disrespect is intended. (*See Conway v. County of Tuolumne* (2014) 231 Cal.App.4th 1005, 1008, fn. 1.)

² “SLAPP” is an acronym for “strategic lawsuit against public participation” (*S. B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 377) and refers to a lawsuit that both arises out of defendants’ constitutionally protected expressive or petitioning activity and lacks a probability of success on the merits. (Code Civ. Proc., § 425.16, subd. (b)(1).)

FACTS

Sherry sued Merrick in April 2011 for slander and intentional infliction of emotional distress. Merrick filed a motion to dismiss under the anti-SLAPP statute in May. The trial court denied the motion, and Merrick appealed. We reversed and instructed the trial court to grant the motion and dismiss the case.³

In November 2012, Merrick made a motion for her attorney fees under Code of Civil Procedure section 425.16, subdivision (c)(1), for \$195,866. The trial court granted this motion in February 2013 for the entire amount, plus interest. Sherry filed a notice of appeal from the fee award on March 19, 2013.

Without waiting to see what happened with the appeal of the fee award, Merrick filed a motion in the trial court on August 21, 2013, to have William's payments from the Los Angeles trust assigned to her to satisfy the attorney fee award. The court granted this motion on November 7, 2013, ordering that William's payments from the trust were "assigned to . . . Merrick to the extent necessary to satisfy Merrick's March 26, 2013 judgment in this case against Sherry . . . in the amount of \$198,049.73 plus simple daily interest on the outstanding balance at the rate of ten percent (10%) (currently \$54.26 per day) through the date of payment." The order further directed the trustees of the Los Angeles trust to pay Merrick from the trust proceeds "until the judgment is satisfied in full." Both William and Sherry appealed from this order, which is the one presently before us.

Meanwhile, here at our court, the appeal of the attorney fee award was making its way through the system. We issued an opinion on May 21, 2014, reversing the award of attorney fees in its entirety for lack of admissible evidence of the amount of

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Lund v. Merrick (Aug. 24, 2012, G045654) [nonpub. opn.].

fees and sent the matter back to the trial court for Merrick to make another pass if she wished to do so.⁴

DISCUSSION

When a judgment is unqualifiedly reversed, the effect is the same as if it had never been entered. (*Weisenburg v. Cragholm* (1971) 5 Cal.3d 892, 896 [fraudulent conveyance judgment based on reversed judgment reversed]; *Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1015.) The issue is “‘at large’ for further proceedings, including retrial, as if it had never been tried and no judgment had been entered.” (*Saller v. Crown Cork & Seal Co., Inc.* (2010) 187 Cal.App.4th 1220, 1238, quoting *Regents of University of California v. Public Employment Relations Bd.* (1990) 220 Cal.App.3d 346, 356-357.) Merrick’s “right to recover the fees was established by the judgment and was extinguished when the judgment was vacated.” (*Beard v. Goodrich* (2003) 110 Cal.App.4th 1031, 1036; see 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 869, pp. 928-929 [vacation of judgment nullifies incidental proceedings based on judgment].)

In this case, we reversed the trial court’s order granting Merrick her fees in May 2014. The order Merrick obtained from the Orange County Superior Court in November 2013, granting her permission to collect her attorney fees from William, was extinguished when the fee order was reversed. Our reversal of the fee award erased its existence, and any subsequent proceeding based on that award is likewise erased.

We understand the parties’ desire to have us rule on the merits, on the assumption that Merrick will simply try again to get an assignment based on the second fee award. Nevertheless, “[t]he rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court.” [Citation.]” (*Salazar v. Eastin* (1995) 9

⁴ *Lund v. Merrick* (May 21, 2014, G048210) [nonpub. opn.]. After remand to the trial court, a different judge heard the renewed fee motion and awarded Merrick \$130,000 in fees (a \$65,000 reduction), on August 18, 2014. Respondent’s request for judicial notice of the subsequent judgment of dismissal is denied.

Cal.4th 836, 860.) We cannot foresee whether Merrick will try again, let alone what arguments or authorities she would use to support her attempt. The trial court is the place to seek a resolution of the dispute in the first instance.

DISPOSITION

The order of assignment is reversed. Any funds paid out pursuant to the assignment order are to be restored to their source. Appellants are to recover their costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.