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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOHN THOMAS CHRISTIANA,

Plaintiff and Appellant,

v.

NICHOLAS J. DOGRIS et al.,

Defendants and Respondents.

G050285

(Super. Ct. No. SICVCV120053246)

O P I N I O N

Appeal from a judgment of the Superior Court of Inyo County, Phillip Argento, Judge. (Retired judge of the Los Angeles Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

John Thomas Christiana, in pro. per., for Plaintiff and Appellant.

Susson, Parrett & Odell, Steven R. Odell and Edward L. Schumann, for Defendant and Respondent Nicholas J. Dogris.

Nemecek & Cole, Jonathan B. Cole, Mark Schaeffer and David B. Owen, for Defendant and Respondent Lynne Elizabeth Corpora.

John Thomas Christiana appeals from a judgment following the trial court's order sustaining demurrers, without leave to amend, to his first amended complaint. Christiana's complaint arises out of an underlying criminal case in which he was the defendant. During the course of that case, his appointed counsel, defendant Elizabeth Corpora, became concerned that Christiana might not be competent to assist in his own defense. The court then appointed defendant Nicholas Dogris as one of two experts who would evaluate his competency. Christiana was subsequently found to be incompetent by the court in the underlying case and was remanded to a psychiatric facility for a time. The court also ordered that Christiana be involuntarily medicated, and while that order was overturned on appeal, the incompetency finding was affirmed.

In the present case, Christiana alleges he was never incompetent, and that doctors who assessed him at the psychiatric hospital confirmed he was not. He seeks to hold Dogris and Corpora responsible for what he contends was his improper detention at the hospital. Christiana stated a cause of action for medical malpractice against Dogris, and causes of action for abuse of process and violations of his constitutional rights (deprivation of due process, violation of speedy trial right, unlawful detention and false imprisonment) against both Dogris and Corpora. Both defendants demurred to the first amended complaint.

The trial court sustained Dogris' demurrer without leave to amend on the ground that his opinion regarding Christiana's competency, given as a court-appointed expert, was absolutely privileged under Civil Code section 47 (section 47); and it sustained Corpora's demurrer without leave to amend on the ground that Christiana's claims against her were barred by the applicable statute of limitations. We find no error in either determination and affirm the judgment.

## FACTS

In February 2012, Christiana filed his initial complaint alleging malpractice and fraud against Dogris, a psychologist. Christiana alleged that a doctor/patient relationship existed between him and Dogris when Dogris examined him in February of 2009 to assess his competency to stand trial in a criminal case. He claimed Dogris wrote a report which improperly reflected both that Christiana had a mental illness and that he was incompetent to stand trial. As a result of Dogris' report, Christiana was committed to Atascadero State Hospital and was held both there and in county jail, for an indefinite period. The complaint named no other defendants and included no defendants sued under fictitious names (i.e., "Doe" defendants; see Code Civ. Pro., § 474).

In the complaint, Christiana specifically alleged he was excused from complying with the statute of limitations under Code of Civil Procedure section 352.1, subdivision (a) during the time he was imprisoned on a criminal charge.

Dogris demurred to the complaint and asked the court to take judicial notice of the fact he had been appointed by the court in Christiana's underlying criminal case, for the purpose of evaluating whether Christiana suffered from a mental disorder and whether that disorder rendered him incompetent to stand trial. Dogris argued the complaint failed to state a cause of action against him; that the causes of action alleged were barred by the applicable statutes of limitation; and that his alleged misconduct was protected by the litigation privilege set forth in section 47. The court sustained the demurrer with leave to amend.

In June 2012, Christiana filed his first amended complaint, in which he also added a second defendant, Corpora, whom he identified as an Inyo County public defender.

According to the second amended complaint, Christiana was in jail on felony criminal charges in February 2009, when Corpora declared she had some doubt about his competency. Christiana responded by requesting new counsel be appointed for him. Instead of being assigned new counsel, he was evaluated by Dogris to determine whether he was competent to stand trial. In April 2009, Corpora – acting contrary to Christiana’s wishes – waived important rights in connection with his competency hearing, including his right to a jury trial, his right to call witnesses (including Dogris) to testify under oath, and his right to testify personally.

