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

ERIC MOBERG,

Plaintiff and Appellant,

v.

LESLIE CODIANNE et al.,

Defendants and Respondents.

H038250

(Monterey County

Super. Ct. No. M105157)

I. INTRODUCTION

Appellant Eric Moberg, a self-represented litigant, was hired by respondent Monterey Peninsula Unified School District (the District) as a special education teacher for young adult students with severe handicaps. After the District dismissed Moberg from his position as a probationary certified employee, he filed a lawsuit against the District and District personnel. On December 13, 2010, the trial court issued its order granting defendants' motions to strike all causes of action in the first amended complaint and dismissing the entire action with prejudice.

Moberg appealed and in our prior decision, *Moberg v. Codianne* (Oct. 7, 2011, H036633) [nonpub. opn.] (*Moberg I*), we determined that the entire action should not have been dismissed with prejudice in the absence of a noticed motion to dismiss.

(Code Civ. Proc., § 581, subd. (f)(3).)¹ We therefore reversed the order of dismissal in *Moberg I* and remanded the matter for the limited purpose of allowing defendants to bring a noticed motion to dismiss.

During proceedings after remand, the trial court (1) struck the statements of disqualification filed by Moberg; (2) granted defendants' motion to dismiss and ordered dismissal of the first amended complaint with prejudice pursuant to section 581, subdivision (f)(3) on February 9, 2012; (3) also on February 9, 2012, denied as moot Moberg's motion for consolidation of this action with *Moberg v. Jordan* (Super. Ct. Monterey County, No. M113154); and (4) granted defendants' motion to strike costs on May 31, 2012. On appeal, Moberg contends that the trial court erred in issuing all four orders. He also challenges an earlier March 4, 2011 judgment awarding attorney fees to defendants.

For the reasons stated below, we determine that the only issues cognizable in this appeal are those raised by Moberg with respect to the February 9, 2012 order of dismissal. Since we find no merit in Moberg's contentions on appeal, we will affirm the order of dismissal.

II. FACTUAL AND PROCEDURAL BACKGROUND

Some portions of the summary of the factual and procedural background have been taken from this court's prior decision in *Moberg I, supra*, H036633.

A. *Moberg I*

On April 12, 2010, Moberg filed a verified complaint against four individual defendants and the District. The individual defendants included Leslie Codianne, the District's associate superintendent of student support services; Ann Kilty, the District's director of adult education; Teresa Poirier, a District school psychologist/program manager, and Marilyn Shepherd, District superintendent.

¹ All further statutory references are to the Code of Civil Procedure.

On August 12, 2010, the trial court issued its order sustaining defendants' demurrers to the first, second, and fourth causes of action without leave to amend and sustaining the demurrer to the third cause of action with leave to amend. The court also granted defendants' motion to strike paragraph eight of the complaint and defendants' motion for a protective order. The trial court's order of August 12, 2010, therefore disposed of all causes of action in the original complaint with the exception of the third cause of action for defamation.

Moberg subsequently served a first amended complaint, which added four new defendants (including Judd Jordan, the District's attorney), a revised third cause of action for defamation, and five new causes of action. Defendants brought a motion to strike the new causes of action and a special motion to strike the third cause of action in the first amended complaint under the anti-SLAPP statute, section 425.16. Defendant Jordan filed a special motion to strike the fifth cause of action for invasion of privacy and the sixth cause of action for intentional interference with contract under section 425.16. Additionally, defendants filed demurrers to causes of action three through eight in the first amended complaint on the grounds that each cause of action failed to state facts sufficient to constitute a cause of action.

The trial court issued its rulings on all of the motions in its order of December 13, 2010. The order states, "It is hereby ordered that defendants' general motion to strike and special anti-SLAPP motions to strike, which include all of the purported causes of action of the first amended complaint, are granted; [Moberg's] oral request at the hearing for leave to amend the purported third cause of action for defamation to avoid the anti-SLAPP statute is denied; and therefore the entire action is determined and dismissed with prejudice, rendering defendants' demurrer and [Moberg's] stayed discovery motion moot."

