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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

LOWELL A. GARAMALLO,

Plaintiff and Appellant,

v.

WILLIAM P. DALEY et al.,

Defendants and Respondents.

A128979

**(Alameda County
Super. Ct. No. RG10506542)**

Plaintiff Lowell A. Garamallo (appellant)¹ appeals, in propria persona, the April 26, 2010 voiding of his complaint against defendants² due to his failure to pay the requisite trial court filing fees. He contends the trial court's dismissal of his complaint was an act exceeding its jurisdiction, an abuse of its discretion, and a violation of his constitutional rights to due process and access to the courts. We conclude the appeal is untimely and must be dismissed.

On March 18, 2010, appellant filed a civil complaint against respondents alleging numerous causes of action including legal malpractice and breach of contract.

¹ Appellant is an inmate at Pelican Bay State Prison.

² The defendants are William P. Daley, Seth Chazin, Paul Upton, Miller and Associates Law Firm, Willis Shalita, Ester Rogers, and the State Bar of California (collectively respondents). No respondent has filed a brief on appeal, and the sole record on appeal is an appellant's appendix.

On March 29, 2010, the trial court issued a form “Order on Court Fee Waiver (Superior Court)” regarding appellant’s request to waive court fees filed on March 29. The order stated “The court **denies** your request as follows:”

“**Warning!** If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. . . .”

(Boldface in original.) The order also stated the court denied the fee waiver request because the sections on the form regarding appellant’s monthly income, household income, money and property and monthly expenses were blank or incomplete. The order stated “You have 10 days after the clerk gives notice of this order (see date below) to pay your fees and costs, or file a new revised request providing the incomplete information.” Appellant was served by mail with the order on March 30, 2010.

On April 14, 2010, the trial court received, but did not file, a letter from appellant to the court clerk and attached documents intended as a “refiling of fee waiver per crt order.”

On April 26, 2010, the court clerk filed and served on appellant a form “Notice of Administrative Void.”³ A checked box on the form stated, “Application for Waiver of Court Fees and Costs Denied.” The form also stated, “You are hereby notified that the Complaint filed on March 18, 2010 is hereby set aside and deemed void as to Plaintiff, Bank of America, N.A., for failure to post the required filing fee in the amount of \$355.00.”

On April 28, 2010, the court clerk sent appellant a letter stating, “Your request to file Rejection Letter has been rejected for the following reason: [¶] The court has determined that your Request to Waive Court fees which was Denied by the Judge and

³ Pursuant to Government Code section 68634, subdivision (g), “If an application [for an initial fee waiver] is denied in whole or in part, the applicant shall pay the court fees and costs that ordinarily would be charged, or make the partial payment as ordered by the court, within 10 days after the clerk gives notice of the denial, unless within that time the applicant submits a new application or requests a hearing under subdivision (e). If the applicant does not pay on time, the clerk shall void the papers that were filed without payment of the court fees and costs.”

receipt of your letter on April 14, 2010, is untimely. Therefore, rendering your Complaint filed with the court is deemed Void (see copies attached). As per mailing date of March 30, 2010, you had 10 days to file an Amended Request to Waive Court Fees to court. [¶] You must file a new complaint to court with an updated Request to Waive Court Fees.” (*Sic.*) The “copies attached” were: (1) a copy of page 1 of appellant’s complaint, which contained a slash mark across it and, in large print along the left side vertical margin stated “Void Pursuant to 3/29/2010 Court Order”; and (2) a copy the April 26, 2010 notice of administrative void.

In a letter filed by the court clerk on April 29, 2010,⁴ appellant requested a 30- to 45-day “grace period” as to his court filings due to restrictions resulting from his prison confinement.

In a letter filed by the court clerk on May 5, 2010,⁵ appellant inquired as to whether the court had granted his April 7 request for a fee waiver form.

At a date on or after May 10, 2010, the court clerk apparently refused to file appellant’s motion for “alteration/reconsideration” of the April 26 “Notice of Administrative Void.”

On July 6, 2010, appellant filed a notice of appeal from the April 26 “Notice of Administrative Void.”⁶

The time limits for filing a notice of appeal are jurisdictional and are governed by rule 8.104(a) of the California Rules of Court, which states: “Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (1) 60 days after the superior court clerk serves the party filing the notice of appeal with a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the

⁴ We judicially notice appellant’s letter filed in the trial court on April 29, 2010. (Evid. Code, § 452, subd. (d).)

⁵ We judicially notice appellant’s letter filed in the trial court on May 5, 2010. (Evid. Code, § 452, subd. (d).)

⁶ The notice of appeal states the appeal is from the April 26, 2010 “final judgment setting aside [appellant’s] complaint.” Since no such document appears in the record, we construe the appeal as being from the April 26 “Notice of Administrative Void.”

judgment, showing the date either was served; [¶] (2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or [¶] (3) 180 days after entry of judgment.” (See *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 905 [pursuant to rule 8.104(a)(1), an appellant has 60 days from the date the superior court clerk mails a file-stamped copy of the judgment in which to file a notice of appeal].) Here, the record establishes that the court clerk served appellant by mail on April 26, 2010, with a file-stamped copy of the appealed from notice of administrative void. Thus, appellant had until June 25, 2010, to file a timely notice of appeal. His failure to file his notice of appeal until July 6, 2010, renders the appeal untimely; it must therefore be dismissed.

DISPOSITION

The appeal is dismissed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.