The complaint alleges the court then delayed the competency hearing to hold a separate hearing addressing Christiana’s demand for new appointed counsel. (See *People v. Marsden* (1970) 2 Cal.3d. 118.) Following that hearing, the court denied Christiana’s request for new counsel. The competency hearing resumed in June 2009, and Christiana demanded Corpora seek a mistrial due to the absence of live testimony, and renewed his request to testify. Corpora refused. Over Christiana’s repeated objections, the court found him incompetent to stand trial and ordered he be transported to Atascadero State Hospital. The court subsequently ordered that Christiana could be administered psychotropic drugs against his will, to assist in restoring his competency.

Christiana appealed both the determination of his incompetency and the later order allowing involuntary administration of psychotropic drugs. In a published opinion, the court of appeal affirmed the incompetency ruling but reversed the medication order. (*People v. Christiana* (2010) 190 Cal.App.4th 1040.)

According to the complaint, the senior psychiatrist at Atascadero State Hospital reported that he viewed Christiana as being competent to stand trial from his first day at the hospital. Christiana was nonetheless detained at the hospital for 43 days, which did not count as “half time or good behavior time” credit against the length of any

subsequent incarceration. The delay was allegedly attributable to “paperwork and waiting for transportation back to . . . jail.”

Based on those facts, the amended complaint alleges a cause of action for medical malpractice against Dogris, and although Christiana purported to base that cause of action on both “intentional tort” as well as “negligence,” the complaint includes no allegations that Dogris engaged in any intentional wrongdoing. Rather, it alleges only that he acted intentionally in evaluating Christiana, and that he “failed to diagnose correctly” and “wrongly determined” Christiana was not competent to stand trial.

The complaint also states causes of action against both Dogris and Corpora, based on: (1) the alleged violation of Christiana’s constitutional rights to due process and a speedy trial, which resulted in Christiana being indefinitely held against his will in the state hospital; (2) the alleged violation of his constitutional right to be free from excessive bail; and (3) abuse of process. The complaint states, in conclusory fashion, that both defendants “entertained an ulterior motive” in using the legal process to have Christiana declared incompetent, but it does not suggest what that motive might have been, or why it might have been wrongful. The complaint also includes a reference to a cause of action for fraud, but no elements of such a cause of action were alleged.

Both Dogris and Corpora demurred to the first amended complaint. Dogris’ demurrer once again relied primarily on the litigation privilege of section 47, while Corpora’s raised several issues but relied primarily on the assertion that Christiana’s claims against her were barred by the statute of limitations, which she contended had expired by the time she was named as a defendant in the first amended complaint.

Christiana filed an opposition to both demurrers, and also sought to file a second amended complaint without leave of court. The trial court took the matter under submission following oral argument, and subsequently issued a lengthy written ruling.

The court noted in its ruling that although Christiana's second amended complaint had not been properly filed, its proposed allegations were nonetheless considered in ruling on defendants' demurrers. On the merits, the court sustained both demurrers without leave to amend. It concluded that Dogris, a court appointed expert, was immune from any liability based on the content of his opinion under section 47, and that no claim for abuse of process could be stated without identifying the alleged ulterior motive shared by both Dogris and Corpora in seeking to have Christiana declared incompetent.

As for the claims against Corpora specifically, the court ruled that (1) all of the causes of action alleged were barred by the applicable statutes of limitations, and (2) Christiana was collaterally estopped from claiming he was actually competent because he was previously adjudicated incompetent, and has not successfully challenged that determination. Judgment was subsequently entered in defendants' favor.

### *1. Standard of Review*

Christiana contends this case presents an issue of first impression and thus we should review the trial court's ruling de novo. He is correct about the standard of review, but wrong about the reasons for it. The applicable standard of review on appeal is determined by the type of issues presented, not their novelty. "We review an order sustaining a demurrer without leave to amend de novo [citation], assuming the truth of all properly pleaded facts as well as facts inferred from the pleadings, and give the complaint a reasonable interpretation by reading it as a whole and its parts in context. [Citation.] However, we give no credit to allegations that merely set forth contentions or legal conclusions. [Citation.] A complaint will be construed 'liberally . . . with a view to substantial justice between the parties.' [Citation.] If the complaint states a cause of action on any possible legal theory, we must reverse the trial court's order sustaining the

demurrer. [Citation.] Whether a plaintiff will be able to prove its allegations is not relevant.” (*Wilson v. Hynek* (2012) 207 Cal.App.4th 999, 1007.)