Moberg appealed from the judgment of dismissal and we determined in *Moberg I*, *supra*, H036633, that his substantive challenges to the trial court's rulings in the

December 13, 2010 order lacked merit. However, we found merit in Moberg's procedural challenge to the dismissal. Although the December 13, 2010 order disposed of all causes of action in the first amended complaint, we determined that the order did not operate as a dismissal of the entire action with prejudice and a noticed motion to dismiss was required under both section 581, subdivision (f)(3) and the right to due process. We therefore remanded the matter for the limited purpose of allowing defendants to bring a motion to dismiss pursuant to section 581, subdivision (f)(3).

B. Trial Court Proceedings After Remand

On December 8, 2011, defendants filed a notice of motion to dismiss the first amended complaint pursuant to section 581, subdivision (f)(3). Moberg opposed the motion on the ground that dismissal was premature because he had indicated during prior court proceedings that he intended to move for leave to amend the first amended complaint.

On January 13, 2012, Moberg brought a statement of disqualification of the trial judge, the Honorable Kay T. Kingsley. In the trial court's February 9, 2012 order, Judge Kingsley struck the statement of disqualification as untimely and for failure to state any legal grounds for disqualification.

The February 9, 2012 order also included the trial court's order granting defendants' motion to dismiss and dismissing the first amended complaint with prejudice pursuant to section 581, subdivision (f)(3). Additionally, the February 9, 2012 order denied Moberg's motion for consolidation of this action with *Moberg v. Jordan, supra*, No. M113154 as moot.

On February 22, 2012, Moberg served a memorandum of costs on appeal in which he claimed costs and "[o]verpaid attorney's fees" in the amount of \$13,175. Defendants moved to strike and/or tax costs on the grounds that the memorandum of costs was untimely and improperly sought a "refund" of the award of attorney's fees to defendants as set forth in the March 4, 2011 judgment for attorney's fees and costs.

While the motion to strike and/or tax costs was pending, on April 13, 2012, Moberg brought another statement of disqualification against Judge Kingsley. In the trial court's May 31, 2012 order, Judge Kingsley struck the statement of disqualification as untimely and for failure to state any legal grounds for disqualification. The May 31, 2012 order also granted defendants' motion to strike costs.

In April 2012 Moberg filed a timely notice of appeal from the February 9, 2012 order of dismissal.

III. DISCUSSION

On appeal, we understand Moberg to raise the following issues: (1) Judge Kingsley erred in striking his statements of disqualification and therefore she should have recused herself; (2) the trial court erred in dismissing the first amended complaint with prejudice because he had a right to amend the complaint; (3) the trial court erred in denying as moot his motion for consolidation of this action with *Moberg v. Jordan*, *supra*, No. M113154; and (4) the trial court erred in granting defendant's motion to strike costs on May 31, 2012. Moberg also seeks review of a pre-remand March 4, 2011 judgment awarding attorney fees to defendants.

A. Issues Not Cognizable on Appeal

Our consideration of the issues that Moberg seeks to raise on appeal is limited pursuant to the rules governing appeals. One important rule is that "[i]f a party fails to appeal an appealable order within the prescribed time, this court is without jurisdiction to review that order on a subsequent appeal. [Citations.]" (*In re Marriage of Lloyd* (1997) 55 Cal.App.4th 216, 219; see also § 906 ["The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken."].)

Another important rule of appellate procedure is that "[a] notice of appeal from a judgment alone does not encompass other judgments and separately appealable orders: 'The law of this state does not allow, on an appeal from a judgment, a review of any

decision or order from which an appeal might previously have been taken.” ’ [Citation.]” (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239 (*Sole Energy*)).) Thus, “ ‘[d]espite the rule favoring liberal interpretation of notices of appeal, a notice of appeal will not be considered adequate if it completely omits any reference to the judgment being appealed.’ [Citation.]” (*Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 47; see also *Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh* (2005) 131 Cal.App.4th 1342, 1352.) Accordingly, where a notice of appeal specified that the plaintiffs were appealing from a judgment entered on January 30, 2003, and did not mention the separately appealable order granting defendants a new trial on January 17, 2003, the appellate court lacked jurisdiction to review the order granting a new trial. (*Sole Energy, supra*, 128 Cal.App.4th at pp. 239-240.)

