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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PALM BEACH PARK ASSOCIATION,

Cross-complainant and Respondent,

v.

FLORENCE BEARDSLEE,

Cross-defendant and Appellant,

SEAN BEARDSLEY, et al.,

Movants and Appellants.

G050385

(Super. Ct. No. 30-2010-00423544)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert J. Moss, Judge. Motion to dismiss appeal granted.

Broedlow Lewis, Jeffrey Lewis and Kelly Broedlow Dunagan, for Cross-defendant, Movants and Appellants.

Allan B. Weiss & Associates, Allan B. Weiss, Allen L. Thomas and Sivi G. Pederson for Cross-complainant and Respondent.

* * *

THE COURT:^{*}

We dismiss appellant Florence Beardslee's appeal as untimely because it was filed nearly a month after the 60-day time period for filing a notice of appeal after service of notice of entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1).)

Beardslee purports to rely on an exception to the 60-day deadline which arises upon the filing of a "valid motion" to vacate a judgment within the same 60-day deadline. (Cal. Rules of Court, rule 8.108(c).) Beardslee, however, never filed such a motion within that time frame, and her earlier pre-judgment motions for relief from default do not suffice to extend the time for a motion to vacate a default judgment.

Appellants Sean Beardsley and Jade Beardsley claim to have filed a timely appeal from an order denying their motion to intervene. But no such motion and no such order were filed below, and these two other would-be appellants were not proper parties either to the action below or to this appeal.

I

PROCEDURAL HISTORY

Respondent Palm Beach Park Association (Association) owns and operates a resident-owned mobile home park in San Clemente. Appellant Florence Beardslee (Beardslee) is a resident of the mobile home park. Appellants Sean and Jade Beardsley (collectively Sean and Jade) are Beardslee's son and daughter-in-law.¹

In February 2012, Beardslee was incarcerated in federal prison for conspiracy to commit arson, arson of a structure used in interstate commerce, mail fraud and use of fire to commit mail fraud. Beardslee executed a notarized power of attorney for Sean and Jade as attorneys-in-fact, including for "full power of attorney to all

^{*} Before Bedsworth, Acting P. J., Aronson, J., and Thompson, J.

¹ Because of the similarity in surnames (although they use a slightly different spelling), we refer to Sean and Jade by their first names. No disrespect is intended. (See *Hong v. CJ CGV America Holdings, Inc.* (2013) 222 Cal.App.4th 240, 243, fn. 1.)

personal & real property transactions of any kind whatsoever.” Sean and Jade delivered the power of attorney to Association’s on-site manager.

In September 2012, Association filed a cross-complaint against Beardslee for past rent and for ejectment. Association alleged that Beardslee had failed to pay her monthly rent for a seven year period since 2007, and now owed over \$40,000 in back rent, as well as additional monetary obligations. While Association named other individuals as cross-defendants, Association did not allege any causes of action against Sean and Jade.

Beardslee did not answer the cross-complaint.

On December 18, 2012, Association filed a request for entry of default against Beardslee on the cross-complaint, with a proof of service. The clerk entered default as requested on the same day.

Almost a year later, in November 2013, Beardslee specially appeared to move to quash service of summons on the cross-complaint for lack of personal service. Association opposed the motion to quash, claiming its process server had personally served the summons upon Sean. Beardslee denied that either Sean or Jade had been served, or that either was authorized to accept service of process.

In December 2013, the court denied Beardslee’s motion to quash service “on the ground that since a default has been entered . . . her right to take any further steps in the litigation is terminated until she successfully seeks to set aside the default.” By separate order, the court directed that Association’s request for a default prove-up be placed on calendar for a hearing because “[t]here are complexities associated with this default prove-up that are best resolved in open court.”

On February 3, 2014, Beardslee filed an ex parte application for relief from default based in part upon Association’s alleged failure to properly serve its cross-complaint.

Association conducted a title search on the mobile home on February 20, 2014 and ascertained that Beardslee was the only person named on title for the property. Association thereupon sought to depose Beardslee. “Specifically, the deposition would allow the Association’s attorney to question Beardslee about her claims pertaining to the power of attorney document, her claim that her son was not appointed broad powers of an attorney-in-fact, her claim that the power of attorney document was executed on behalf of an apparently non-existent corporation and/or a trust, her claim that the Request for Entry of Default was not received by her in prison, and other issues pertaining to her knowledge about the instant cross-complaint and when she learned about the cross-complaint and default. All of these inquiries are highly relevant matters for the Association to discover as part of [its] opposition to the motion to set aside the default.”