## 2. *Law Governing Competency Hearings*

Christiana’s claims against both Dogris and Corpora arise out of a competency proceeding conducted in the course of his underlying criminal case. Penal Code section 1368, subdivision (a), provides for such a proceeding to be conducted: “If, during the pendency of an action and prior to judgment, a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent.” And “[i]f counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant’s mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369. If counsel informs the court that he or she believes the defendant is mentally competent, the court may nevertheless order a hearing.” (*Id.* at subd. (b).)

Penal Code section 1369 specifies, in some detail, the procedures to be followed in determining a criminal defendant’s competency, commencing with a requirement that the court appoint experts to evaluate defendant: “The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. In any case where the defendant or the defendant’s counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. . . . The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant’s mental disorder, if any, the defendant’s ability or inability to understand the nature of the criminal proceedings or assist counsel in the

conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence.”

“A competency proceeding, although certainly related to the underlying criminal case, is not itself a criminal action. . . . ‘A proceeding to determine competency to stand trial is neither a criminal action nor a civil action; rather, it is a special proceeding. [Citations.]’” (*People v. Masterson* (1994) 8 Cal.4th 965, 969.) And “[a]lthough there is a constitutional right to a jury trial in criminal and civil actions [citation], there is no such right in a competency proceeding.” (*Ibid.*) Rather, the right to a jury trial in a competency hearing is “statutory, not constitutional,” and may properly be waived by defense counsel, even over the defendant’s own objection. (*Id.* at pp. 972-973.) This is consistent with the long-standing rule that “where the attorney has doubts as to the present sanity of the defendant he should be able to make decisions as to how the proceeding should be conducted. [¶] When evidence indicates that the defendant may be insane it should be assumed that he is unable to act in his own best interests. In such circumstances counsel must be free to act even contrary to the express desires of his client.” (*People v. Hill* (1967) 67 Cal.2d 105, 115, fn. 4.)

### 3. *Christiana’s Causes of Action Against Dogris*

Each of the claims alleged against Dogris arise from the report and opinions he gave in connection with Christiana’s competency hearing. The trial court ruled that all of the claims were barred by the litigation privilege set forth in section 47, subdivision (b), which declares that any “publication or broadcast” made in a “judicial proceeding” is “privileged.” We agree.

“Although originally enacted with reference to defamation [citation], the privilege is now held applicable to any communication, whether or not it amounts to a publication [citations], and all torts except malicious prosecution. [Citations.] Further, it applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved. [Citations.] [¶] The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. [Citations.]” (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.)

“The purposes of section 47, subdivision (b), are to afford litigants and witnesses free access to the courts without fear of being harassed subsequently by derivative tort actions, to encourage open channels of communication and zealous advocacy, to promote complete and truthful testimony, to give finality to judgments, and to avoid unending litigation. [Citation.] To effectuate these purposes, the litigation privilege *is absolute and applies regardless of malice*. [Citation.] Moreover, “[i]n furtherance of the public policy purposes it is designed to serve, the privilege prescribed by section 47[, subdivision (b)] has been given broad application.” [Citation.]” (*Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 336, italics added.)

As Dogris points out, *Gootee v. Lightner* (1990) 224 Cal.App.3d 587 (*Gootee*), is nearly on point. In that case, a father sued a psychologist who had been jointly retained by the parents to render an expert evaluation in a child custody dispute. After the psychologist opined that primary custody should go to the child’s mother, the father sued, alleging the psychologist had engaged in negligence as well as intentional

wrongdoing involving the improper destruction of raw test data. The trial court entered summary judgment in the psychologist's favor based on the litigation privilege, and the court of appeal affirmed. As the court explained, "[f]reedom of access to the courts and encouragement of witnesses to testify truthfully will be harmed if neutral experts must fear retaliatory lawsuits from litigants whose disagreement with an expert's opinions perforce convinces them the expert must have been negligent in forming such opinions. Moreover, finality of litigation is preserved by applying the privilege. Appellant had and exercised his opportunity to challenge Lightner's methods and conclusions, and, having lost the original contest, should not now be permitted to institute new litigation over those same conclusions." (*Id.* at p. 593.) The same is true here.