Moberg is not exempt from compliance with the rules of appellate procedure because he is representing himself on appeal. “Under the law, a party may choose to act as his or her own attorney. [Citations.] ‘[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ [Citation.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) Thus, a self-represented litigant is not entitled to lenient treatment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

In this case, Moberg’s notice of appeal specified that he was appealing from the February 9, 2012 order. No other order was mentioned. Since the March 4, 2011 judgment awarding attorney fees to defendants was separately appealable (see, e.g., *Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 693), as was the May 31, 2012 order granting defendants motion to strike costs (see, e.g., *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 223), we lack jurisdiction to review those orders. (See *Sole Energy, supra*, 128 Cal.App.4th at pp. 239-240.)

We are also precluded from reviewing the trial court's orders striking the statements of disqualification brought by Moberg against Judge Kingsley. "An order striking a statement of disqualification is not appealable; it may only be challenged by a petition for writ of mandate filed 'within 10 days after service of written notice of entry of the court's order' (. . . § 170.3, subd. (d).)" (*Carl v. Superior Court* (2007) 157 Cal.App.4th 73, 75.)

Thus, the only trial court order that we have appellate jurisdiction to review is the February 9, 2012 order of dismissal, which includes the order denying Moberg's motion to consolidate this action with *Moberg v. Jordan, supra*, No. M113154.

B. Order of Dismissal

We understand Moberg to contend that the trial court's February 9, 2012 order of dismissal and order denying his motion to consolidate as moot should be reversed because the court abused its discretion by failing to allow him to amend the first amended complaint.

The order of dismissal is an appealable order. "The court may dismiss the complaint as to that defendant when: [¶] . . . [¶] After a motion to strike the whole of a complaint is granted without leave to amend and either party moves for dismissal." (§ 581, subdivision (f)(3).) "[O]rders of dismissal 'constitute judgments . . . effective for all purposes' (§ 581d) and hence are directly appealable. (§ 904.1, subd. (a); [citation].)" (*Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 345, fn. 2.)

Moberg contends that he properly requested leave to amend at the pre-remand hearing held on November 30, 2010. He further contends that the trial court did not explain the court's reasoning in failing to allow leave to amend.

Defendants respond that Moberg does not have an absolute right to amend the first amended complaint. They also argue that the trial court did not err in dismissing the action with prejudice since Moberg has never served or filed a motion for leave to amend the first amended complaint.

It is undisputed that Moberg never filed a motion for leave to amend the first amended complaint during any of the proceedings below. In his opposition to defendants' post-remand motion to dismiss, Moberg asserted that during a pre-remand November 30, 2010 hearing he had requested leave to amend by advising the trial court " 'I'll just file a separate motion for leave to amend, and that should dispense with that.' " Subsequently, during the hearing held on January 13, 2012, on defendants' post-remand motion to dismiss, Moberg admitted that he had not filed a motion to amend the first amended complaint.

The omission of a properly noticed motion for leave to amend the first amended complaint is fatal to Moberg's contentions on appeal under the statutory provisions for amendment of previously amended pleadings. Section 472² provides that a plaintiff may amend a pleading without leave of court before an answer or demurrer is filed. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612 (*Leader*).) After a demurrer has been sustained, the pleading may be amended only with permission of the court. (§ 473, subd. (a)(1); see *Leader, supra*, at pp. 612-613.)

Section 473, subdivision (a)(1) provides in part: "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, *after notice to the adverse party*, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars;" (Emphasis added.)

² Section 472 states, "Any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, and the time in which the adverse party must respond thereto shall be computed from the date of notice of the amendment."

The record reflects that Moberg filed the first amended complaint after demurrers were sustained to the original complaint. Therefore, any amendments to the first amended complaint could be made only with the permission of the court, obtained after a noticed motion for leave to amend. (§ 473, subd. (a)(1); see *Leader, supra*, 89 Cal.App.4th at pp. 612-613.) Since Moberg did not file a noticed motion for leave to amend, he did not properly request leave to amend the first amended complaint.

Moberg's challenge to the February 9, 2012 order of dismissal on the ground that the trial court did not allow him to amend the first amended complaint therefore lacks merit in the absence of a noticed motion for leave to amend, and we will affirm the order. In light of our affirmance of the order of dismissal, we also determine that the trial court properly denied as moot Moberg's motion to consolidate this action with *Moberg v. Jordan, supra*, No. M113154.

IV. DISPOSITION

The February 9, 2012 order is affirmed. Costs on appeal are awarded to respondents.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.