Beardslee refused to appear for a deposition. On February 27, 2014, the trial court ordered Beardslee to be deposed before the court would set a hearing on her motion to set aside the default. According to the court’s minute order, “[The] [m]otion to set aside [the] default will not go forward until [Association] has a chance to depose [Beardslee].” (See *Armstrong v. Gates* (1973) 32 Cal.App.3d 952, 958-959 [plaintiff entitled to take defendant’s deposition to inquire into matters relating to factual issues on a motion to set aside a default].)

Beardslee claimed she was medically unable to sit for the “stress” of a deposition for at least a six month period. On March 6, 2014, the trial court ordered Beardslee to be deposed unless her counsel provided a declaration under penalty of perjury by Beardslee’s physician “in nonconclusory language indicating that she is medically unable to appear and provide deposition testimony.” The court further scheduled a prove-up hearing for April 2, 2014.

Association again moved to compel Beardslee’s deposition, contending her physician’s declaration was insufficient to establish that she had a bona fide medical condition preventing her from appearing at a deposition.

On March 18, 2014, the trial court issued an order staying Beardslee's pending motion for relief from default until she agreed to submit to an oral deposition. "[T]he fact of the matter is the motion to set aside [the] default is not going to take place until they have had a chance to depose Mrs. Beardslee"

Beardslee was not deposed before the prove-up hearing, and the court never lifted the stay on her motion for relief from default.

On April 2, 2014, the court held the default prove-up hearing, as scheduled. After hearing testimony from several witnesses, the court found in favor of Association. On April 3, 2014, the court entered a default judgment in favor of Association and against Beardslee, awarding Association damages of some \$44,500. The court further issued a writ of possession to Association to recover possession of the real property upon which Beardslee's mobile home was located. The court served notice of entry of judgment on April 4, 2014.

The April 3, 2014 default judgment does not name Sean and Jade as judgment debtors; they neither owned nor lived on the property and never had any agreement with Association. Despite this, on May 15, 2014, Sean and Jade, each acting in pro. per., filed a notice of motion to vacate the default judgment and to set aside the writs of possession and of execution and to reinstate Beardslee's lease with Association. Association objected, pointing out that Sean and Jade were not parties to the litigation, and had never filed an application for leave to file a complaint-in-intervention.

Beardslee did not file her own motion to vacate the April 3, 2014 default judgment, even though she was named as a judgment debtor.

On June 6, 2014, the court held a hearing on Sean and Jade's motion to vacate. While acknowledging that he should have filed a petition to intervene, Sean asked the court to overlook such procedural shortcomings. "I understand that from talking to . . . my mom's attorney, that we should have filed a petition [to intervene] instead of the motion or prior to the motion in order to be included in [the] case, but I

would pray that the court would look past those shortcoming” The court declined to do so because “[a]t this point both of you lack standing to effect this case in any way, even if you have an interest in the property.”

On July 2, 2014, Beardslee filed a notice of appeal from the April 3, 2014 default judgment. Sean and Jade joined in her notice of appeal.

On July 21, 2014, Beardslee filed an ex parte application to vacate the default and the default judgment. The court denied Beardslee’s ex parte application.

Association has moved to dismiss this appeal as untimely. Association further claims that Sean and Jade lack standing to pursue an appeal because they were not parties below and never filed a motion to intervene. Appellants, now represented by the same counsel, have filed written opposition to the motion to dismiss, and Association has filed a reply.

II

DISCUSSION

A. *Since Beardslee Did Not File a Timely Motion to Vacate the Default Judgment, She Cannot Benefit From the Extended Filing Period.*

Beardslee did not file her notice of appeal within 60 days after service of the notice of entry of judgment. Since the notice of entry of judgment was served upon Beardslee’s then counsel of record on April 4, 2014, the last day for Beardslee to file her notice of appeal was on June 3, 2014. But Beardslee did not file her notice of appeal until July 2, 2014, well beyond the 60-day period. (Cal. Rules of Court, rule 8.104(a)(1).)