In fact, the only notable distinction between *Gootee* and this one is that in *Gootee*, the father had directly retained the expert, and thus could argue the expert *owed him* a professional duty of care which could be separately breached by the psychologist's acts *in preparing* for his testimony in the custody proceeding, and that such breaches would fall outside of the litigation privilege. By contrast, Dogris was retained *by the court* in the underlying case, not by Christiana himself, and thus Christiana had no valid basis to claim Dogris *owned him* any duties which might exist independently of the competency proceeding. In any event, the *Gootee* court concluded that even a direct duty of care owed by the professional to the litigant would be insufficient to breach the litigation privilege because "the protective mantle of the privilege embraces not only the courtroom testimony of witnesses, but also protects prior preparatory activity leading to the witnesses' testimony." (*Gootee, supra*, 224 Cal.App.3d at p. 594, fn. omitted.)

Christiana argues *Gootee* is inapposite for different reasons, however, because it involved "no malicious prosecution and no constitutional rights [were] violated." We cannot agree those are valid distinctions. To the extent Christiana is implying that *this case* involves a claim for malicious prosecution, he is mistaken. A

cause of action for malicious prosecution lies only when the plaintiff *has prevailed* in the prior action. (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 341 [“[i]t is hornbook law that the plaintiff in a malicious prosecution action must plead and prove that the prior judicial proceeding of which he [or she] complains terminated in his favor”].) Christiana did not prevail in his competency hearing, and thus he could not state a cause of action for malicious prosecution.

Nor has Christiana provided any authority for the notion that a claim based on opinions offered by Dogris at his competency hearing would be exempt from the litigation privilege merely because *they resulted in a violation of his constitutional rights*. He does cite *Flatley v. Mauro* (2006) 39 Cal.4th 299, 324-325, for the proposition that “section 47 states a statutory privilege, not a constitutional protection,” but this statement has nothing to do with limiting *the scope* of section 47 as a privilege. Nor does it suggest a hierarchy which somehow precludes the application of *statutory* provisions to claims involving *constitutional* rights. Instead, the quoted reference merely explained why a statement which was privileged under section 47 – and thus could not be asserted *as a basis of liability* – might nonetheless be admissible *as evidence of the defendant’s intent* in a cause of action alleging abuse of process based on other conduct. That distinction is of no assistance to Christiana here.

Christiana also contends that the application of section 47 to preclude liability in this case “leads to absurd results,” because it would “protect [the] malpractice of a psychiatric doctor depriving a person of their liberty.” But while we agree that application of the privilege might allow such a result to occur in isolated cases, we cannot agree that possibility renders the privilege “absurd.” As we have already explained, the privilege is designed to protect the adversarial system as a whole, “to afford litigants and witnesses free access to the courts without fear of being harassed subsequently by derivative tort actions . . . to give finality to judgments, and to avoid unending

litigation.”” (*Komarova v. National Credit Acceptance, Inc.*, *supra*, 175 Cal.App.4th at p. 336.) Protecting the vast majority of litigants and witnesses from the prospect of being sued based on their honest (but disputed) testimony, and protecting our legal system from being clogged with such derivative litigation, are both worthy goals. It is consequently not at all absurd for our legislature to conclude that those benefits outweigh the detriment inherent in allowing the occasional expert witness to escape potential liability for malpractice.

Because all of Christiana’s causes of action alleged against Dogris arose from the content of his expert report and opinions offered in the competency hearing, they were all barred by the litigation privilege set forth in section 47. Thus, the trial court did not err by sustaining Dogris’ demurrer without leave to amend.

#### 4. *Christiana’s Cause of Action Against Corpora*

Christiana also challenges the court’s decision to sustain Corpora’s demurrer without leave to amend on statute of limitations grounds. We find no error in the court’s decision.

Code of Civil Procedure section 340.6 governs any “action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services,” and requires that such actions be brought “within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission.” (*Id.* at subd. (a).) Here, it is beyond dispute that Christiana was aware of Corpora’s alleged misdeeds – her waiver of his rights against his will, and her alleged failure to ensure that the proper protocol was followed in his competency hearing – at the time those misdeeds allegedly occurred; i.e., in February through June 2009. But it was not until June 2012 – three years later – that he alleged a cause of action against her in his first amended complaint.