As a result, we lack jurisdiction to further consider the appeal unless Beardslee can fit herself within an exception to the 60-day rule. (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674.) This absolute jurisdictional bar promotes the finality of judgments and requires the losing party to act expeditiously or not at all. (*Conservatorship of Townsend* (2014) 231 Cal.App.4th 691, 696-697 (*Townsend*).)

Beardslee claims her time to appeal was extended because she filed a motion to vacate the default on January 13, 2014, which motion was never heard by the trial court because she refused to submit to her deposition. In the absence of such a deposition, the trial court proceeded to the default prove-up hearing and issued a default judgment on April 3, 2014.

Beardslee does not cite any court rule or statute which extends the 60-day period because of the failure of a trial court to rule on a motion to vacate a default. Indeed, such order is reviewable, if at all, only by petition for writ of mandate, not by appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981 [“the order denying the motion to vacate the default is not independently appealable”].)

California Rules of Court, rule 8.108(c) extends the appellate deadline for appellants who timely file a motion to vacate a default *judgment*, but Beardslee never timely filed such a motion before filing her notice of appeal. Instead, Beardslee waited until July 21, 2014, weeks after filing her notice of appeal, before seeking to vacate the default judgment. “The rules governing posttrial motions involve drawing bright lines marking the point when the trial court’s jurisdiction over a case ends and the jurisdiction of the appellate court begins.” (*Townsend, supra*, 231 Cal.App.4th at p. 697 [dismissing appeal as untimely where appellant filed a motion to vacate the judgment with a temporary judge within the 60-day period, but not with the superior court clerk].)

We decline Beardslee’s request to treat her notice of appeal as a premature appeal from the denial of her subsequent *ex parte* application to vacate the default judgment. Beardslee provides no reason why we should give any deference to her *ex parte* application which was made long after the trial court’s authority to act on the motion to vacate had expired. (See Code Civ. Proc., § 663a, subd. (b).) “Were we to begin saving untimely appeals by allowing procedurally invalid posttrial motions to be deemed entirely different motions, we would be subverting the carefully drawn

jurisdictional scheme. Such mischief is strictly forbidden.” (*Townsend, supra*, 231 Cal.App.4th at p. 702.)

B. *Sean and Jade Cannot Appeal from a Motion to Intervene Which They Never Filed.*

Sean and Jade assert their status as would-be intervenors who filed a notice of appeal less than 30 days after respondent Court denied their “unsuccessful attempt to intervene” Sean and Jade correctly contend that an order denying a motion to intervene is an appealable order. (*Jun v. Myers* (2001) 88 Cal.App.4th 117, 122.)

However, Sean and Jade never asked to intervene in the action below. They filed a motion to vacate the default judgment and to set aside the writ of possession. The trial court denied the motion at the hearing on June 6, 2014 precisely because Sean and Jade were not parties to the action, were not attorneys who could represent Beardslee, and because they had never sought to intervene.

Only parties of record in a trial court action can file a notice of appeal. Sean and Jade were not named as party plaintiffs or defendants in any of the proceedings below, nor, as they have acknowledged, did they take appropriate steps below to become a party of record to the proceedings.

Sean and Jade’s cited cases are distinguishable. In *Jun v. Myers* (2001) 88 Cal.App.4th 117, the appellant filed a motion to intervene in the trial court, and was found to have properly appealed from the trial court’s order denying his motion. The same cannot be said here. Similarly, in *In re Veterans Industries, Inc.* (1970) 8 Cal.App.3d 902, two veterans’ groups filed objections in the superior court to the proposed distribution of assets of a dissolved nonprofit charitable organization. The Court of Appeal held the veterans’ groups properly appealed from the trial court’s order striking their objections on the ground they lacked standing to sue. “The filing of these objections . . . was in essence an attempt to intervene and to become a party to the proceeding. An order denying leave to intervene is appealable.” (*Id.* at p. 916.)

Here, in contrast, Sean and Jade’s post-judgment motion to vacate at most sought to dismiss Association’s cross-complaint against Beardslee “and enjoin [Association] from continuing to harass, threaten or otherwise cajole Beardslee from the legal, legitimate and quiet enjoyment of her home.” We do not see this as the functional equivalent of a motion to intervene based on Sean and Jade’s alleged independent standing as aggrieved parties whose own rights or interests were injuriously affected by the judgment.

III

DISPOSITION

The appeal is dismissed. Costs on appeal are awarded to Association.