Christiana argues, however, that the statute of limitations was tolled pursuant to Code of Civil Procedure section 352.1, subdivision (a), which states: “If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335), is, at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years.” According to Christiana, this tolled the statute of limitations against Corpora for a full two years. We cannot agree, however, because the tolling under that code provision extends only for “the time of that disability,” and as Corpora points out, Christiana specifically alleged he was ultimately released from jail on *February 8, 2011*. Consequently, Christiana’s incarceration disability ended on that date, and his one-year statute of limitations period commenced running. His first amended complaint, alleging his claims against Corpora, was filed in June 2012, more than one year later.

Christiana also argues that his causes of action against Corpora should relate back to the date he filed his original complaint against Dogris, because she was a “necessary or proper party” to a complete determination of his claims. However, he supports that contention with no analysis or authorities, and thus it is deemed waived. (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived”]; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [““Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived””].)

In any event, the contention is incorrect. Code of Civil Procedure section 389, subdivision (a), specifies when a party would be considered necessary or

indispensable to the adjudication of a claim: “A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) *in his absence complete relief cannot be accorded among those already parties* or (2) *he claims an interest relating to the subject of the action* and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.” (Italics added.) In this case, Christiana’s causes of action against Dogris were based on alleged breaches of Dogris’ own professional obligations in connection with the competency hearing, and those causes of action could have been fully litigated without involving Corpora at all. And of course, she asserted no legal interest in the subject matter of those claims. While it might certainly have been more *efficient* for Christiana to join whatever claims he wished to allege against these two defendants into a single lawsuit, because those claims arise out of a common set of facts, there was no legal requirement that he do so.

Further, even if Corpora were a necessary party to the causes of action Christiana alleged against Dogris, that would not mean his subsequent assertion of related claims against her would relate back to the filing of the original complaint for statute of limitations purposes. The only circumstance in which the identification of a new defendant in an amended complaint would relate back to the date of the original complaint is when that newly identified defendant had initially been sued as a “Doe” (i.e., fictitiously named) defendant in the original complaint. (See Code Civ. Pro., § 474; *Hoffman v. Keeton* (1901) 132 Cal.195, 196-197 [party whose name is substituted for a

fictitiously named defendant is treated as “a party to the action from its commencement”].) Christiana included no “Doe” defendants in his initial complaint.

Because Christiana was indisputably aware of Corpora’s alleged wrongdoing in connection with his competency hearing as it was occurring, and by February 8, 2011, he had completed both his confinement in the mental hospital (which was alleged to be the harm resulting from her wrongdoing) as well as his jail term, his one-year statute of limitations under Code of Civil Procedure section 340.6 commenced running no later than that date. Thus, he was obligated to file any claims “for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services” no later than February 8, 2012. (Code Civ. Pro., § 340.6.) He failed to do that.

And finally, although Christiana did purport to include a cause of action labeled as “fraud” in his first amended complaint, the allegations under that label did not include any of the *required elements* of such a claim. “The elements of fraud . . . are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or “scienter”); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) The allegations of Christiana’s fraud claim incorporate none of those things, and appear instead to comprise an argument that a doctor-patient relationship should be deemed to exist between Dogris and him, because the criminal court had authority under Penal Code section 987.8, subdivision (b), to require Christiana to bear the expense of Dogris’ services. Whatever merit there is in that assertion, it bears no resemblance to a cause of action for fraud.

Moreover, as the trial court pointed out, the other factual allegations of the first amended complaint are inconsistent with the existence of a fraud cause of action against Corpora because they establish that Christiana never *relied* on anything she said or did in connection with the competency proceeding. To the contrary, the first amended

complaint makes clear he fought her every step of the way in relation to that proceeding, and even sought to have her replaced as his appointed counsel. These factual allegations foreclose any cause of action for fraud against Corpora, which is the only exception to the one-year statute of limitations for claims arising out of the professional services of an attorney. Consequently, the trial court did not err in sustaining her demurrer to Christiana's first amended complaint without leave to amend.

#### DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.